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Serving This Time: Examining the Federal Sentencing Guidelines After a Decade of Experience*

*Deanell Reece Tacha***

I. INTRODUCTION

I am honored by your invitation to deliver the annual Earl F. Nelson Lecture at the University of Missouri School of Law, where I follow many distinguished speakers who have brought to you important perspectives on public policy, the judicial system, and the law. Today I ask you to look with me at the law through the lens of criminal sentencing. I have picked my title carefully with the intentional double entendre. On one hand, I want to convey my thoughts about the federal sentencing guidelines, which I think have generally “served this time” in our nation’s history by reflecting the concerns and will of the public and of our elected representatives. The title also has a personal meaning, however. I speak to you today as a member of the United States Sentencing Commission, a position I was appointed to by President Clinton nearly three years ago. I view my service on this Commission as a form of “serving my time” because this is a job for which I did not campaign, for which I am no more qualified than any of my colleagues on the federal courts of appeals, and which I did not need in combination with the heavy press of my circuit court duties. Nonetheless, I agreed to serve and have had the challenge of looking at the law from the very difficult perspective of sentencing.

* Earl F. Nelson Lecture. University of Missouri-Columbia School of Law, March 21, 1997.

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Today, I challenge you to think with me about the job of determining sentences. Ask yourself, if you will, what is the proper sentence for a particular crime? What are our goals? Which crimes are more or less serious? What aspects of individual defendants' histories should be taken into account? The task of setting sentencing policy, and indeed of sentencing individual defendants, is one in which a host of social, legal, ethical, and quite personal issues converge. In order to see this, I ask you to look at a sentence from a variety of perspectives. If you were given the opportunity to establish the sentence for a particular defendant who had committed a serious crime, you would no doubt have one view if you were the victim of that crime. You would likely have a very different view if the perpetrator was your seventeen-year-old son or daughter. What would you think if the victim was your mother or an elderly relative? You might have still another view if you were a member of the community reading about the crime in the local newspaper. Or, consider your perspective as a taxpayer who sees his tax bill rising as a result of the ever-increasing need to build more prisons. Finally, if you were the defendant, what sentence would you think was fair and just? In order to fully understand the multitude of issues involved in sentencing policy, it is important for all of us to think about sentencing from the various perspectives involved. This has been one of the most challenging assignments of my entire career, but I have come to understand the difficulty and ambivalence with which we all approach the process of punishing those who have broken the law.

I suppose it is fitting for me to be here to reflect on a decade of experience with the federal sentencing guidelines just as you are beginning to embark on your own odyssey of guideline sentencing in the Missouri state courts. As many of you may know, about half of the states in the country have already adopted some form of sentencing guidelines and I understand that yours went into effect just about a month ago. The goals and structure of the Missouri guidelines are very similar to those of the federal sentencing guidelines, but there are also some very significant differences between the two which, in part, reflect the differences in state and federal jurisdiction over crime.

First, Missouri, like most states, has limited resources to devote to its criminal justice system and it has reached a political consensus that one of the purposes of its guidelines is to ensure the rational use of correctional resources. The nation as a whole has not yet reached such a consensus, in part because the federal government has historically had jurisdiction over a relatively small number of crimes and has had the resources to punish federal offenders without significant resource restrictions. But as more and more crimes become federalized, and as concern over balancing the federal budget takes center stage, the landscape in which federal sentencing policy is made has changed significantly. As I will discuss in more detail in a moment, I predict the federal government will face many of the same concerns about resource allocation in the coming years that the states already have.

Another notable difference between the two systems is that the Missouri guidelines, like those of other states, are comparatively simple because they cover fewer and simpler criminal statutes than the federal guidelines, which relate to a large number and variety of crimes. And, of course, the increasing federalization of crime continues to add to the complexity of the federal code and the guidelines.

Finally, it is worth noting that the Missouri guidelines are advisory rather than mandatory like the federal guidelines. The rationale for mandatory guidelines is based on the concern that the goals of sentencing reform would not be achieved if judges could disregard the guidelines and instead exercise the very discretion that prompted sentencing reform in the first place. But a decade later, many are still debating this assumption and I expect this will be a fruitful area for comparative study after the Missouri guidelines have been in effect for some time. Despite these differences, however, there are many important similarities between the two schemes and I hope some of my comments today will prove to be informative with respect to both.

After a decade of experience with the federal sentencing guidelines, there are, of course, several important issues that deserve careful consideration. But, because it is impossible to cover the waterfront today, I want to focus my comments and observations on where the Sentencing Commission and the guidelines may go as we embark on a second decade of federal guideline sentencing. There is no question that the second decade will present very different challenges from the first. The first Commission faced the enormous challenge of creating and implementing the most comprehensive system of sentencing reform in our history. On the heels of that accomplishment, it was faced with defending an onslaught of constitutional challenges and criticisms as it sought to train criminal justice practitioners and court personnel to use the guidelines. After the Supreme Court reaffirmed the constitutionality of both the Commission and the guidelines,¹ the Commission spent the next several years amending the guidelines in response to legislative directives and ad hoc requests from various groups, and based on its own assessment of ways in which the guidelines needed to be modified. All in all, the Commission has already passed more than 500 amendments.

As stability in federal sentencing begins to emerge, however, it is important that the Commission takes a step back to reassess the guidelines objectively in light of all of the changes we have seen in society, in criminal activity, and in crime policy over the past decade. I think it is fair to say that, in the next decade, the Commission's focus will be less on the legitimacy and continued existence of the guidelines as a whole and more on research and selective revision of the guidelines.² The Commission will not revisit the guidelines anew, nor will it

1. See *Mistretta v. United States*, 488 U.S. 361 (1989).

2. The Commission has a statutory duty to periodically "review and revise" the

continue to amend the guidelines at the same pace or with the same emphasis on marginal improvements as we have in the past. Instead, I would like to see the Commission engage in thoughtful deliberation about significant issues that may warrant reconsideration and revision in light of the changing circumstances we have witnessed over the past decade. Thus, we will not ask whether the current guidelines could somehow be improved—of course they could—but rather, whether they advance the goals of the Sentencing Reform Act and evolving federal crime policy. As we do so, it is imperative that we look beyond the four corners of the Guidelines Manual itself and draw on the knowledge and experience that the Commission and others have acquired over the last decade by expanding research and creating more opportunities for constructive dialogue with others involved in sentencing.

Before I get into specifics about what I would like to see the Commission do in the next decade, I think it is important to give you some background about federal sentencing reform, the goals of sentencing and the sentencing guidelines themselves.

II. OVERVIEW OF FEDERAL SENTENCING REFORM AND THE CREATION OF THE GUIDELINES

Throughout most of our nation's history, judges had virtually unfettered discretion to impose sentences based on their own individual notions of justice and their own sense of what information was relevant in a given case.³ In the early 19th Century, most states adopted criminal statutes that established fixed terms of imprisonment in order to incapacitate criminals and to provide sufficient time for offenders to be rehabilitated. At the federal level, Congress set statutory maximum penalties, but federal judges retained full discretion to select any sentence below the statutory maximum. In the early 20th Century, Congress created an even more indeterminate sentencing scheme by establishing a parole system under which all three branches of government played a role. Congress set statutory maximum sentences, judges selected and imposed individual sentences within statutory bounds, and parole officials within the Executive

sentencing guidelines. See 28 U.S.C. § 994(o) (1994); *Braxton v. United States*, 500 U.S. 344, 348-49 (1991).

3. For discussions about the history of criminal sentencing and sentencing reform, see United States Sentencing Commission, *The Federal Sentencing Guidelines: A Report on the Operation of the Guidelines System and Short-Term Impacts on Disparity in Sentencing, Use of Incarceration, and Prosecutorial Discretion and Plea Bargaining*, 9-14 (Dec. 1991) [hereinafter Sentencing Commission Evaluation Report], William W. Wilkins, Jr., Phyllis J. Newton & John R. Steer, *The Sentencing Reform Act of 1984: A Bold Approach to the Unwarranted Sentencing Disparity Problem*, 2 CRIM. L.F. 355, 356-64 (1991).

Branch determined the ultimate length of imprisonment by deciding when to release prisoners.

By the 1970s, several independent factors converged to make sentencing a central focus of criminal justice reform efforts. First, civil rights activists and others became increasingly concerned about the disparity that resulted from indeterminate sentencing, which appeared to reflect the offenders' personal characteristics—particularly race and class—more than the seriousness of the offense or other legitimate grounds for punishment. Second, political conservatives also were concerned about indeterminate sentencing and wanted to supplant what they saw as judicial leniency with strict and enforceable sentencing standards. Third, social science research showing that incarceration and corrections programs had not successfully reduced recidivism called into question the dominant rehabilitative model of sentencing. And finally, consistent with other legal reforms of the era, there was an interest in shifting away from a common law of sentencing (and substantive criminal law, for that matter) to a more rule-based system that was thought to be more rational and subject to greater accountability.⁴

Reflecting these concerns, Congress began what would prove to be a decade-long effort to reform the federal sentencing laws. The legislative history reveals a broad range of concerns and views about the need for sentencing reform—with some advocating the elimination of unwarranted leniency and others concerned about undue severity. Regardless of their individual views, however, they shared an overriding concern about the apparent disparity and inequality that resulted from an indeterminate sentencing system, where similar defendants who committed similar crimes could receive very different sentences. The vast majority shared an interest in shifting from an indeterminate system to a determinate system, under which people would know the basis for a sentence and that the sentence imposed would, by-and-large, be the sentence served. In 1984, after more than ten years of study and debate, Congress overwhelmingly passed the Sentencing Reform Act,⁵ which brought about the most far-reaching reforms in federal sentencing that this nation has ever seen. The Sentencing Reform Act abolished parole and introduced a comprehensive new sentencing scheme to ensure that federal sentencing satisfied the goals of certainty, uniformity and fairness, while furthering the traditional purposes of criminal punishment: deterrence, incapacitation, just punishment and rehabilitation.⁶

4. Michael Tonry, *Twenty Years of Sentencing Reform: Steps Forward, Steps Backward*, 78 JUDICATURE 169, 170 (1995); see generally Sentencing Commission Evaluation Report, *supra* note 3, at 9-11.

5. Pub. L. No. 98-473, 98 Stat. 1837 (1984) (codified at 18 U.S.C. §§ 3551-3742 (1994); 28 U.S.C. §§ 991-98 (1994)).

6. 28 U.S.C. § 991(b)(1)(B) (1994); United States Sentencing Commission, *Guidelines Manual*, 1-10 (Nov. 1995).

To achieve these goals, the Sentencing Reform Act created the United States Sentencing Commission, which in turn created the federal sentencing guidelines. The guidelines went into effect in 1987 and, although they have been amended more than 500 times, the basic structure and operation has remained intact. The guidelines are designed so that a judge measures the seriousness of a defendant's offense and the extent of his criminal history in order to select the sentence he should receive. The seriousness of the offense is based on a combination of factors, including:

- ▶ the offense of conviction (*e.g.*, robbery, drug trafficking, fraud);
- ▶ specific aggravating or mitigating conduct that occurs during the offense of conviction (*e.g.*, the amount of money taken, use of a gun, bodily injury); and
- ▶ other adjustments for factors that are relevant regardless of the type of offense involved (*e.g.*, the victim's vulnerability, the defendant's role in the offense, obstruction of justice, acceptance of responsibility).

A defendant's criminal history score reflects the number, seriousness and recency of his prior offenses.

These two considerations—offense seriousness and criminal history—are represented along the two axes of the sentencing table, which judges use to select a final sentence. The table is a grid with the offense levels running along the vertical axis and the criminal history levels running along the horizontal axis. The point at which a given offense level and criminal history score intersect on the grid shows the range of months from which the judge can choose a specific sentence.

The judge may depart from the sentencing range and impose a higher or lower sentence only if there are aggravating or mitigating circumstances that have not been adequately taken into account by the Commission in formulating the guidelines. On the rationale that it would undermine the principal goals of the Sentencing Reform Act, a judge may not depart simply because she thinks the final sentencing range is too harsh or too lenient. However, she is given flexibility to depart when faced with an extraordinary or atypical case.⁷

Finally, the judge must determine whether the guideline sentence is consistent with the statutory maximum and minimum sentences mandated by Congress. The guidelines were drafted to achieve some parity with mandatory sentences, but if the guideline sentence is inconsistent with a mandatory

7. See generally, Michael S. Gelacak, Ilene H. Nagel & Barry L. Johnson, *Departures Under the Federal Sentencing Guidelines: An Empirical and Jurisprudential Analysis*, 81 MINN. L. REV. 299, 305-32 (1996).

sentence, the mandatory sentence will trump the guidelines. Thus, a defendant who is sentenced for drug trafficking, and based on the seriousness of the offense and her criminal history would receive a guideline sentence of between 46 and 57 months, could nevertheless receive a 60-month sentence if it were mandated by the relevant statute.

III. FEDERAL SENTENCING POLICY IN THE SECOND DECADE

Since the guidelines took effect ten years ago, we have witnessed some dramatic changes in criminal activity and in the federal government's role in crime policy. As the Sentencing Commission embarks on the next decade, it is important that the Commission reevaluates and revises the guidelines as necessary to respond to these changing circumstances and to ensure that federal sentencing policy is consistent with the goals of the Sentencing Reform Act and the evolving national crime strategy. The Commission has a unique role in the federal system as an independent, expert agency that has been given the broad statutory authority—and the responsibility—to rationalize sentencing policy. In assuming that role, it must not operate in a vacuum. Rather than simply taking the existing guidelines as the baseline from which to make changes, the Commission must look beyond its own institutional memory and the guidelines themselves and learn from the laboratories in which the guidelines have been operating over the course of the last decade. This will mean both expanding our capacity for rigorous research and working systematically with other governmental entities involved in the development of federal crime policy.

A. Reevaluating the Sentencing Guidelines as Circumstances Change

A number of factors have changed the context in which the guidelines operate over the course of the past ten years. First, we have seen a major shift in the roles that the states and the federal government play in criminal law and policy. For the most part, crime has historically been a matter of state concern. The federal government was primarily interested in criminal activity that implicated interstate or international commerce, and the states prosecuted most drug offenses, violent crime, and property offenses. Beginning in the 1980s, however, Congress began to pursue more of a "get tough" policy on crime and federalized a number of different crimes, most notably drug offenses and many violent crimes. Although we have seen widespread federalization of other laws that traditionally fell within the purview of the states' police powers since the New Deal, this marked a significant change in the area of criminal law. In addition to expanding the scope of federal jurisdiction, the federal government's "get tough" attitude has been reflected in more severe sentences and in an increase in the use of statutory mandatory minimum sentences.

At the same time we are increasing the number of federal crimes, we are also facing concerns about balancing the federal budget and significantly limiting federal spending. This in turn raises questions about how best to allocate scarce federal resources for law enforcement, as well as judicial and prison resources. Recognizing that the resources of the federal criminal justice system are becoming increasingly limited, it may be time for the federal government to reevaluate its role in the criminal justice system and to reassess federal priorities. As this happens, the Commission must also reassess federal sentencing policy to ensure that it continues to be consistent with federal priorities.

Finally, over the course of the last decade, we have seen significant changes in the federal prison population which may require some reassessment of the extent to which federal sentencing policy is furthering the fundamental goals of sentencing. For example, as the federal government has assumed jurisdiction over drug offenses and more property crimes, we are seeing younger defendants prosecuted in the federal system. This raises new questions about how best to achieve the fundamental goals of sentencing (*e.g.*, What effectively deters young people? Should we place more emphasis on rehabilitation if we are going to release people who are still relatively young even though they have served long sentences?). It also raises questions about whether we should develop a national crime control strategy that rationalizes the roles of the federal and state governments in fighting crime and handling young offenders (*e.g.*, Is it better to leave younger defendants to the states which may be able to provide social services more effectively?).

It is important for the Commission to periodically reassess federal sentencing policy in order to reflect changes in the national will with respect to the goals of sentencing and how they should be prioritized as time passes and conditions change. This will not be easy. We have always harbored uncertainty about sentencing goals and priorities because criminal activity is inherently hard to study and understand and the goals of sentencing often come into conflict. The original Sentencing Commission struggled with many of these issues in drafting the guidelines,⁸ and I expect future Commissions also will struggle as they periodically reevaluate federal sentencing policy to determine whether it is advancing the goals of the Sentencing Reform Act and evolving federal criminal policy.

8. See Stephen Breyer, *The Federal Sentencing Guidelines and the Key Compromises Upon Which They Rest*, 17 HOFSTRA L. REV. 1, 4-5 (1988).

B. The Commission's Role in Shaping Federal Sentencing Policy

1. Redefining the Commission's Role

As we enter the next decade, the Commission must take steps to grow into its role as an independent expert agency. The Commission must be more proactive in setting its own agenda, rather than primarily responding to specific, ad hoc concerns of Congress and various interest groups. In doing so, the Commission should focus less on the annual amendment cycle, which is often characterized by dozens of marginal amendments to the existing text, and more on a limited number of issues that it has determined are of substantial importance and warrant thoughtful consideration based on research and an assessment of whether guideline modifications are necessary to accomplish the goals of sentencing. The Commission should also assume more of a leadership role in shaping federal sentencing policy generally by systematically channeling relevant information to and from other institutions involved in the development of crime policy and by facilitating collaboration among these different entities. In providing leadership, the Commission must listen to political will, but not be bound by it. Finally, the Commission must do more to fulfill its statutory obligation to serve as a clearinghouse for data and information about federal sentencing. The Commission has very valuable data as a result of monitoring every case sentenced in the federal system (of which there were approximately 43,000 in 1996), and it is important that we make these data and resources available and accessible to academics and others in the criminal justice community.

2. Emphasizing Research

Research is of primary importance in helping the Commission set its own priorities and as a link to outside organization. It is imperative that, as we evaluate federal sentencing policy in light of changing circumstances, we have full information about what those circumstances are and how successful the guidelines are in achieving sentencing goals under those circumstances.

I implore those who follow me on the Commission, as well as other policy makers who make decisions related to the sentencing guidelines and the Commission, to look carefully at the very valuable data the Commission has collected over the past decade. I think it would be fair to say that there has never been a better database on individual defendants, the sentencing process, and sentences imposed. It is a rich resource from which not only the Commission but academics, policy makers, and concerned citizens should turn to try to understand in more objective ways the criminal element in our society and the

important role that sentencing policy should play in crime control strategy at both the federal and state levels.

The Commission can benefit from other types of research as well. For example, we have received the results of two national surveys which provide meaningful information about areas that may warrant further research and consideration. The first report was based on a national survey that was designed to find out how American citizens outside of the criminal justice system would themselves sentence defendants convicted in federal court.⁹ The report compared public perceptions about what would constitute a proper sentence to the guideline sentence that a hypothetical defendant would actually receive. In general, the survey showed that guideline sentences are largely consistent with public opinion. For example, the public thinks sentences should be based on what kind of crime the defendant committed, not on who they are, which is one of the central principles of the Sentencing Reform Act and the guidelines. The public thinks you should get a longer sentence if you have a history of criminal conduct, but they think blunt rules like “three-strikes-and-you’re-out” are too harsh and that judges should have more flexibility. This view is more consistent with guideline sentencing than with mandatory sentences imposed by statute. The public thinks economic harms are not as bad as causing personal injury, and the guidelines reflect this distinction. There are, of course, areas of disagreement, particularly with respect to drug trafficking where guideline sentences are typically much harsher than sentences selected by respondents. The public survey and the report analyzing it were both commissioned by the Sentencing Commission pursuant to our statutory obligation to study the extent to which the guidelines have achieved the goals of sentencing,¹⁰ and they provide valuable insight into the public will regarding three of those goals—just punishment, deterrence and rehabilitation.

This study also provides some interesting insight into where we might draw the line between federal and state roles in criminal policy. The survey revealed significant regional differences in what kinds of sentences people think are appropriate. This, of course, is one reason we have the guidelines—to counter unwarranted disparity based simply on where you live. But, it also raises questions about whether sentencing policy should somehow reflect this geographic variation—not in the form of disparity within the federal system—but as a measure of where to draw the line between state and federal

9. See Peter H. Rossi & Richard A. Berk, *Public Opinion on Sentencing Federal Crimes* (1995) (on file with the United States Sentencing Commission). Sentencing Commission staff also analyzed the survey data and issued a Research Bulletin which can be obtained from the Sentencing Commission. See Linda D. Maxfield, Willie Martin & Christine Kitchens, *Just Punishment: Public Perceptions and the Federal Sentencing Guidelines*, UNITED STATES SENTENCING COMMISSION RESEARCH BULLETIN (1997).

10. See 28 U.S.C. § 991(b)(2) (1994).

jurisdiction over crime. In other words, it may be appropriate to let public will be reflected in sentences at the state level in a way it would not be at the national level because there is no such national consensus.

The second survey I mentioned was conducted by the Federal Judicial Center in an effort to assess systematically the views and experiences of federal judges and probation officers who work with the sentencing guidelines on a daily basis.¹¹ Overall, the survey showed that there is no groundswell of support for a major overhaul of the guidelines. In addition, the majority of respondents said that, although they would prefer advisory guidelines over mandatory guidelines, they also prefer some type of guideline system to the purely discretionary sentencing that existed previously. Despite this general acceptance of the guidelines, however, they did identify a number of areas where they would like to see changes. The number one interest was in increasing judicial discretion and opportunities for judges to depart from the guideline sentencing range. They also expressed concern that the discretion that used to belong to judges had shifted to prosecutors who they think have too much control over sentences, especially in the context of plea bargains which many see as a source of hidden disparity in the guidelines system. Judges also expressed an interest in disassociating the sentencing guidelines from statutory mandatory minimum sentences, especially in the area of drug trafficking where sentences are closely tied to the quantity of drug involved. Finally, they expressed widespread interest in having the guidelines amended less frequently and in having fewer amendments each cycle in order to give the law a chance to stabilize within the courts.

Even from these brief summaries, I think it is immediately apparent that both of these studies provide valuable information to the Commission about how the guidelines are working and about areas where research and reassessment may be called for. Perhaps even more striking, however, is the extent to which these areas call for a collaborative effort between the Sentencing Commission and all three branches of the federal government—not only because it would provide the Commission with valuable information from other perspectives—but because change in almost all of these areas would require some action by the other branches of government as well as the Commission.

3. Collaborating With Others To Shape Federal Sentencing Policy

Federal sentencing policy must be part of a coordinated national crime control strategy and should be designed to further the goals of that strategy. In

11. See Molly Treadway Johnson & Scott A. Gilbert, *United States Sentencing Guidelines: Results of the Federal Judicial Center's Survey*, REPORT TO THE COMMITTEE ON CRIMINAL LAW OF THE JUDICIAL CONFERENCE OF THE UNITED STATES (1997).

shaping the policy—and reshaping it over time as conditions change—the Commission must work with other governmental agencies in order to coordinate our efforts. Some forms of inter-agency exchange are mandated by the Sentencing Reform Act¹² and are already used. For example, the Executive Branch is represented on the Commission by two nonvoting *ex officio* members and the Commission periodically meets and consults with the Committee on Criminal Law of the Judicial Conference of the United States, which represents the federal judiciary before the Commission. The Sentencing Commission has also established a Judicial Advisory Group to complement the Practitioners' Advisory Group from which it routinely seeks and receives recommendations about guideline sentencing. All of these provide useful opportunities to exchange information, but it is important that the Commission maximizes these opportunities by consulting with these representatives as it is setting priorities and considering possible policy changes or amendments to the guidelines.

I think the Commission should also institutionalize other means of communication and collaboration so that different institutional perspectives and information are channeled to and from the Sentencing Commission in the most constructive way. As we all know, legislators and judges view the law from very different vantage points, making decisions in different contexts and based on different information. Congress is, of course, faced with the challenge of setting national policies *ex ante* with the expectation that, overall, they will achieve the intended results. Judges, on the other hand, apply the guidelines in the context of particular cases or controversies and are thus uniquely able to assess how well they work as they seek to impose a just and lawful sentence in each individual case. Likewise, many within the Department of Justice have valuable experience and information, including prosecutors who work with the guidelines on a daily basis but have a different perspective than judges. In addition, the Bureau of Prisons has valuable information about the effects of the sentencing guidelines on the prison population and the prospects for rehabilitation and transition of defendants back into society. The Justice Department also has several research agencies of its own that gather and analyze institutional data and knowledge. The Sentencing Commission is in a unique position to bridge the gap between these different vantage points in order to rationalize federal sentencing and it is important that we develop in this role. This would not only ensure more informed policy making by the Commission, but would also increase congressional and judicial confidence in the Commission and the guidelines.

Besides expanding the scope and frequency of our workaday interaction and collaboration, I think it would be valuable to all of these institutional players for the Sentencing Commission to host periodic conferences where judges and representatives from the Legislative and Executive Branches gather to discuss

12. See 28 U.S.C. §§ 991(a), 994(o) (1994).

important issues in federal crime policy and to work together to set priorities and discuss possible solutions. While sentencing policy is the Commission's primary concern, it should be considered in the broader context of an evolving national crime control strategy. To the extent we are faced with the need to rationalize the respective roles of states and the federal government in a unified strategy, similar conferences with state and federal representatives also would be valuable. Of course, I do not expect that these different parties will agree on all issues as a matter of course—if they did, the enterprise would be meaningless—but, to the extent they can help clarify the national will over crime and sentencing policy, and do so in a thoughtful and collaborative way, we would all benefit.

IV. CONCLUSION

I conclude, after three very difficult years of membership on the United States Sentencing Commission, that the federal guidelines have, by and large, "served this time" by addressing the concerns of the public and of the Legislative Branch. I hope that future sentencing commissioners and policy makers will use the Commission's very valuable data to learn from this first decade of experience with guideline sentencing. We must take a hard look at the many complex variables involved in sentencing policy and how they may or may not effect our criminal justice goals as a society. The kind of analysis I suggest and welcome will require a concerted will to look honestly and carefully at the data to determine what policy directions we should take. It is no easy task, particularly the task of setting aside the perspective from which each of us view sentencing and trying to ask broadly whether the sentencing policies we pursue truly "serve this time."

Finally, today I have focused primarily on the roles of governmental institutions and officials in federal sentencing reform, which is in no way meant to minimize the critical role that lawyers play, not only in sentencing reform, but in the sentencing process itself. Our justice system depends on the participation of competent and conscientious lawyers who represent those who are brought before the courts, and this is no more important than in the criminal justice system where peoples' fundamental rights and liberties are so directly at stake. For those of you who are interested in criminal law, there is no question that sentencing guidelines are complex and that it is a challenge to learn to use them well, but it is imperative that you do so because they will be as important to the outcome of your clients' cases as the substantive law. Whether you practice in state or federal court, on behalf of the prosecution or defense, I encourage all of you to take up this challenge.

