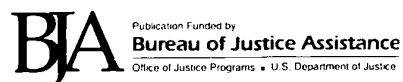
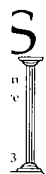


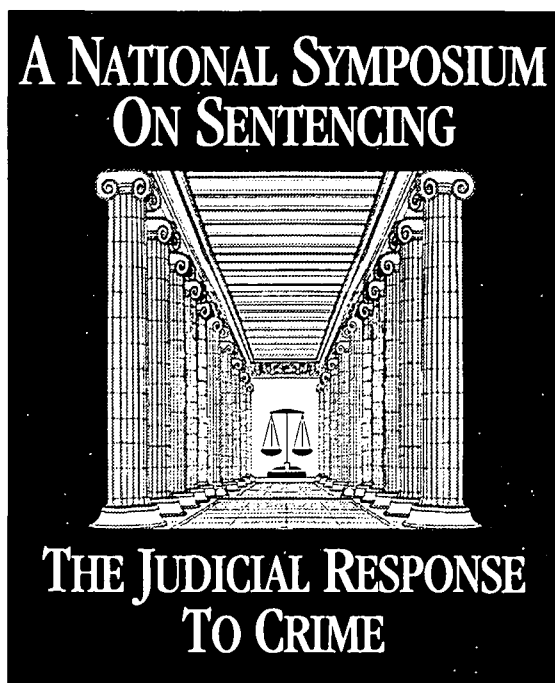
Instructor's Guide for Classroom Video

American Judicature Society

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National Symposium on Sentencing: Instructor's Guide for Classroom Video

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Founded in 1913, the American Judicature Society is an independent, nonprofit organization supported by a national membership of judges, lawyers and other members of the public. Through research, educational programs and publications, AJS addresses concerns related to ethics in the courts, judicial selection, the jury, court administration, and public understanding of the justice system.

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Introduction to the Guide

Synopsis

Highlights of The National Symposium on Sentencing video (running time—38:37) presents an overview of plenary and small group discussions of participants in a symposium devoted to key issues surrounding sentencing policy and practice in the United States. The video program is divided into four segments, with three built-in pauses for reaction and discussion. Hosted by *Court TV* anchor Raymond M. Brown, the video captures the variety of perspectives on sentencing issues presented during the symposium, held in November 1997 in San Diego, California.

The American Judicature Society convened the National Symposium on Sentencing to allow judges, prosecutors, defense attorneys, corrections officials, probation officers, victim advocates, former offenders, media representatives, state legislators, and academics from all 50 states and the District of Columbia to share their perspectives on the current state and future direction of sentencing policies. Participants discussed key contemporary sentencing issues, identified problems with sentencing policies and practices, and developed strategies for addressing these problems. The symposium was made possible by a grant from the State Justice Institute, with additional funding provided by the Bureau of Justice Assistance and the National Institute of Justice.

About this Guide

The video and accompanying instructor's guide are designed primarily for use in undergraduate-level courses in criminal justice studies. They may, however, be used in a variety of other settings, including graduate-level courses in criminal justice, high school civics classes, and meetings of civic organizations.

This Instructor's Guide contains the following:

- A glossary of key terms used in the video program
- A pre-test on viewers' opinions relating to sentencing issues

- The text of three hypothetical situations posed during the video program
- A brief summary of the content of each video segment
- A list of speakers featured in the video segments
- Discussion questions and follow-up activities
- Resources for further study

Glossary of Sentencing Terms Used in the Video

Indeterminate Sentencing—legislatures specify maximum sentence length for different categories of offenses; judges have discretion to set particular maximum and minimum sentences on a case-by-case basis within a broad range; parole boards have the authority to release an offender

Voluntary Sentencing Guidelines—voluntary recommendations for judges to follow when handing down specific sentences; compliance not required by law

Determinate Sentencing—an offender is given a fixed term that may be reduced by good time or earned time; usually involves explicit standards specifying the amount of punishment and a set release date with no parole board review

Presumptive Sentencing Guidelines—may use determinate or indeterminate sentencing structures; devised by specially convened administrative agencies called sentencing commissions; judges required to follow specific sentencing ranges; any deviations/departures must be explained in writing and may be reviewed by a higher court; judges follow a two-variable grid, which cross-tabulates the offense severity with prior criminal history

Mandatory Minimum Sentences—set by statute; require that all convictions of a particular crime receive predetermined sentence

Three Strikes Laws—require that felons found guilty of a third serious crime be incarcerated for 25 years to life

Truth-in-Sentencing Laws—require that violent offenders serve a minimum percentage, usually 85 percent, of original sentence before becoming eligible for release

Intermediate Sanctions—alternatives to incarceration; examples include boot camps, electronic monitoring devices, intensive supervision, restitution and drug treatment programs, day reporting centers, community service, and monetary fines

Pre-test on Viewer Background and Opinions on Sentencing

Before viewing the video, it will be useful to assess the background knowledge and opinions of viewers (students) on sentencing issues. Viewers should privately record their answers in writing to questions such as:

- How are sentences determined for defendants found guilty of committing a violent crime?
- How are sentences determined for defendants found guilty of committing a nonviolent crime?
- To what extent should judges be allowed to tailor sentences to fit the mitigating or aggravating circumstances of a crime and the characteristics of the offender?
- Who should have a say in determining the sentence of those convicted of violent crimes? How much say should victims have?
- Should all people convicted of first-degree murder across the country receive the same sentence?
- To what extent does the media influence the setting of sentencing policies? Are broader sentencing policies ever formed in response to a single, highly-publicized crime?

The same questions should be posed to viewers after the video has been shown to assess whether or not the views and ideas expressed in the video changed original viewer notions and understandings about sentencing issues.

Segment 1

Introduction to Video, Opening Symposium Remarks, and the Politics and Practice of Sentencing

This segment begins by emphasizing that the intent of the symposium was to bring judges back into the process of formulating sentencing policies. The judges and other sentencing stakeholders in attendance discussed how judges can deal with dilemmas posed by less judicial discretion in sentencing decisions, public pressures to be tough on crime, and lack of alternatives to incarceration. Part of the introductory comments of Judge John Daffron concern the difficulty judges face in carrying out the important task of sentencing.

Judge Daffron's comments are followed by an excerpt from the keynote address given by Professor Michael Tonry, which focuses on the issue of public opinion and its effect on judges and policy makers. For example, Professor Tonry discusses the development of our national drug policy over the past 25 years, pointing out how public opinion and public policy response to drug use change depending on whether drug use is becoming more or less common. He emphasizes that perspective can be lost when society's response to drug use is based on fear of crime and moral condemnation of drug users.

This segment also explores the politics and practice of sentencing as a former offender, a prosecutor, a state legislator, and a defense attorney react to a hypothetical situation in the mythical State of Erehwon. The panelists discuss issues surrounding the use of guideline systems, which seek to promote consistency in sentencing, and truth-in-sentencing laws, which ensure that more of an original sentence is served behind bars. The video contains a pause after the prosecutor's response to the moderator's request for reaction to the first option proposed for Erehwon.

Hypothetical Situation 1: The Mythical State of Erehwon

In the mythical State of Erehwon, two high-profile crimes have put sentencing issues in the political spotlight, kindling a debate over whether to overhaul the entire state's sentencing system. Erehwon has used an indeterminate sentencing system since the 1970s, under which judges determine the maximum sentence for each offense.

The first case to receive widespread attention involved a recently released prisoner who was apprehended for shooting and killing a police officer in the largest city in the state. Public outrage set in when the local papers publicized the fact that this offender, a 33-year-old white male, had previously been convicted of second-degree murder. Although the judge sentenced him to prison for killing the police officer after another plea bargain, the newspapers were quick to point out that he could be paroled in as little as ten years.

In the second case shortly thereafter, in a rural area of the state, a 29-year-old black male was convicted of aggravated battery for stabbing a sheriff who had pulled over his vehicle for suspected drug trafficking. In a controversial trial, the prosecutor argued that the defendant was dangerously violent; a charge bolstered by a previous 10-year sentence for manslaughter, of which he served two years. The defendant claimed, however, that he was stopped on a racist pretext and that the stabbing was an attempt to defend himself against police brutality. In the end, the judge sentenced him to life in prison. A group of minority citizens and liberal activists have charged racism and rallied to his cause, pointing out that his sentence was just as severe as the white offender's, even though the sheriff who was stabbed did not die.

Given the political firestorm created by these two cases, a variety of proposals to overhaul the state system are currently being debated. Particularly at issue are proposals for a strong truth-in-sentencing law to ensure that convicted criminals will serve more of their original term behind bars (usually 85 percent of original sentence), and for a shift to a guideline system to promote consistency in sentencing.

Discussion Questions

1. In his comments, Judge Daffron points out that while legislators might prefer the verb "shape" or "guide" to describe their role in sentencing, judges might prefer verbs like "limit" or "confine" to describe the role of legislators. What verb would you use to describe the role of state legislators with respect to sentencing issues/policies?

2. Do you agree or disagree with Nelson Marks' view that in addition to promoting public safety and justice, rehabilitation should also be a goal of the sentencing process? Explain your position.
3. What is prosecutor Thomas Charron's concern about 100 percent truth-in-sentencing requirements?
4. What is the political dilemma for a state legislator considering a truth-in-sentencing bill?
5. Who is the greater threat to society—the young man who steals a gold chain from someone on the street, or the white-collar person who commits a \$50 million mortgage fraud?

Options and Results

After the panelists discussed various options for restructuring the sentencing system in Erehwon, the audience was given an opportunity to vote for their preferred option. The options and results were as follows:

Scenario: state economy booming; budget surplus; prisons at 85 percent of capacity; public strongly supports increased corrections budget.

1. Retain judicial discretion to determine maximum sentences, but add a 100 percent truth-in-sentencing (TIS) requirement for convicted murderers.

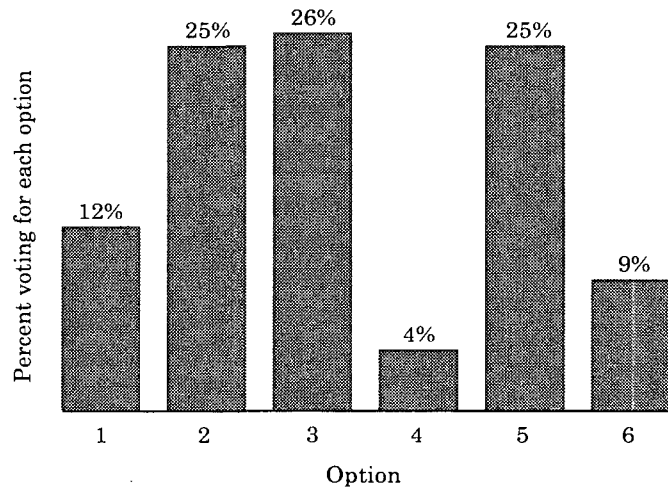
2. Retain judicial discretion to determine maximum sentences, but add an 85 percent TIS requirement for all violent offenders.

3. Retain judicial discretion to determine maximum sentences, but add an 85 percent TIS requirement for all offenders.

4. Have the state legislature establish minimum and maximum sentences for all serious offenses, and eliminate parole.

5. Form a sentencing commission to draft recommendations for the creation of a presumptive guidelines system.

6. Enact a repeat-offender statute stating that upon conviction of a second violent offense, the offender must serve 50 percent of time given with no parole.



Follow-up Activities

1. Have class members vote on Erehwon options, discuss results, and compare/contrast to the results of voting by symposium participants. (See above.) Discuss similarities and differences.

2. Have students assume roles of prosecutor, former offender, state legislator, judge, defense attorney, family member of victim, and corrections officer; then debate the pros and cons of truth-in-sentencing laws and sentencing guideline systems.
3. Write a letter to members of Erewhon's legislature convincing them to either maintain the traditional indeterminate sentencing system that has existed since the 1970s or to change to a sentencing guideline system.

Featured Speakers

Hon. John F. Daffron, Jr., Chief Judge, Chesterfield, Virginia Circuit Court
and co-chair of the Board of Directors of the State Justice Institute
Professor Michael Tonry, University of Minnesota Law School
Sandra A. O'Connor, state's attorney, Baltimore County, Maryland
Nelson Marks, social worker, New Orleans, Louisiana
Thomas Charron, district attorney, Cobb County, Georgia
Rep. Sally Fox, state legislator, Vermont
William B. Moffitt, defense attorney, Washington, D.C.

Segment 2

Media and Public Opinion: Their Impact on Sentencing Policy

This segment addresses the effect of media coverage and public opinion on sentencing policy making. Questions were posed to media representatives regarding the public's perception of the effectiveness of the criminal justice system as well as the media's responsibility for shaping that perception. A defense attorney added that prosecutors are sometimes responsible for creating unrealistic expectations and subsequent public dissatisfaction when they announce the maximum sentence for an offense, even though the defendant will likely serve only a fraction of that time. A prosecutor noted the need to hear more from the users of the criminal justice system—the defendants and victims whose lives are most directly affected by the actions of the court. This segment then introduces the second hypothetical situation, in the mythical State of Whatif, to motivate further debate about the impact of the media and public opinion on sentencing policy. The video contains another pause after the listing of five options for consideration by the governor of the mythical State of Whatif.

Hypothetical Situation 2: The Mythical State of Whatif

An investigative report on an alleged conspiracy to market various illicit drugs (e.g., heroin, cocaine, PCP) at rural and suburban high schools throughout the State of Whatif has placed issues of sentencing policy in the political spotlight only two months before a major election. The report has attracted widespread public attention, with 78 percent of adults polled reporting that they were “aware” of the story, or were “following it closely.” Arousing particular public ire is the fact that six of the seven alleged conspirators had at least one prior conviction for drug trafficking; and that none had served more than 16 months in prison. Further, two of those had served no time at all, being placed in intermediate sanctions programs instead, in keeping with a growing trend of diverting nonviolent offenders from prison.

Mr. John Doe, the challenger in a closely watched gubernatorial race, quickly responded to these developments by making “the fight to win the war on drugs” the new theme of his campaign. If elected, he promises, he will bar all drug offenders from intermediate sanctions programs, and make them subject to tough Truth-In-Sentencing requirements. According to the latest opinion poll, 63 percent of registered voters support Doe’s proposal. Nonetheless, some criminal justice experts are warning that such a policy is neither necessary nor affordable, as most drug offenders have no grand marketing schemes, and prisons are already overly expensive and overcrowded.

Discussion Questions

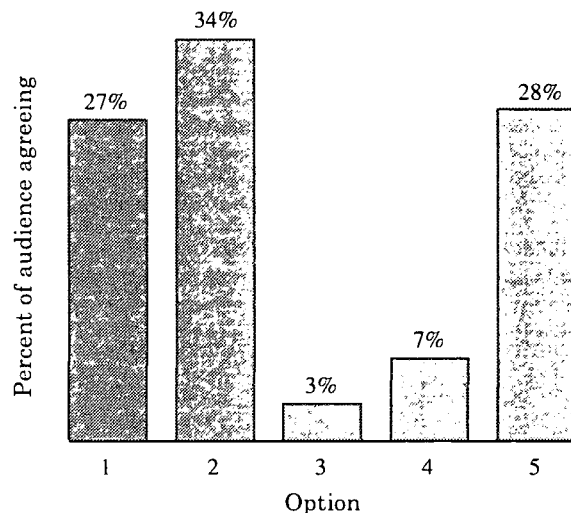
1. How could intermediate sanctions like drug treatment and community service survive in a state wanting to “get tough on drug crimes”?
2. Would watching the evening news on a regular basis help or hinder the public perception that the criminal justice system does not work? Explain your choice.

Options and Results

After the panelists discussed this hypothetical situation, the moderator asked the audience members to assume that they were one of the incumbent governor’s advisors, and to vote on how they would counsel him. The audience was given five options. The options and results were as follows:

Advice to the Governor

1. Accept the terms of the challenger’s proposed legislation for the duration of the campaign, and strategize to chart a more moderate course after the election.
2. Come up with an alternative proposal that is less punitive than the challenger’s, but more punitive than the current policy.
3. Avoid the whole issue as much as possible, and avoid taking a clear position on the proposed law.
4. Openly state your opposition to the proposed law, but attempt to focus attention on other issues.
5. Openly state your opposition to the proposed law, arguing that the criminal justice system is already overwhelmed with nonviolent offenders, and that the proposed law could send the system into a state of crisis.



Follow-up Activities

1. Take a class vote on the five options available to the incumbent governor running for re-election in Whatif. Compare and contrast your vote outcomes with those of the symposium participants. (See bar graph page 9.)
2. Take additional votes on the options by asking class members which option they would choose if they were (a) director of corrections for the state of Whatif; (b) a drug court judge in the state; (c) the mother of a high-school student.
3. Trace the media coverage of a recent criminal case and give examples of positive and negative public perceptions of the criminal justice system generated by the coverage.
4. You are the incumbent's campaign speech writer. Write a three-minute campaign speech that will have the broadest possible appeal to voters who represent a wide range of perceptions about the effectiveness of the criminal justice system.

Featured Speakers

Thomas Hodson, attorney and media relations consultant, Athens, Ohio
Professor Joseph Angotti, School of Communications, University of Miami (Florida)

Linda Deutsch, special correspondent, Associated Press

Neal Sonnet, defense attorney, Miami, Florida

Stephanie Tubbs Jones, prosecutor, Cleveland, Ohio

Hon. Gerald Bruce Lee, state judge, Virginia (elevated to federal bench in October 1998)

Hon. Dana Levitz, state judge, Towson, Maryland

Rep. Michael Lawlor, co-chair, Connecticut Joint Judiciary Committee

Segment 3

Sentencing Dilemmas Posed to Judges

Raymond Brown, video host and moderator at the Symposium, describes the strength of our “secular faith” in justice, which hinges on a judges’ ability to reconcile contradictory forces and produce fair results. This judicial balancing act is the focus of this segment. The panel of judges discuss how they deal with personal anger on the bench, stressing the critical need for introspection and awareness of how their feelings might compromise their ability to be impartial and fair to criminal defendants.

Mr. Brown then introduces the third hypothetical situation, dealing with the case of a respected physician who hits and kills a 16-year-old cyclist while driving home from a charity fund raising party. The doctor had a blood alcohol level slightly over the legal limit for his jurisdiction. This hypothetical case evokes very different responses from several judges. One judge (a white man) feels this is a tough case given that the defendant is a person who does not fit into the normal conception of a defendant in a felony case. Another judge (a black woman) strongly states she would have no problem sending this physician to jail for a year, and that she senses race- and class-based preferences operating in favor of the physician. A third judge brings up the additional obstacle of intense media coverage of this case in reaching a fair sentence.

Hypothetical Situation 3: The Case of Dr. Joe Doe

Joe Doe is a 45-year-old physician who is highly involved in civic affairs, and well-known and respected in the small middle-class community of Evansville. One night, driving home from a charity fund-raising party, he accidentally hit and killed a 16-year-old boy on a bicycle. Police tests revealed that the amount of alcohol in his blood was .5 percent over the legal limit for that jurisdiction. A widower with grown children, Doe is considered to be a social drinker with no substance abuse problems.

The tape pauses after initial discussion of the hypothetical case to allow time for classroom discussion. After the pause, panelists discuss possible alternatives to incarceration and the moderator summarizes the audience's votes on a suitable sentence for Dr. Doe.

Discussion Questions

1. Do you agree or disagree with Judge Worthy's contention that if the defendant in this case was a black, unemployed steel worker with no criminal record who is also a social drinker, then the sentencing decision (prison time or not) for some judges might not be so difficult? Explain your answer.
2. How would the media's presence in the courtroom possibly affect a judge's sentencing decision in an indeterminate system?
3. Which sentencing system might eliminate or at least reduce the influence of bias in the courtroom? Explain your response.
4. What sentence would you give to Dr. Doe if you were the judge? Why?

Options and Results

After a spirited discussion among the judges on the panel, Raymond Brown presented the audience with options on how to sentence Dr. Doe. The options and results were as follows:

Give the Physician Probation?		
(number responding)		
	Yes	No
Judges	27	52
Non-Judges	42	55

When some judges on the panel said that straight probation was not punitive enough, Mr. Brown posed the following question to only the judges in the audience.

Redefining probation as including up to a year in county jail, electronic monitoring, possibly house arrest or a host of other more punitive possibilities, would judges give probation?

This time, 70 judges said yes; 20 said no.

Follow-up Activity

Bring in a psychologist or therapist to identify the possible mindsets that judges have at the time sentences are set and to suggest ways to minimize the influence of personal feelings. For example, Judge Fitzgerald deals with judicial anger by not imposing the sentence immediately after the trial.

Featured Speakers

Hon. Thomas Fitzgerald, presiding criminal court judge, Cook County, Illinois

Hon. Carolyn Engel Temin, judge, Philadelphia, Pennsylvania

Hon. Kym Worthy, judge, Detroit, Michigan

Hon. Van Zimmer, judge, Cedar Rapids, Iowa

Segment 4

Changing the System

Speakers in Segment 4 wrestle with how to determine when a sentencing system needs to be changed and what must be done to change it. Moderator Erwin Chemerinsky notes that reforms are often spurred by horror stories and wonders if more systematic and effective ways of initiating reforms might be possible. Panelists point to high incarceration rates and more early parole being granted in response to court orders to ease prison overcrowding as some of the hard facts that need to be recognized before reform efforts begin.

This last segment also focuses on the role of the judiciary in evaluating and implementing sentencing systems. Several panelists advocate for a more active role for the judiciary in policy formulation that impacts not only individual sentencing decisions, but the criminal justice system as a whole. More judges are recognizing that they can play a key and influential role in improving the criminal justice system by stepping beyond the traditional judicial role of isolated, individual decision maker who does not attempt to advocate or influence policy.

No pauses have been inserted in this segment; instructors should stop tape for discussion where it seems appropriate.

Discussion Questions

1. When, where, and why should judges take more active roles in working with policy makers to influence decisions for the good of the criminal justice system? Are there any reasons why judges should not attempt to influence policy making in this area?
2. If you had your own foundation and were giving away millions of dollars in grants, what kinds of projects and policies would you fund for the improvement of the criminal justice system in general and sentencing systems specifically?
3. Identify indicators for the need to reform sentencing policies and practices other than public and media reaction to horror stories.

Follow-up Activities

1. Find and present examples from current news stories of instances when the criminal justice system (including sentencing systems) is used to tackle other societal problems such as mental illness, drug abuse, discrimination, unemployment, etc.
2. Plan a community forum, inviting judges to speak to the public about the issues and dilemmas they face in sentencing.

Featured Speakers

Professor Erwin Chemerinsky, University of Southern California Law Center

Christopher Johns, public defender, Phoenix, Arizona

James Greene, deputy director, Connecticut Office of Alternative Sanctions

Arthur C. (Cappy) Eads, District Attorney, 27th Judicial District of Texas

Hon. David B. Mitchell, judge, Baltimore, Maryland

Madeleine Carter, senior associate, Center for Effective Public Policy

Conclusions and Recommendations

Host Raymond Brown concludes with the results of small group discussions among all participants. Small groups were given the following tasks:

- Identify problems with contemporary sentencing policy
- Identify barriers to solutions
- Recommend strategies to overcome the barriers and address the problems

At the symposium's closing session, the problem-solving strategies identified by the small groups were presented to the full audience, which then ranked the recommendations as follows:

EDUCATE EVERYBODY. This recommendation responds to the problem of the public's lack of knowledge about and trust in the criminal justice system generally, and the courts in particular. Some suggested strategies to implement this recommendation include (1) conducting court-sponsored outreach programs for community groups, teachers, journalists and others; (2) having judges explain their sentencing decisions so the public understands the basis for them; (3) hiring an official court spokesperson to respond to media questions about the criminal justice system; and (4) designing Web pages about the criminal justice system that explain, for example, what alternative sanctions are and compare the cost of alternative sanctions and imprisonment.

FIND WHAT WORKS. Participants said that informed policy making is difficult because there is little evaluation research on various sentencing alternatives. Therefore, they stressed the need for empirical research to provide valid and reliable data to guide policy makers. Another way of finding what works is setting measurable goals for new programs, pilot testing the programs, and then evaluating the extent to which the goals were met. Finally, jurisdictions can learn from the experience of others by, for example, accessing research reports published by SJI, the National Institute of Justice, the Bureau of Justice Assistance and other federal or state agencies.

EXERCISE JUDICIAL LEADERSHIP. Symposium participants urged the judiciary to be proactive in a variety of ways, including working with coalitions to educate the public, develop a consensus for change, and improve the system. They also urged the judicial branch to develop a united voice on sentencing issues.

ELIMINATE BIAS. A significant number of small groups cited the continuing existence of sentencing disparities based on race, class, gender and geography. Because public perceptions of bias erode trust in the sentencing process, it is important that the judiciary publicly acknowledge and deal with the issue. One suggested strategy is to establish an interbranch commission that would monitor sentences and prosecutorial practices and report back to judges, prosecutors and others. Other suggested strategies include mandatory diversity training for judges and prosecutors, and having judges monitor their own statistics in order to identify any recurring patterns that might indicate bias, e.g., who is sentenced to prison and who is sentenced to probation.

USE RESOURCES BETTER. Symposium participants identified lack of resources and programs as a serious problem, along with poor allocation of existing resources. One way to insure that limited resources are used effectively is to develop a coordinated, system-wide approach to planning and budgeting. Another is to apply the *Find What Works* recommendation to reduce duplication of effort, and modify or eliminate ineffective programs.

BUILD COALITIONS. The purpose of working with a coalition is to collaborate with an inclusive group to develop a consensus on goals to improve the criminal justice system, and sentencing policy in particular, and develop a plan to implement the goals. The benefits of coalition building include providing a mechanism to identify system-wide problems and develop solutions. In addition, the coalition could plan comprehensive community education programs and support requests for adequate resources for all components of the criminal justice system.

Discussion Question

1. How would the class rank order the recommendations for problem solving strategies that symposium participants identified? Discuss any differences and/or similarities.

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