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## DEVELOPMENT AND ACCOMPLISHMENTS OF SENTENCING INSTITUTES IN THE FEDERAL JUDICIAL SYSTEM

Luther W. Youngdahl\*

The judges of the United States courts long have been concerned with the improvement of the administration of criminal justice in the federal courts. Their concern has been reflected in their continuing efforts to this end. Over the years one problem in particular—the wide-spread differences in sentencing philosophies and practices—has eluded solution.

As long ago as 1941 the Judicial Conference of Senior Circuit Judges (now the Judicial Conference of the United States) addressed itself to this problem. The work of its Committee on Punishment for Crime and the Committee's report<sup>1</sup> thereon the following year were responsible to a considerable degree for stimulating the efforts which resulted in the enactment eight years later of the Federal Youth Corrections Act and the creation of the Advisory Corrections Council. In turn the deliberations of the Council jointly with the Committee on the Administration of the Criminal Law of the Judicial Conference of the United States gave rise to a proposal for legislation to permit the establishment of institutes and joint councils on sentencing.

The proposed legislation was before the Judicial Conference on several occasions. In his report to the Conference in March 1957 the Attorney General of the United States said in part:

The basic shortcoming of the present sentencing system is the lack of a uniform sentencing philosophy. This has resulted in disparate sentences being imposed even where by comparison the crime and the background of the criminal are substantially similar. Such a result is unfair and poses serious morale problems. Therefore, in consultation with representatives of the courts we are attempting to formulate a program (both legislative and administrative) which will provide for greater uniformity in sentences without at the same time withholding from the sentencing authority the power to fit the punishment to the criminal and not necessarily to the crime.<sup>2</sup>

In the Attorney General's report to the Judicial Conference in September 1957 he said:

Another proposal is based on the assumption that an inter-

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<sup>1</sup> JUDICIAL CONFERENCE OF THE UNITED STATES, REPORT OF THE COMMITTEE ON PUNISHMENT FOR CRIME, June 1942.

<sup>2</sup> 1957 JUDICIAL CONFERENCE OF THE UNITED STATES ANN. REP. 301.

change of points of view between the various United States Judges would help to establish more generally accepted standards and policies of sentencing. The proposed bill would authorize the Judicial Conference to sponsor a series of institutes and joint councils for this purpose. These discussions would have as their objective the formulation of principles and criteria for sentencing that would assist in promoting equal administration of the criminal laws of the United States.<sup>3</sup>

In March 1958 the Judicial Conference of the United States approved H.R.J. Res. 424 (introduced by Congressman Celler) as amended. The July 1958 Senate report on the resolution stated in part:

The proposed legislation is recommended by the Judicial Conference of the United States. It authorizes Federal judges to form joint councils and institutes under the auspices of the Judicial Conference of the United States for the purpose of studying, discussing, and formulating the objectives, policies, and standards for sentencing those convicted of Federal offenses. These groups are intended to serve chiefly as a means by which Federal judges may reach a desirable degree of consensus as to the types of sentences which should be imposed in different kinds of cases.<sup>4</sup>

The legislation (H.R.J. Res. 424) was approved by the President on August 25, 1958 as Public Law 85-752.<sup>5</sup> In the interest of uniformity in sentencing procedures, the statute authorizes the establishment of institutes and joint councils on sentencing under the auspices of the Judicial Conference of the United States. Also it authorizes the Attorney General and/or the chief judge of each circuit at any time to request, through the Director of the Administrative Office of the United States Courts, the Judicial Conference to convene such institutes and joint councils for the purpose of studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing those convicted of crimes and offenses in the courts of the United States. The statute provides that the agenda of the institutes and joint councils may include but shall not be limited to:

1. The development of standards for the content and utilization of presentence reports;
2. the establishment of factors to be used in selecting cases for special study and observation in prescribed diagnostic clinics;
3. the determination of the importance of psychiatric, emotional, sociological and physiological factors involved in crime and their bearing upon sentences;
4. the discussion of special sentencing problems in unusual cases such as treason, violation of public trust, subversion, or in-

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<sup>3</sup> 1957 JUDICIAL CONFERENCE OF THE UNITED STATES ANN. REP. 58.

<sup>4</sup> S. REP. NO. 2013, 85th Cong., 2d Sess. 3 (1958).

<sup>5</sup> 28 U.S.C. § 334 (1964).

volving abnormal sex behavior, addiction to drugs or alcohol, and mental or physical handicaps;

5. the formulation of sentencing principles and criteria which will assist in promoting the equitable administration of the criminal laws of the United States.<sup>6</sup>

The first sentencing institute was convened at Boulder, Colorado, in July 1959 as authorized by the Judicial Conference of the United States. It was a pilot project on a national level planned to accomplish these primary objectives:

(1) to insure judicial participation in the formulation of a long-range institute program in accordance with the statute;

(2) to make available certain important information on new sentencing alternatives provided for the federal courts by the same law that authorized the sentencing institutes; and

(3) to bring together federal judges to discuss practices and problems relating to sentencing.

In his remarks opening the institute the Honorable William J. Campbell, Chief Judge, United States District Court for the Northern District of Illinois, said:

The legislation contemplates the operation of these institutes on a circuit level, where they are to be conducted, possibly annually, and possibly in conjunction with the Circuit Judicial Conference. However, it was thought by the Judicial Conference and the Chief Justice that this first institute should be on a national basis in order to set a pattern for the circuit institutes to follow.<sup>7</sup>

The pilot institute was successful in contributing substantially to the knowledge of new sentencing alternatives. It partially achieved its objectives of affording judges an opportunity to discuss sentencing practices and problems. It provided basic experiences needed for the planning of future institutes. Through September 1965 fifteen additional sentencing institutes had been conducted. Three of these brought together judges from more than one circuit, and the remainder were on an intra-circuit basis.

As early as 1960, the sentencing institutes were conducted in the form of a university seminar with as much time as possible allowed for open discussion and questions. A substantial portion of the program was devoted to discussion of actual cases in workshop sessions.

The Highland Park Institute in October 1961 was the first multicircuit institute where the participants were separated into

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Pilot Institute on Sentencing*, 26 F.R.D. 231, 239 (1959).

smaller groups for workshop sessions to discuss actual cases. This technique was continued with success in the two subsequent multi-circuit institutes (Denver and Lompoc). These workshop sessions, as they were conducted at the Highland Park Institute, have been described as follows:

The Highland Park Institute thus was planned on the basis of the experience at the Pilot Institute and at the subsequent circuit institutes. In brief, the experience seemed to be that there is advantage in giving major emphasis to full discussion of important sentencing problems by all of the participating judges and that the most effective way of achieving this is by focusing upon actual cases represented by selected presentence reports. . . .

Each judge in attendance participated in all four of the workshops over a 2-day period. Each workshop was focused upon issues in a single case (one session dealt with two cases) with a minimum of direction provided by either the workshop leaders, who were judges, or by the resource personnel. It was the purpose of the sessions to encourage a maximum of discussion by the attending judges and to neither direct nor divert what developed to be the major interest in each case. The cases themselves were selected to provide a range of offense categories and to raise complicated sentencing issues. They were not necessarily "representative" cases, yet they were real enough and challenging enough to call virtually all sentencing alternatives into question. The offense categories involved were an income tax evasion, an embezzlement, a bank robbery, a Dyer Act violation, and a forgery. The conduct patterns revealed in the presentence reports ranged from a relatively simple "situational" violation to one involving complex cultural, psychiatric, and medical factors. Each of the judges had received the five presentence reports prior to the conference and had been asked to indicate his sentencing choice in each instance. The participants started each workshop, not only familiar with the case, but with at least a tentative commitment to a particular sentence.<sup>8</sup>

The institute at Denver in February 1964 was the first one which included a visit<sup>9</sup> to an institution of the Bureau of Prisons and which provided, also, demonstrations of the classification meetings at which diagnostic recommendations for the help of the judges are made. Actual parole hearings were included on the program at the Lompoc and the Lewisburg Institutes in the fall of 1964 and the Ninth Circuit Institute in September 1965. Holding the institutes at the institutions of the Bureau of Prisons is considered by the judges a valuable part of the program.

Paralleling the last three years of the history of the sentencing

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<sup>8</sup> Remington and Newman, *The Highland Park Institute on Sentence Disparity*, Fed. Probation, March 1962, p. 3, 4-5.

<sup>9</sup> Such visits include a meal with some of the inmates, as well as guided tours of the educational, religious, industrial, maintenance, recreational, sleeping, and eating facilities.

institutes is another development of equal importance in the improvement of criminal justice. On February 14, 1963, there was convened in Washington a meeting of an Ad Hoc Committee<sup>10</sup> on the administration of probation appointed by the Chief Justice of the United States on suggestion of the Director of the Administrative Office. The Committee's task was to formulate a recommendation to the Chief Justice and the members of the Judicial Conference of the United States based on three questions:

1. Is further attention of the Judicial Conference to the probation system needed?
2. If so, should there be a complete study?
3. If a complete study is indicated should it be assigned in part to a standing committee of the Conference or to a new committee on probation?

A report then went forward to the Chief Justice recommending a standing Committee on the Administration of the Probation System with additional responsibility for organizing institutes and joint councils on sentencing. Following affirmative action by the Judicial Conference the Chief Justice announced on March 29, 1963, the appointment of a permanent Committee on the Administration of the Probation System.<sup>11</sup>

At its first meeting on May 6-7, 1963, the Committee established a subcommittee to make a study of the effectiveness of sentencing institutes and to assume responsibility for organization and future programming. Four other subcommittees were estab-

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<sup>10</sup> The members of the Ad Hoc Committee were: Luther W. Youngdahl, Judge, United States District Court for the District of Columbia, chairman; William B. Herlands, Judge, United States District Court, Southern District of New York; Walter E. Hoffman, Chief Judge, United States District Court, Eastern District of Virginia; Thomas M. Madden, Chief Judge, United States District Court, District of New Jersey; and Francis L. Van Dusen, Judge, United States District Court, Eastern District of Pennsylvania.

<sup>11</sup> The members of the Committee are: Luther W. Youngdahl, Judge, United States District Court for the District of Columbia, chairman; William B. Herlands, Judge, United States District Court, Southern District of New York; Walter E. Hoffman, Chief Judge, United States District Court, Eastern District of Virginia; Frank M. Johnson, Jr., Judge, United States District Court, Middle District of Alabama; Thomas M. Madden, Chief Judge, United States District Court, District of New Jersey; John W. Oliver, Judge, United States District Court, Western District of Missouri; James B. Parsons, Judge, United States District Court, Northern District of Illinois; Francis L. Van Dusen, Judge, United States District Court, Eastern District of Pennsylvania; and Albert C. Wollenberg, Judge, United States District Court, Northern District of California.

lished including one on presentence reports.<sup>12</sup> Its work, closely related to sentencing problems, has strengthened the institute programs and in addition under its sponsorship a revised monograph on presentence reports has been published.

The four sentencing institutes held since the establishment of the Committee on the Administration of the Probation System have been conducted under its leadership or with its cooperation and assistance.

Out of the experience thus far gained several accomplishments that may be attributable to the sentencing institutes seem clear:

1. There has been an increased awareness and use of the newer sentencing options available to the federal courts including the referral to the Bureau of Prisons of defendants for study and recommendation as provided by statute.<sup>13</sup>

2. The proceedings of the sentencing institutes as reported from time to time in the *Federal Rules Decisions* constitute a handbook for judges on the treatment of offenders which periodically is being revised as new techniques become known, new studies become available, new agreements are reached on sentencing principles, and new legislation is enacted.

3. There has been increased cooperation and exchange of information between the judges and the various correctional agencies including the Bureau of Prisons, its institutions, and the United States Board of Parole. The 1942 report of the Committee on Punishment for Crime, referred to earlier, stated: "The defect in the federal system is the lack in integration of the sentencing and paroling functions and the lack of cooperation between those who sentence offenders and those who parole them."<sup>14</sup>

In contrast is the present eagerness of the courts to be informed of the policies and procedures of the Bureau of Prisons and the Board of Parole and an equal inclination on the part of these

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<sup>12</sup> The subcommittees and their members are: Research and Development, Judge Youngdahl, chairman, Judge Johnson, and Judge Wollenberg; Presentence Reports and Supervision, Chief Judge Madden, chairman, and Judge Parsons; Psychiatric and Medical Services, Judge Oliver, chairman, and Judge Van Dusen; Formulation of Statement of Principles of Probation and Parole, Judge Herlands, chairman, Chief Judge Hoffman, and Judge Wollenberg; Sentencing Institute and Statistics, Judge Van Dusen, chairman, Judge Oliver, Judge Herlands, and Judge Parsons.

<sup>13</sup> 18 U.S.C. § 4208(b) (1964), 18 U.S.C. § 5010(e) (1964).

<sup>14</sup> JUDICIAL CONFERENCE OF THE UNITED STATES, REPORT OF THE COMMITTEE ON PUNISHMENT FOR CRIME 5, JUNE 1942.

agencies in formulating policy to consider the views of the courts to the end that the greatest good may be accomplished in the treatment of offenders. Recent evidence is the change of Board of Parole policy in setting parole eligibility dates in cases of persons sentenced under 18 U.S.C. § 4208(a)2 (1964). The chairman of the Board in transmitting to the court news of the policy change identified it as a result of the recent sentencing institutes.

4. There has been a noticeable decrease in federal prisoner population. The 1964 annual report of the Federal Bureau of Prisons stated:

Although the number of criminal cases filed in the Federal courts increased from 29,858 in fiscal 1963 to 29,944 in fiscal 1964, the rate of decline in the prisoner population during 1963 accelerated during 1964. The trend can be attributed to a number of factors. Better representation of defendants in Federal courts is bringing about more acquittals and more use of fines. The courts are formulating sentences in a more knowledgeable manner; the marked disparities of a few years ago are not as prevalent and the courts are adopting more liberal probation policies and reversing the long-term trend toward lengthier sentences.<sup>15</sup>

5. There is some evidence that both disparity of sentences and divergence in the use of probation may be lessening.

Last year Mr. James V. Bennett, retired Director of the Federal Bureau of Prisons, wrote:

In 1937 there was little consensus among the Federal courts as to how individual offenders should be handled or as to the basic considerations involved in the sentence. In 1964, as a result of the 1958 sentencing act, three major sentencing institutes were conducted—one at Denver, Colorado, in February, and two others scheduled for later in the year at Lompoc, California, and Lewisburg, Pennsylvania. The institute program by 1964 had virtually ended the flagrantly disparate sentence and it had brought about a close working relationship between the Federal courts and the prison system.<sup>16</sup>

Considerable progress has been made toward the objectives envisioned by the drafters of the sentencing institute legislation. Much more remains to be accomplished. The excellent cooperation of the courts, the Department of Justice, the Board of Parole, and the Bureau of Prisons is the guarantee of continuing success.

We cannot expect to achieve uniformity of sentences but rather uniformity of procedures. The result to be sought is punishment to fit the individual, not punishment to fit the crime, and thus justice under science rather than justice under law.

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<sup>15</sup> 1964 BUREAU OF PRISONS ANN. REP. 1.

<sup>16</sup> *Id.* at 16.