

AN EMERGING PROFESSION:
White Paper on Sentencing Advocacy

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Introduction

Following the remarkable turnout and media interest in the first National Conference on Sentencing Advocacy held in Washington, D.C., on January 27-28, 1989; it became evident that we were at the beginnings of a new profession.

This is all the more remarkable inasmuch as the true origins of sentencing advocacy in North America date to the work of Boston shoemaker, John Augustus, circa 1841. Nevertheless, in the last twenty years, a number of social workers, criminologists, case workers, lawyers, and ex-probation officers have pursued this ad hoc occupation on nearly a full-time basis.

Indeed, in addition to the Practising Law Institute's handbook on Sentencing Advocacy, a book has been published by Chief Probation Officer Andrew R. Klein. See **Alternative Sentencing – A Practitioners Guide** (Cincinnati: Anderson Pub Co. 1988). Our colleague, Marcia Shein, Esq., has written a nationally-acclaimed manual on practice and procedure for the profession. See **Sentencing Defense Manual: Advocacy – Practice – Procedure** (NY: Clark Boardman & Co. 1990).

At this juncture, a group of practitioners decided that it might be beneficial to take stock of where the profession of "Sentencing Advocacy" was headed. In mid-1990, a discussion group was formed to make recommendations. This White Paper is the result of their efforts, and should be regarded as a "work in progress."

Thoughts and Ruminations

A Professional Membership Organization

There was a unanimous agreement that now was the time to form an organization for Sentencing Advocates. Members of the discussion group felt that such an organization would add legitimacy to the profession, which is often criticized by prosecutors and under-utilized by members of the criminal Defense bar.

Larry Vellani summarized this position best when he said: "There is, at present, no single, stable, professional or issue-based forum within which sentencing advocates...can come together for information, professional support, inspiration, or strategic planning... [T]here is no periodical or publication through which this community can give voice to its concerns, share its lessons, center its debates, or challenge its members professionally or politically."

Use an Existing Association or Form a new one?

This question sparked some debate within the Discussion Group. At the outset, there are a number of organizations who might fulfill this mission, including: The Sentencing Project, Washington, D.C.; National Legal Aid and Defender Association; the National Community Service Sentencing Association; the National Center on Institutions & Alternatives; the National Council on Crime & Delinquency; and the National Forensic Social Workers Association, just to name a few.

Considering the precarious financial positions of most Sentencing Advocates and their programs, a consensus eventually emerged that an existing project should be approached to consider “expanding” their duties. An obvious problem is that the membership of professional associations usually likes to have some “say” in the operation of their organization. Several members favored using The Sentencing Project, but were unsure whether the Project’s Board of Directors would favor such an approach. Because many advocates already work closely with the Project, it was felt that perhaps a separate section could be formed, thereby providing for some degree of member input.

Most of the Practitioners felt that such a Professional Association would need to be partially subsidized during its initial years because the small number of practitioners could not sustain a free-standing organization via dues. This would necessarily involve the sharing of costs and the possibility of obtaining grants; and thus, another reason to use an existing organization for this purpose.

Assuming some degree of stability in future years, it was felt that the bylaws of the organization would have to allow for some degree of “control” by the practitioners; otherwise, there might be a need for separate membership association. One model that came to mind was the relationship between the National Pretrial Services Association (a membership group) and the National Pretrial Services Resource Center (a research and training organization).

What Kind of Services Should be Provided?

By far, Discussion Group members felt the single most effective service to be rendered by a national membership Association would be an on-going program of technical training seminars and aides. Several members referred specifically to the “client specific planning” seminars offered by the National Center on Institutions and Alternatives (NCIA); whereas others mentioned the current program efforts of the Sentencing Project (e.g. national conferences on Sentencing Advocacy); or even a yearly Advocates Training Academy.

Some of the suggestions by members were of a nuts-and-bolts variety, including: a) the format of court reports; b) effective communication in the courtroom; c) ethnic awareness; and even d) administrative skills (budgeting, grants, etc.).

With respect to local training, there was a call for networking with existing local projects, such as the North Carolina Alternative Sentencing Association.

Cessie Alfonso and Marsha Weissman called for training curriculum that has a broad, social policy component. Specifically highlighted were the Sentencing Project's report on Black male incarceration rates, and its release on international imprisonment. To quote Marsha:

One of the problems we encounter in bringing in new staff...is the absolute lack of a sociological/economic/political/historical perspective. To be a truly effective sentencing advocate, one must understand the bigger picture.

Among the other services mentioned were the following:

- Briefbank of reports
- Newsletter highlighting creative plans
- Topical research
- A professional Journal
- Periodic Briefing Sheets
- Legislative advocacy
- Technical assistance
- Cases for Guideline departure
- Staff Development
- Directory of Sentencing Advocates
- Media outreach
- Networking with colleagues

Nearly all Discussion Group members agreed with Dennis Schrantz' observation that during "the initial first several years of a national organization, you would probably be hard pressed to provide much beyond a regular training session or sessions and a newsletter."

Finally, there was much discussion – especially among private practitioners – of the need for professional liability insurance. Most public defender-based sentencing members felt they were already covered by their agency; but nevertheless conceded the benefits to their private colleagues. However, the issue was not considered a high priority item, and generated several questions as to just what liability exposure a sentencing advocate had?

Professional Accreditation

By far the most contentious of issues raised during our discussions, our small group of practitioners split on this question. Two thirds favored accreditation but voiced numerous concerns: including what body would set the standards, who would enforce them, grandfathering of veteran practitioners, as well as race, sex, and class biases of accreditation.

Mim George represented the minority position with her observation that “accreditation is not a priority at this stage of the development of sentencing advocacy...For me one of the most interesting factors of sentencing programs is the diverse makeup of the participants. I would like to see that diversity maintained.”

Catch-all for New Ideas

Several of the Discussion Group members expressed an interest in developing sentencing advocacy curriculums in colleges and law schools.

In particular David Norat of Kentucky suggested that a national poll on punishment might be worthwhile, especially after the public is educated as to just what options exist. “My thought is that a national poll would show there is a greater acceptance than realized for punishment options.”

Commentary by Prof. Tom Gitchoff

As the fortuitous “father” of the privately-commissioned presentence evaluation (circa 1971), originally called a “Criminological Case Evaluation and Sentencing Recommendation,” I am impressed with the growth and development of the sentencing advocacy movement.

For the past twenty years, I have encouraged colleagues from academia as well as others from the social and behavioral sciences to consider assisting defense attorneys in the sentencing process (including, hopefully, efforts at rehabilitation and doing less harm).

My interest as a criminologist was to view myself as an agent of the attorney and my report became part of his work product submitted to the court. I was paid by the attorney for my time and professional services. I also discovered the most of my clients were very receptive to performing charitable labor in the community before sentencing, thereby establishing a “track record” of “penitence, remorse, community-symbolic restitution, etc., etc.” depending on current popular nomenclature. I also discovered that most victims (90%) were receptive to monetary restitution or in-kind labor to repair property losses or damages.

A Professional Organization?

It seems we're already overwhelmed with professional associations and societies. I like the notion of affiliation possibly with either the Sentencing Project or a subunit in the American Society of Criminology. However, if we view this emerging profession as part of the adversarial legal system, then we must be viewed as retained (consulted, hired, paid for, etc.) by the defense and not be shy about it. In which case, the National Legal Aid and Defenders Association would then seem appropriate for affiliation. After all, there is a strong prosecutorial bias in most probation reports; and in fairness, there should be one on the side of the defense and the judge would determine the balance (ideally!).

Given the current situation of the U.S. Sentencing Commission, prison overcrowding, longer sentences, etc.; I do not foresee any major changes in the sentencing patterns in the near future. Governor Pete Wilson of California has authorized a 14% increase in the Department of Corrections budget to continue to incarcerate more offenders for larger periods of time. Eventually (hopefully not much longer) the legislature, the public, and the media will see how expensive and useless these types of responses to crime really are.

I like the notion of training seminars, which can be done separately or as a workshop under the aegis of any related social/behavioral science conference or meeting.

Finally, I would probably fall in line with Mim George's position of stressing diversity over accreditation and reminding any hostile prosecutor who may attack you, your work, or credentials while you're on the witness stand, about the "little ole shoemaker," John Augustus, from Boston who is the father of Probation and who simply cared enough about his community and his fellow man to get involved. The fact that you get paid for your time and effort should not matter – doesn't the prosecutor, the defense, the judge, and the probation officer also get paid?