

The Criminal Record

Forging Ahead With California Sentencing Reform

Until 1976, California had an indeterminate sentencing system: Judges had almost complete discretion to impose sentences within broadly defined ranges, and parole authorities had almost complete discretion to release inmates any time before the expiration of the imposed sentence. Sentencing experts and policy-makers were virtually united in their opposition to this system, condemning it for lacking uniformity, proportionality, and transparency, and for unrealistically promoting rehabilitation as a primary goal of sentencing.

In 1976, the California Legislature enacted the Determinate Sentencing Act (DSA), explicitly describing the new law's philosophy as rooted in "punishment" rather than rehabilitation. The DSA grouped crimes into categories, with each category tied to a sentencing "triad" containing a high, middle, and low sentence. The law directed judges

to presumptively impose the middle sentence or, if justified by aggravating and/or mitigating factors, the higher or lower sentence. The DSA also abolished discretionary parole release.

There is now growing agreement among practitioners, policymakers, and academics that California's post-1976 sentencing structure has contributed to

serious problems that no one anticipated in 1976 – a correctional system plagued by egregious overcrowding, unsafe conditions for officers and inmates, racial imbalances in prison populations, high recidivism, a troubled parole revocation system, increasing expenditures, a lack of systematic data collection, and an incoherent sentencing structure.

This new consensus now recognizes that it is good public policy for California to create a sentencing data and policy commission as a new independent agency, drawing on professional policy expertise as well as the perspectives of representatives from various parts of state government. The agency's mandate would be to collect and analyze sentencing and corrections data, to develop statewide sentencing and corrections policies, and to coordinate sentencing policy with correctional resources.

Improvement in California's sentencing system requires the cooperation and broad agreement of various branches and agencies of government, as well as key constituent *(Continued on page 5)*

A NEWSLETTER OF THE STANFORD CRIMINAL JUSTICE CENTER: Stanford's vehicle for promoting and coordinating the study of criminal law and the criminal justice system, including legal and interdisciplinary research, curriculum development, and preparation of law students for careers in criminal law.

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Director's Note



I am delighted to be introducing the inaugural issue of *The Criminal Record*, the Stanford Criminal Justice Center's forum for letting our partners in the criminal law and criminal justice policy arena know what we're up to.

It is fitting that the focus of the inaugural issue is sentencing policy. When Professor Robert Weisberg introduced the Stanford Criminal Justice Center in the fall of 2004, he chose as the Center's inaugural event a conference entitled "The Future of American Sentencing: A National Roundtable on Blakeley." Indeed, as the features included in this newsletter show, sentencing law and policy has been a key feature of the SCJC's work. Dr. Joan Petersilia spent the 2005-2006 academic year as a visiting Professor here, teaching courses on the sociological aspects of the juvenile and adult sentencing and prison systems in California. I became an advisor to the Little Hoover Commission's Sentencing Reform Project and attended the 2006 conference of the National Association of State Sentencing Commissions. The spring 2007 semester will bring both a new course on sentencing law and policy and the launch of the Stanford Executive Sessions on Sentencing and Corrections Reform to the Law School.

Yet, our work is hardly limited to the sentencing context. In the last year and a half, we have hosted:

- a panel of individuals who had recently been paroled from California life prison sentences;
- a public meeting in which community members had an opportunity to provide commentary and feedback to the expert panel appointed by the Governor to make recommendations for reforming the dysfunctional California Youth Authority (now the Division of Juvenile Justice);
- a panel of experts on investigations and prosecutions of gang related crimes;
- a presentation of two noted scholars on the current status of the constitutional right to counsel in criminal cases;
- an address by New York University Law School Professor James Jacobs concerning his work on the intersections between labor unions and organized crime;
- a debate amongst the candidates for Santa Clara County District Attorney; and
- an academic conference on new developments in federal white collar prosecution practice.

In addition, we have helped numerous students find summer and post-graduate criminal law and criminal justice jobs, and have helped many others think through the complexities of what it means to be a criminal law practitioner. To say the least, we have been involved in research and activities that cover a broad range of topics and disciplines.

We have barely begun to explore the directions the SCJC may take in the future. As the fall 2006 semester comes to a close, I feel very optimistic about the new directions 2007 will bring.



Kara Dansky
Executive Director, Stanford Criminal Justice Center

The Stanford Executive Sessions on Sentencing and Corrections

The Stanford Criminal Justice Center is launching the Stanford Executive Sessions on Sentencing and Corrections, an innovative form of policy working group based on the Executive Sessions model that was developed in the 1980s at the Kennedy School of Government at Harvard. The purpose of this endeavor is to bring together the key public, academic, and organizational leaders in the field of sentencing and corrections policy in a spirit of cooperative movement toward reform of the sentencing and corrections systems in California. The Stanford Executive Sessions on Sentencing and Corrections will include leaders from the California Department of Corrections and Rehabilitation, the California Correctional and Peace Officers Association, key legislators, the judiciary, academia, and nonprofit groups. We believe that the Stanford Executive Sessions provides an ideal forum and structure for the transformation of research on sentencing and corrections into policy and practice, and that now is the perfect time for the establishment of these Sessions. Our first meeting is scheduled for March 9, 2007.



Prof. Mariano-Florentino Cuellar teaches the first-year Criminal Law course, as well as the upper-level course in International

Criminal Law. Formerly Senior Advisor to the Under Secretary of Enforcement in the US Department of the Treasury, where he developed policy on investigating and prosecuting trans-national financial crimes, Prof. Cuellar has written on such topics as the federal money-laundering laws and international criminal courts.



Prof. George Fisher, a scholar and teacher of Evidence Law, also directs the Prosecution Clinic and teaches a seminar on

the Jury Trial. Prof. Fisher is a former Massachusetts state prosecutor whose scholarship includes historical studies of the jury trial, plea bargaining, and morals legislation.



Prof. Jeffrey Fisher co-directs the Supreme Court Clinic, where a major part of the caseload involves criminal law and procedure, and himself has won major

victories in the US Supreme court on such issues as sentencing law and the Confrontation Clause. Prof. Fisher has also directed the amicus curiae appellate litigation activities of the National Council of Criminal Defense Lawyers.



Prof. Pamela Karlan, in addition to her expertise in Constitutional Law, Civil Procedure, and Election Law, teaches and

writes on federal civil rights law as it bears on the criminal justice system, and has also taught the course in Criminal Procedure: Adjudication. Prof. Karlan also co-directs the Supreme Court Litigation Clinic, with a caseload including major criminal law and procedure appeals. Prof. Karlan was

Criminal Law

Faculty Showcase

The following members of Stanford Law School's permanent faculty devote a substantial portion of their teaching and research to criminal law and criminal justice policy.

formerly a staff attorney and continues to serve as a cooperating attorney for the NAACP Legal Defense Fund in civil rights cases.



Prof. Mark Kelman teaches the first-year Criminal Law course and has written on criminal law topics

with an interdisciplinary approach, including applications of microeconomics and cognitive psychology.



Prof. Lawrence Marshall, Associate Dean for Public Interest and Clinical Education, is the head instructor for criminal

defense clinics, including the current Capital Litigation Clinic. An expert on criminal procedure, he formerly served as Legal Director of the Center on Wrongful Convictions at Northwestern University, where he coordinated efforts to obtain post-conviction relief for death-row inmates with actual innocence claims.



Prof. Miguel Méndez teaches first-year Criminal Law as well as Evidence and Advanced Evidence. A former public defender,

as well as civil rights lawyer for the Mexican-American Legal Defense Fund, Prof. Mendez writes broadly on issues of reform in federal and state evidence codes and substantive criminal law doctrines.



Senior Lecturer David Mills, an expert on tax and corporate finance law, has a background in white-collar defense

and co-teaches the course in White Collar Crime.



Prof. Robert Weisberg teaches the first-year Criminal Law course as well as Criminal Procedure: Adjudication,

Criminal Procedure: Investigation, and White Collar Crime. He writes on a variety of criminal law and procedure topics and has litigated death penalty appeals as consulting attorney for the NAACP Legal Defense Fund and the California Appellate Project. Prof. Weisberg also serves as Director of the Stanford Criminal Justice Center.

In addition, the Stanford law faculty includes professors in fields ranging from Corporations and Securities Regulation to International Human Rights Law whose scholarship and teaching encompass criminal law and criminal justice issues.

Back-End Sentencing and Technical Parole Violations

On November 4, 2006, the SCJC hosted a conference on “back-end sentencing,” the phenomenon whereby a parolee is sent to prison upon a finding that he committed a new crime while on parole. Jeremy Travis, President of the John Jay College of Criminal Justice, delivered a keynote address (conference details and related media can be found here:

http://www.law.stanford.edu/program/centers/scjc/#past_events).

We will be using the material presented at this conference to compile a research agenda and coursework for a seminar on the topic of sentencing law and policy during the spring of 2007. One goal of this research is to forge a conceptual link between parole and sentencing, so that stake-holders begin to view both phases of the criminal justice system as points along a continuum rather than as entirely distinct processes.

The Cooperation Dilemma: The New Realities of Corporate White Collar Defense

On November 3, 2006, the SCJC co-hosted with the Arthur and Toni Rembe Rock Center for Corporate Governance a conference on contemporary approaches to white collar prosecutions, including the use of The Thompson Memorandum. The conference covered the following topics:

- The Origins and Purposes of the Corporate Cooperation Dilemma and the Phenomenon of Punishment by Indictment;
- The Legal Context for Corporate Investigations;
- The Defense Bar: New Professional Identities; and
- The Future of Cooperation.

Speakers included, among others: Linda Thomsen, SEC Enforcement Division Director; Gerard Lynch, U.S. District Judge for the Southern District of New York; Robert G. Morvillo, founding partner in the firm of Morvillo, Abramowitz, Grand, Iason, & Silberberg, P.C., Samuel W. Buell, Associate Professor of Law at Washington University and lead Enron prosecutor; Julie Rose O’Sullivan, Professor of Law at Georgetown University; and Mark F. Pomerantz, partner in the litigation department of the Paul Weiss firm.

Forging Ahead

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groups. The institutional complexity of a large government in a large and diverse state poses great logistical obstacles to the kinds of inter-party discussion needed for such cooperation and agreement. Hence, one key value of the Commission is that it can serve as a representative microcosm of this range of perspectives and interests and so it can replicate the kind of dialogue that would otherwise happen only in an idealized world. Because all the relevant parties have their own, often conflicting, ideas on how best to resolve California's sentencing and corrections crisis, the only sensible solution is to delegate the responsibility of conducting an objective analysis of these issues to an independent expert agency capable of addressing them.

For all of these reasons, the Stanford Criminal Justice Center has been a key player in the movement to establish a Sentencing Commission in California. Following are some examples of the SCJC's work in this area:

- In May of 2006, the SCJC hosted a symposium on Sentencing Reform in California. It was at this meeting that the SCJC brokered a historic agreement between representatives of the California Department of Corrections and Rehabilitation and the California Correctional and Peace Officer's Association that a sentencing commission for California is a necessary step in the right direction (details here: http://www.law.stanford.edu/program/centers/scjc/#past_events).
- On August 24, 2006, Kara Dansky, the Executive Director of the SCJC, testified before the Little Hoover Commission in connection with its Sentencing Reform Project. Her report, which formed the basis for her written testimony, can be found here: <http://www.lhc.ca.gov/lhcdir/sentencing/DanskyAug06.pdf>.
- Ms. Dansky serves on the Advisory Committee of the Little Hoover Commission's Sentencing Reform Project, described here: <http://www.lhc.ca.gov/lhcdir/sentencing.html>.
- The Little Hoover Commission found the SCJC's contributions to the sentencing reform discussion immensely valuable and asked the SCJC to assist it by reporting on the number and effect of changes to California's sentencing structure since the enactment of the Determinate Sentencing Act in 1976. The SCJC will submit its conclusions by the end of 2006, for use by the Little Hoover Commission in preparing its report and recommendations.
- The SCJC has been meeting with key legislators and legislative staff, advising them on the best way to structure a sentencing commission, providing

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detailed recommendations regarding commission purpose, scope, duties, composition, authority, and staffing

Sentencing reform for California has become an imperative, and the overwhelming consensus is that a sentencing commission is a good start in the right direction. The SCJC looks forward to working collaboratively with the California Sentencing Commission as we embark upon the next era of sentencing reform.

Upcoming SCJC Events

January 26, 2007

The Stanford Center for Internet and Society, the Stanford Criminal Justice Center, and the Stanford Technology Law Review proudly present: "Beyond a Physical Conception of the 4th Amendment: Search and Seizure in the Digital Age." The joint symposium will showcase vibrant legal scholarship on the interplay between new technology and traditional constitutional search and seizure doctrine.

April 11, 2007

The SCJC is partnering with the Center for Comparative Studies in Race and Ethnicity (<http://ccsre.stanford.edu/>) and the Institute for Research in the Social Sciences (<http://www.stanford.edu/group/iriss/>) to host an interdisciplinary exploration of issues relating to race, inequality, and incarceration in contemporary America. This event is conceived as an "intellectual summit" of a very select group of social scientists and legal scholars, including Stanford faculty members Lawrence Bobo, Robert Weisberg, and Karen Cook, whose work has addressed the causes, meanings, and effects of racial disproportionality in the American criminal justice system, especially in terms of racial disproportion in American prisons and jails.

About *The Criminal Record*

The Stanford Criminal Record is produced by the staff of the Stanford Criminal Justice Center.

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