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U.S. SENTENCING COMMISSION
1331 Pennsylvania Avenue, N.W., Suite 1400
Washington, D. C. 20004

Attn: Public Access Comment

RE: Access to Sentencing Commission Data

Dear Commission:

Allow me to comment on the Commission's interim policy as it relates to the disclosure of documents and microdata. The comments below represent my personal viewpoints, and are intended as a response to the Commission's invitation for public comment on its interim disclosure policy. For clarity, I have grouped my comments under various subject headings.

A. FAILURE TO CONSULT WITH INTERESTED PARTIES PRIOR TO
ESTABLISHMENT OF INTERIM POLICY

Perhaps the most glaring problem evidenced by the new interim policy is the Commission's failure to seek comment from interested parties prior to the establishment of its disclosure policies. The Commission failed to create an outside advisory group, or invite its creation before entering into an agreement with the Administrative Office of the U.S. Courts regarding confidentiality of certain court records. It is now extremely difficult to comment on a policy, part of which is embedded in a June 22, 1988 letter from Mr. L. Ralph Meham, which is predicated on a clandestine agreement that has already been signed, sealed, and delivered.

B. ACCESS TO PERSONAL IDENTIFIERS FOR RESEARCH

The interim policy sheds little light on whether researchers from the non-government sector will be permitted to access "personal identifiers" when that information is needed to address the research hypotheses. Will outside researchers be given access to confidential information, or not? The issue is never specifically affirmed or denied in the policy notice.

C. CLARIFICATION: ORIGINAL SOURCE DOCUMENTS

The establishment of policy with little or no input from outside parties is also illustrated by a concern over original source documents. For example, what parts of the Judge's sentencing form will be encoded onto computer; and will this necessarily include a narrative section to address reasons for departure? This is not made clear in the policy initiative. Take another example. The Commission will create a "comprehensive dataset" on sentencing trends under the new guidelines. Which information does the Commission intend to select? ¹ Will this information come from the presentence reports? From a form to be filled out by defense attorneys? In my opinion, the whole issue is presumably delegated to the Commission without outside input.

D. DISCLOSURE OF THE FPSSIS DATASET

Nowhere in the interim policy is there any mention of the extremely interesting FPSSIS dataset. As the Commission is well aware, this dataset documents sentencing practices prior to inauguration of the guidelines. Will this dataset be made available through the Inter-university Consortium for Political and Social Research?

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For instance, will the dataset of current trends under the Guidelines conform with the original FPSSIS dataset, for which there is no mention at all in the interim policy? Some researchers will want to compare trends between the two sets of data.

E. APPOINTMENT OF AN INFORMATION COORDINATOR

There is an urgent need to appoint an information coordinator who will work with interested parties to expedite disclosure of information, and assist in the prompt dissemination of data. For example, only recently have I obtained a copy of the ASSYST program. There is absolutely no need for this diskette to be made available through N.T.I.S. It should be disseminated by the people who are directly involved in its creation and updating.

Part of the Coordinator's job would be to expedite dissemination of datatapes through CJAIN [Criminal Justice Archive & Information Network]. The Coordinator would be available to assist with the development of research projects, and to make sure that staff members of the Commission's research unit return phone calls, and are available to discuss technical problems with interested parties.

SUMMARY

In summary, the Commission's interim policy is a noble effort that falls short of its mission. It fails to address central issues (such as which data is to be encoded onto computer for public disclosure). And, it appears to continue a system where policy originates within the Commission and is institutionalized with little or no outside commentary.

Respectfully yours,



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Criminologist

cc: Members of Congress