

Maryland State Commission on Criminal Sentencing Policy
May 13, 1997

Commission Members in Attendance:

The Honorable John F. McAuliffe, Chairperson
Judith R. Catterton, Esq.
Ms. Roberta Roper
Chief Walter E. Chase, Sr.
LaMonte E. Cooke
Senator Delores G. Kelley
Senator Christopher J. McCabe
Delegate Joseph F. Vallario, Jr.
The Honorable Howard S. Chasanow
The Honorable Joseph H.H. Kaplan
The Honorable Alexander Wright, Jr.
Carolyn Quattrocki, Esq.
Stephen E. Harris, Esq.
John Lang for Secretary Bishop L. Robinson
Adam Gelb
Marna McLendon, Esq.
Senator F. Vernon Boozer
Delegate Kenneth C. Montague, Jr.
The Honorable Andrew L. Sonner, Consultant

Staff Members in Attendance:

Linda M. Schuett

Announcements and Preliminary Matters

The Honorable John F. McAuliffe, Chairman, called the hearing to order at approximately 2:10 p.m. He welcomed all persons present and encouraged anyone who wished to testify to sign the sheet. He noted that there was a shuttle available to return to the Biddle Street Garage for anyone who parked in that location.

The Chairman asked for additions or corrections to the minutes of the last meeting. Hearing none, the minutes were approved as submitted.

The Chairman noted that a letter from Ms. Roper had been distributed to Commission members. The letter addresses possible issues that the Commission may wish to submit for the 1998 and 1999 legislative sessions. The Chairman stated that consideration of the letter would be deferred until the June meeting of the Commission.

The Chairman announced that his candidate for Executive Director had accepted a position as CEO for a corporation and therefore had to decline the Executive Director position. The Chairman still has several good prospects available, and he will interview them at the earliest possible time.

The June meeting of the Commission will take place on June 19, 1997 at the Wye Institute. This will be a full day meeting with a full agenda.

The Chairman and others have participated in numerous events since the date of the last Commission meeting. In late March, the Chairman met with the Criminal Justice Coordinating Committee of Montgomery County. That Committee has agreed to sponsor a hearing if a hearing is held in Montgomery or Prince George's Counties. The Chairman also attended a seminar on Federal Sentencing Guidelines at American University. On April 24, the Chairman and Senator McCabe met with the Committee on Mental Health, Alcoholism, and Addiction of the Maryland Judicial Conference. That committee is interested in community options, as well as addiction treatment. On May 7, the Chairman, Secretary Robinson, and Senator Kelley were speakers on a radio talk show in Baltimore. Also this month, the Chairman and Ms. Quirk met with Michael Sarbanes, Executive Director of the Governor's Office of Crime Control and Prevention, and his staff. Finally, just this morning, the Chairman, Judge Sonner, and Mr. Gelb attended a seminar in Washington, D.C., at which Professor Norval Morris spoke on "Crime, the Media, and Public Disclosure."

The Chairman invited the speakers present to come forward to testify, as follows:

Carol McIntire, Chair, Committee for Justice

Ms. McIntire stated that the Committee for Justice was formed about 2 ½ to three years ago. It provides an outside contact for prisoners at Jessup. Ms. McIntire submitted testimony in written form.

The main point she wishes to make relates to sentencing disparity. The Committee receives many calls from prisoners asking why there are such differences in the length of sentences for similar offenses. Committee members have checked in an informal way, and they too believe there is disparity. Baltimore City sentences tend to be shorter than sentences from the various counties. There is likewise disparity among the counties. Prisoners simply do not understand why this is so. When they ask what can be done, the Committee can only tell them to go back to court.

Prisoners also ask about alternative sentencing. There is a prevalent feeling of hopelessness once prisoners become part of the Department of Corrections. They feel they receive no help. They are, however, buoyed by the existence of this Commission. Although they understand that the work of this Commission will probably not affect them personally, they believe that perhaps the system and sentences will become more equitable in the future.

Senator Kelley stated that the written testimony contains anecdotal examples of disparity. She questioned whether the Committee attempts to keep more formal statistics. Ms. McIntire responded that it does not. Delegate Montague questioned whether the Committee believes that a problem exists with respect to sentences that are modified when the prisoner returns to court seeking a reduction. Ms. McIntire responded that prisoners believe that it creates a problem because, again, the reductions in sentences serve to create additional disparity.

Mr. Harris questioned whether the prisoners that the Committee deals with would prefer to have mandatory sentences. Ms. McIntire responded that prisoners need to know that a definite span of time, for example five to ten years, is the sentence to be imposed for particular offenses.

LouEllen Griffin, Cockeysville

Mrs. Griffin's son, Jamie, was murdered. She opposes life sentences for murderers. Since murderers have taken a life, they should be required to give their lives in return. Although Jamie's murderer was sentenced to death in 1993, the Court of Appeals overturned the death sentence on the ground that the defendant had not had a sufficient opportunity to present evidence of abuse during childhood. Ms. Griffin felt the Court should not be permitted to do this. When the defendant was sentenced the second time, he got a life

sentence. Life without the possibility of parole was not in existence at the time.

Ms. Roper asked whether Ms. Griffin was permitted to address the court during the sentencing phase. Ms. Griffin stated that she was permitted to speak and did so.

Henry Belsky, Esquire

Mr. Belsky stated that he and his law firm represent almost 13,000 police officers throughout the State. In his view, police officers deserve a downward departure from sentencing guidelines for non-intentional crimes committed during the course of duty. In particular, there is a guideline relating to the use of a firearm in connection with an offense. While the guideline may be appropriate for the public at large, it is inappropriate in connection with police officers because police officers are required to carry a firearm while on duty.

When police officers are charged with a crime, the case is always a high profile one. If charged with a felony, the officer is immediately suspended without pay. If convicted, the officer loses his or her job. The police officer receives no credit for all of the many good deeds done during the course of duty. The officer never receives the low end of the sentencing guidelines. Rather, the police officer tends to receive the high end.

The federal system recognizes that time served by police officers is far harder. Police officers usually spend their time in isolation. Mr. Belsky dislikes mandatory guidelines. He trusts our judges. Nonetheless, he believes that police officers get a better "break" in federal court than in state court.

Senator Kelley questioned whether Mr. Belsky believes that being a police officer should be a mitigating factor. Mr. Belsky responded that it should not be a mitigating factor, but the use of a firearm by a police officer during the performance of his or her duties should not be an aggravating factor.

Ms. Catterton asked about the approximate number of cases where the charges have included use of a firearm. Mr. Belsky responded that over the past five years, there have been about five such cases in Baltimore City, one in Anne Arundel County, two on the Eastern Shore, and none in Western Maryland. Those numbers increase if all types of charges were to be included. In response to a question from Ms. Catterton about the cost to incarcerate a police officer, Mr. Belsky stated the cost in the federal system for such inmates is over \$100,000, a figure that the State cannot afford.

Mr. Harris stated that doctors and lawyers also lose their jobs when convicted of crimes because they lose their licenses to practice. Mr. Belsky disagreed that this was comparable to police officers because doctors and lawyers have the ability to obtain reinstatement. Police officers are never re-hired as police officers. If that were done, the police department would face negligent hiring charges.

Felicia Brown, Baltimore

Ms. Brown works in a local detention facility in the department that computes diminution credits. The credits help to manage the prison population.

Ms. Brown believes that community options need to be increased. She sees the same people in and out of the facility where she works. Prison does not rehabilitate them. Prisoners should be kept busy within the community doing community work. Doing this also helps to relieve some of the taxpayer burden. Ms. Brown believes that the use of alternative sentencing procedures, such as home detention, should be increased in lieu of building more jails.

Hal Riedl, Baltimore

Mr. Riedl lives in Baltimore City and works for the Department of Corrections. He interviews new male inmates and makes recommendations concerning their placements.

Mr. Riedl believes that sentencing practices should not be driven by prison capacity. Rather, the reverse should be true. We are a vastly lenient society, leaving far too many offenders on the streets. No other western democracy tolerates the level of individual freedoms that this country tolerates.

Disparity in sentencing necessarily occurs because each case is unique. The hands of trial judges should not be tied.

Non-violent offenders should be given equal access to prison. Mr. Riedl thinks it is appropriate to give jail time to, for example, the man who steals money from the elderly by selling them bogus life insurance policies. Also, buying and selling drugs is a non-violent offense, but it is part of the network of violence. Judges should have the power to imprison drug offenders.

Mr. Riedl supports the continuation of the various methods by which sentences are reduced. Prisons need the ability to take back good time credits for misbehavior. He would not want to see the present entitlement to credits expanded, however, in order to get people out of prison more quickly.

Senator Kelley asked what criteria would be used if additional options were created. Mr. Riedl stated that this State already has most of the options presented on question eight, and inmates are already evaluated for placement into these options. Senator Kelley questioned whether all of the same options are available for women. Mr. Riedl responded that they are. There is no gender disparity. Ms. Quattrocki asked whether Mr. Riedl believes that there are plenty of options available with plenty of slots for placement into those options, but an inability to locate people who meet the criteria for placement into those programs. Mr. Riedl responded in the affirmative. For example, the Baltimore area has the ability to place about 1000 inmates, but only about 250 of those slots are filled.

Mr. Harris questioned whether the judge sentences inmates into the options or whether the Department of Corrections does it. Mr. Riedl responded that, except where the judge sentences a defendant to Patuxent, any statement by the judge that the defendant should be in a particular option is considered to be advisory only. They make every effort to honor the judge's suggestion, however.

Chief Chase questioned whether the speaker had expressed the opinion that there are too many individual freedoms. Mr. Riedl stated that people express themselves in this country through, for example, cars, firearms, and substance abuse. We find ways to excuse their behavior, and we do not teach behavior to prevent these ways of expression. Our collective sense of individual freedoms has resulted in a loss of the sense of the rights of others.

Ms. Catterton questioned how long it takes to evaluate the inmates. Mr. Riedl responded that he could speak only as to the male population, where inmates are seen by the third day after arrival and classification occurs that same day. It takes about ten days to get them into home detention, if that is the classification. There are nine employees evaluating the male inmates only.

Mr. Riedl was asked whether there are sufficient jobs for those classified as able to work. Judge Chasanow questioned whether about 10% of the prison population is currently in a work-release program. Mr. Riedl said he did not know the percentage currently working, but he believes that about 50% of the prison population would like to be working but are not.

Senator Kelley asked whether Mr. Riedl is involved in evaluating high level drug dealers. He responded that he mostly deals with low level offenders. When the discussion again focused on the criteria for the

evaluation, Mr. Riedl stated that the following factors are taken into account in evaluating the defendant: nature of the charge, length of sentence, pending charges, number of prior adult incarcerations, any escape history, and any history of violence.

Ms. McLendon questioned why both parole and good time credits are needed to manage the prison population and whether, if the nature of parole authority were changed, whether parole alone would be sufficient. Mr. Riedl stated his belief that parole alone would be sufficient if the Parole Board were given sufficient flexibility. At the present time, however, parole is only considered after one-fourth of the sentence is served for "regular" offenses or after one-half of the sentence is served for serious offenses. If the system were changed so that 85% of the sentence always had to be served, that would impact the mindset of the prison population.

Kay McMullan, Baltimore

Ms. McMullan stated her belief that perpetrators of crimes should have one appeal, and no more. She also believes that life with parole should always be available.

Thomas P. Hinson, Baltimore

Mr. Hinson stated that he has lost two nephews as a result of crime. One was Jamie Griffin, whose mother has already testified. There, the defendant received death, then, when that sentence was vacated, life. In the other case, the defendant was placed on four years probation for vehicular homicide - and the family was never consulted concerning the plea bargain reached. Mr. Hinson stated the opinion that the Court of Appeals needs to enforce the death penalty statute. He understands that the current Chief Judge is opposed to it. Judge McAuliffe noted that the current Chief Judge has voted in favor of the death sentence in appropriate cases. He is able to distinguish his personal belief concerning capital punishment from his duty to uphold the law. Mr. Hinson was gratified to learn this.

Linda Staylor, Forest Hill

Ms. Staylor stated that she wished to focus on victims' rights. She herself has been a victim. The system needs to monitor victim impact statements. Victims need to be heard, and they need protection. For 17 years, Ms. Staylor has worked at a cemetery where it is her job to monitor the family during the entire burial process. In this, she hears and deals with some families who have been the victims of crime. She understands that judges and juries have difficult decisions to make.

Senator Kelley noted that light sentences have been raised several times during the testimony. She questioned whether Ms. Staylor is bothered by the fact that, in vehicular accident cases where neither drugs nor alcohol are involved, the current fine is \$500 per body. Ms. Staylor responded that she is bothered by this.

Delegate Montague stated that the witness has testified that judges and juries have difficult jobs. He questioned whether she believes they are unjust. Ms. Staylor responded that she does not believe that the system as a whole is unjust, although she felt that it resulted in unfairness in her particular case. The people she deals with in her job do believe that the system is unjust. They are in the process of grieving, however, and are unable during that process to focus on much else. Chief Chase noted that if unfairness does result, it may not be the fault of the judge or the jury. Prior to their involvement, the police and the prosecution are involved. Breakdowns can occur in either of those two phases as well.

Lisa Williams, Woman Power

Ms. Williams stated that Woman Power is a group that focuses on women, particularly African American

women, and children. The group is interested in crime prevention. For example, it runs a program called Girl Scouts Beyond Bars.

Ms. Williams asked the Commission whether it is concerned only with adult crime or whether its charge includes juveniles as well. As with adults, there is disparate treatment of juveniles, often based on race and economic factors. Since 1992, there have been 2.3 million people arrested who are under the age of 18. She questions what is being done to handle these youthful offenders. She questions whether the Commission's role includes the ability to recommend an allocation of funds for juveniles.

Judge McAuliffe questioned what Girl Scouts Beyond Bars is, and Ms. Williams explained the program. Senator Kelley questioned whether the program supports bonding between mothers and their daughters. Ms. Williams said that it does. The slogan, in fact, is "bringing mothers and daughters together." The program was started here in Maryland in the early 1990's and has spread to 21 cities.

Senator Kelley asked whether the same correctional options are available for women as for men. For example, boot camp is rarely discussed with respect to female inmates. Ms. Williams stated that she hears information about the lack of availability of options for women.

Ms. Johnson, Baltimore City

Ms. Johnson stated that she learned of this hearing through the radio talk show. She herself was a defendant and the victim of the legal system. During a time of emotional problems and therapy, she handed the wrong transfer to a bus driver and the driver became nasty and rude. When the bus driver pushed her, Ms. Johnson slapped her. As a result, Ms. Johnson spent several months in jail awaiting her trial for assault. This was her first offense. She herself used to be a Brownie and a Girl Scout - she is not a criminal. The prosecution argued for four years in jail. She received a suspended sentence and two years probation.

In contrast to her case, Ms. Johnson presented the case of the male who had robbed a bank, using a toy gun. There, the case was statted and the man received no jail time. Ms. Johnson questioned how this kind of disparity can exist.

Senator Kelley asked whether the mental problems were raised at the trial. Ms. Johnson said they were. Otherwise, she may have received the four-year sentence. Delegate Vallario noted that the judge could not have done any better for her than he did, to which Ms. Johnson agreed. Judge Chasanow noted that the case may have been statted to allow for the filing of federal charges.

Dr. Stephan Goodwin

Dr. Goodwin stated that he is an anthropologist. He teaches at Morgan State University. He has also taught at Patuxent and elsewhere. He is interested in the rights of victims, safe communities, community awareness, and the public purse.

Dr. Goodwin stated the opinion that descriptive guidelines seem senseless, good only for the purpose of gathering statistical information. Guidelines should instead provide guidance, while allowing for some discretion. Wide discretion, however, is discretion run amuck, which leads to no sense of justice.

Dr. Goodwin stated that our current system is full of double talk. Although we say that a sentence is for a particular number of years, the defendant is out of prison in a small fraction of that time. Dr. Goodwin would prefer to have lesser sentences, with the assurance that the defendant will serve that sentence, modified only perhaps by good time credits.

Dr. Goodwin stated that the cost of correctional options certainly needs to be considered. But there must be

concern about the availability of those options. For example, in some states, the defendant must pay for home detention monitoring, so only those with money can afford that option. Senator Kelley suggested the possible use of sliding scales.

Stephanie Meredith

Ms. Meredith is a psychiatric nurse at Johns Hopkins. She heard about this hearing through the radio talk show.

Ms. Meredith stated that the families of victims are rarely "satisfied" by the death of the murderer. For example, in the case of the defendant who had cannibalized several victims and was later murdered in prison, the victims remained unsatisfied.

Ms. Meredith stated her concern about Governor Glendenning taking away hope for those sentenced to life without the possibility of parole. When hope is taken away, motivation is taken away and problems, such as the recent one at Jessup, result.

Ms. Meredith questioned how the issue of rehabilitation is being addressed. If it is left unaddressed, the inmates are being set up for failure.

The Chairman thanked all of the speakers for their informative presentations. With that, the meeting was adjourned.