The founders of our Constitution established the judiciary as an independent, co-equal branch of government for two reasons:

First, making the judiciary independent of inappropriate outside influences within and without government would better enable the judiciary to render important decisions in individual cases—hence the need for *decisinal judicial independence*.

Second, making the judiciary a third branch of government independent of the legislature and executive would enable the judiciary to check over-concentrations of power in the political branches—hence the need for *institutional judicial independence*.

However, as part of this separation of powers, “. . . it was essential that the Constitution include provisions making the judiciary accountable to both the political branches and the electorate.” Commentators have asserted that it is difficult to maintain judicial independence as the concern for judicial accountability increases. The ABA identifies *decisional independence issues* such as judicial criticism and judicial appointments, and *institutional independence issues* such as the control of financial resources and internal administration, as areas where the political branches have infringed on the independence of the judiciary. This friction between the judicial and political branches, as well as conflicts between judicial independence and judicial accountability, has taken other forms. Mandatory minimum sentencing statutes, sentencing guidelines, judicial reporting requirements, and dissemination of sentencing information are identified by some as examples of encroachment by the legislative and executive branches.

Many of these same issues surfaced in Pennsylvania in the late 1990’s as the state sentencing commission debated a policy regarding the release of judge-specific sentencing data. Advocates for judicial independence spoke of the chilling effect that the release of judge-specific information would have on *decisinal independence*, such as reduced flexibility at sentencing and gamesmanship regarding pleas, and saw the release of the information by a legislative agency as an infringement of the courts’ *institutional independence*. They also criticized the incomplete and allegedly unreliable nature of the information reported, and expressed concerns about the dissemination of misleading information. Supporters of judicial accountability held that incomplete reporting, under-reporting, and non-reporting were the result of judges’ own failure to comply with statutorily-mandated complete reporting, and that public disclosure would improve the quality and completeness of reporting. These supporters also viewed the release of sentencing information as consistent with the Commission’s duty to serve as a clearinghouse and information center, and its responsibility to promote more uniform sentencing practices. Additionally, because public funds were used to collect the information, and a statute requires the dissemination of the information, the information should not be withheld from the public.

This article provides an overview of the development and implementation of the Pennsylvania Commission on Sentencing’s *Release of Information Policy*, discusses the impacts of the policy during the intervening four years, and identifies lessons learned and future challenges. As such, it highlights some of the inherent conflicts involving judicial independence and judicial accountability, separation of powers, and the aggregation and dissemination of public information. It also builds the case for including contextual information and extensive public education as part of a comprehensive release policy.

**Development and Implementation**

**Description of Initial Policy**

Since 1982, the Pennsylvania Commission on Sentencing, a legislative agency with members appointed by...
each of the three branches of government, has been collecting relevant information on sentences imposed as reported by criminal court judges. The Commission is authorized by statute to promulgate forms that document the application of the sentencing guidelines and mandatory laws, and to require of courts the timely completion and submission of the forms to the Commission. The information collected includes demographic data, offense of conviction, record of previous convictions, application of sentencing enhancements and/or mandatory sentencing provisions, type of disposition, guideline recommendation, sentence imposed and reasons for sentence and/or departure from the guideline recommendation. Until 1999, the Commission did not have a written policy controlling the release of information, but generally excluded judge and offender identifier from any public release.

On April 22, 1998, the Pennsylvania Commission on Sentencing adopted for public comment an initial draft of a Release of Information Policy. The policy as proposed applied to all data years upon completion of data entry, cleaning (e.g., verification) and documentation, and created two categories of information: data sets and reports. Data sets are electronic files that contain all of the information reported to the Commission on guideline sentence forms. Under the proposed policy, a general release data set would be available for purchase and would be publicly accessible though the Inter-University Consortium for Political and Social Research (ICPSR) at the University of Michigan. Confidential offender information would be removed from the general release data set. By contract, the Commission could provide the complete data set to an agency or individual conducting research on behalf of the Commission. Reports addressed more focused information requests and would be available on a statewide, county or judge-specific basis. Four standard reports were included in the draft policy: Type of Sentence, Conformity of Sentence, Mandatory Sentences Imposed, and Place of Confinement. Any other specific information requests would be considered a custom report, and would have to be approved by the Commission. A copy of any judge-specific report would be sent to the judge and include the identity of the requesting party.

On June 24, 1998, the Commission formally adopted the policy, to take effect November 1, 1998, but also scheduled a Public Hearing for October 27, 1998 to receive testimony prior to implementation. During the interim, and based on written comments received, Commission staff prepared an additional report, Standard Report 5 (SR-5), which contained offense-specific information on each sentence imposed, and included other information such as type of plea, application of a mandatory minimum, and departure reasons. The first policy, since amended, came into force on February 24, 1999.

Reasons for Policy Development

The Pennsylvania Commission on Sentencing was established on November 26, 1978 for the primary purpose of creating a consistent and rational statewide sentencing policy that would increase sentencing severity for serious crimes and promote fairer and more uniform sentencing practices. The legislation required the Commission to adopt sentencing guidelines that would be “...considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of, felonies and misdemeanors.” Since 1986, the Commission has been designated a legislative agency. The first guidelines were adopted in July 1982 and several revisions have been promulgated since then.

The Commission’s enabling legislation also delegated additional powers and duties, including: to collect, publish, and disseminate information relating to Commonwealth sentencing practices; to make recommendations to the General Assembly which the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy; and to systematically monitor compliance with the guidelines and with mandatory sentencing laws.

The collection and analysis of sentencing information is critical to the development of sound sentencing policies. Consistent with its enabling legislation, the Commission requires Judges to complete a guideline sentence form for sentences imposed on virtually every felony and misdemeanor conviction. The Commission uses the information obtained from guideline sentence forms to assess the impact and effectiveness of the guidelines and other sentencing statutes, and to evaluate the impact of any proposed changes. Sentencing information is a key component of the Commonwealth’s correctional population projections.

The Commission publishes an Annual Report each year that includes aggregate data by county, offense and other groupings. However, the Commission had often received requests for more specific sentencing information. While the Commission did not have a formal policy on releasing information, Commission staff complied with requests in two ways: (1) giving access to paper files containing copies of the sentencing guideline forms, a practice subsequently terminated due to potential release of confidential information; and (2) conducting computer “runs” specific to the requests. Occasionally, the Commission received requests for the complete data set on disk, generally from researchers or reporters, so that persons requesting the information could conduct independent analysis. These requests were generally denied.
Commission staff had refused to release raw data in an automated format for several reasons. First, staff was concerned that analysis by someone not trained in research methods or unfamiliar with the data set would result in incorrect assumptions and inaccurate conclusions. Second, staff was concerned that such a release might violate other acts that govern the release of offender information, such as the Criminal History Records Information Act. Since the information reported to the Commission on the guideline sentence form is collected by a third party, only minimal verification of accuracy occurred. Additionally, some of the information contained on the form, particularly under departure reasons, may be based upon a pre-sentence investigation report, which in Pennsylvania is confidential and not open to public inspection. A third reason for refusing to release the entire data set was that it contained judicial identifier information.

During the initial implementation of the sentencing guidelines in 1982, judges were assured that judge-specific sentencing data would not be released to the public. Such a promise was necessary because judges in Pennsylvania are elected officials, and they were concerned at the time that sentencing data would be used as a “scorecard” during retention elections. Judges indicated that departures below the recommended guidelines would be used to label them as lenient, making a successful retention run more difficult. Additionally, and perhaps just as importantly, the Commission made this promise as an attempt to engender goodwill with and the cooperation of the judiciary. Although judges were required by statute to submit a guideline sentence form for each sentence imposed, the Commission had no enforcement powers.

By the late 1990’s, the Commission and the sentencing guidelines were more established, and the primary concern shifted from institutionalizing the sentencing guidelines to addressing the numerous data requests and related litigation. Additionally, the leadership and active membership of the Commission had changed. In 1982, the Commission was a de facto judicial agency, chaired by a judge, with an agenda driven by the member judges; by 1998 the Commission was a legislative agency, chaired by a legislator, with much more active participation by the legislative and gubernatorial appointees, some of whom were critical of the courts.

Three critical events contributed to the Commission’s decision in 1998 to reverse these longstanding practices and to develop a formal Release of Information Policy: a request from Philadelphia Newspapers, Inc., publisher of The Philadelphia Inquirer, for access to computer records of the Commission under the Right to Know Act; a request from a trial court judge from Pittsburgh (Allegheny County) seeking sentencing data to defend himself on charges alleging violation of the Code of Judicial Conduct; and an initial request from a trial court judge from Philadelphia who was nominated for a federal judicial appointment and subsequent request from the U.S. Senate Judicary Committee seeking sentencing data as part of a confirmation process. While it was determined that the Right to Know statute did not apply to the Commission since it was a legislative agency, the Commission did adopt two interim policies that resulted in the release of the data requested by the judges. First, the Commission agreed to disseminate previously unreleased sentencing information, such as judge identifier and departure reasons, in response to a subpoena, where it was demonstrated that the Commission data were relevant evidence in a pending proceeding. Such an approach did not extend the release of such information beyond those who were party to a legal proceeding in which the data were relevant evidence. Second, upon request, the Commission agreed to release sentencing information to a judge, with the understanding that the sentencing information would then be publicly available.

The Commission felt it necessary to develop a comprehensive written policy for the release of sentencing information. Absent such a move, the Commission would continue to be faced with the choice of inviting lawsuits and subpoenas for specific releases of data, or resisting the release of data generally viewed as public information. The Commission set about developing a coherent policy that would guide staff and provide a framework for the dissemination of sentencing information in a complete, accurate and consistent manner while recognizing the limitations of Commission resources. A number of formal goals for the development of this policy were identified, and included: defining and prioritizing activities consistent with the Commission’s duty to disseminate information; providing accurate and timely information for development of criminal justice policies and legislation; increasing public access to sentencing information collected by the Commission; establishing protocols and procedures for responding to requests for information; reducing risk of litigation; maximizing the use of staff time and resources; and developing a fee schedule so as to recoup reasonable costs associated with dissemination. In addition, it was generally thought that broader disclosure would lead to an improvement in the quality and completeness of the sentencing data, and would promote greater consideration of the guidelines and improved documentation of reasons for departures.

Public Hearing Issues
The majority of the individuals testifying during the October 1998 public hearing spoke of the need for judicial independence and opposed a broader release policy. Included in this group were trial judges,
representatives of state and local Bar Associations, and the director of a judicial reform organization. Most argued that the Commission’s enabling legislation envisioned the use of sentencing data for general policy development, not for specific reporting on judges. They referred to promises made by Commission staff during the implementation of the first guidelines in 1982 that judge-specific data would not be released. They suggested that publishing judge-specific sentencing data would change the nature of the sentencing guidelines from “recommendations” to “edicts,” an infringement on the independence of the judiciary.

These opponents of the policy also expressed concern regarding the accuracy of the sentencing data. They suggested that the guideline form was not designed to capture all of the information relied upon by the court at the time of sentencing; that judges had not had an opportunity to review and, if necessary, correct information submitted; that under-reporting or selective reporting of sentences could skew the data; that offense-specific data was incomplete since it did not provide contextual information; and that aggregate data was misleading due to the differing procedures and programs between as well as within counties. The retroactive application of the policy did not take into account that judges were preparing guideline forms for a different audience in the past than would be prudent under the new policy (i.e., the Commission vs. the public). They recommended a one-year delay in implementing the policy and suggested that the Commission provide additional training for judges.

The third concern raised was the further politicization of the sentencing process with release of judge-specific sentencing information. Many testifying described the articles printed almost daily in a local tabloid criticizing the courts, often based on misinformation or partial information. They saw the Commission’s policies as fanning the flames. Aggregate data would be reduced to political scorecards and offense-specific data was incomplete and would be taken out of context. Since judges in Pennsylvania are elected to ten-year terms and then stand for retention, sentencing data could be used as political ammunition, especially by special interest groups. Under the Code of Judicial Conduct, a sitting judge is at a disadvantage since the ability to respond to any charge is restricted. They argued that being present in the courtroom for a sentencing hearing or reviewing the entire public record could skew the data; that offense-specific data was incomplete since it did not provide contextual information; and that aggregate data was misleading due to the differing procedures and programs between as well as within counties. The retroactive application of the policy did not take into account that judges were preparing guideline forms for a different audience in the past than would be prudent under the new policy (i.e., the Commission vs. the public). They recommended a one-year delay in implementing the policy and suggested that the Commission provide additional training for judges.

Only two media representatives testified in favor of the policy. However, a majority of the Commission members, including two judges and most legislative and gubernatorial appointees, supported the policy. In responding to the testimony, these members argued that the Commission had both the authority and an obligation to release judge-specific information, that doing so was consistent with the original goals of the Commission, and that it had an obligation to do so in a fair and responsible manner. For a majority of members, the question was no longer whether the Commission should release judge-specific information, but rather how such information should be released. Members argued that the Commission’s enabling legislation authorized the release of all information collected, including judge-specific information. Further, since public funds are used to support Commission operations, and the Commission is a legislative agency, the presumption should be that any information collected and/or analyzed should be released, unless specifically barred by statute. Using this analysis, judicial identifiers are not barred from release, and the Commission should not use public funds to fight the release of sentencing information.

One of the purposes of the guidelines is to promote uniformity in sentencing, and the release of judge-specific sentencing information may further that purpose by discouraging judges from departing without articulating defensible reasons on the guideline form. Since the public would have access to aggregate information on judges’ sentences, the public would be better informed of judges’ sentencing practices. However, concerns that the sentence recommendations would become edicts as a result of public dissemination appeared implausible, given the broad permissible sentencing ranges and relatively weak appellate review of Pennsylvania’s guidelines as compared to other jurisdictions. Under the Pennsylvania guidelines, judges retain broad discretion and may easily depart from the recommendations, as long as they provide a reason on the record and include it on the guideline form. Special case-processing programs (e.g., waiver court, drug court, etc.) and other contextual information may be considered as reasons for departures from the guidelines.

Commission Members generally viewed under-reporting of sentences or failure to provide departure reasons to be the result of judges not complying with statute. Many Members believed that those criticizing the policy or advocating for additional training had not taken advantage of many public opportunities to comment and work for system changes over the previous 20 years. Commission meetings are held quarterly, are publicized in advance, and are open to the public. During 2002 alone, the Commission provided 19 sentencing guideline training sessions and 16 training sessions relating to the use of the sentencing guideline software application. Although judges are responsible for the quality and completeness of sentencing information reported, the Commission recognized its responsibility to make every attempt to report sentencing data, and particularly judge-specific
sentencing data, in a fair and informed manner.

The Commission did recognize the difficulties of applying the new policy retroactively to previous sentencing years, both in terms of the concerns raised by judges and the drain on staff resources. The Commission voted in favor of a compromise policy that made the judge-specific release prospective beginning with 1998 sentencing data, the year the Commission gave notice to judges of the policy change. However, as part of this policy, staff would be permitted to release judge-specific data for any sentencing year upon request of the judge or in response to a subpoena. In both cases, the reports generated would be available to the public.

Regarding politicization of the sentencing process, members cited the practice of releasing county-specific data in the Commission’s Annual Report since 1984, which is in fact judge-specific sentencing information in one-judge counties. The concerns raised in the testimony regarding judge-specific release were not substantiated by the experiences in one-judge counties. Members encouraged judges to report any abuses of the policy to the Commission, and pledged to revisit the policy regularly. The Commission welcomed the assistance offered by the judges, the Bar Associations and other interested parties in refining the policy and developing contextual information. To this end, the Commission Chair established an ad hoc committee and charged it with the responsibility of meeting with interested parties to address implementation issues.

Subsequent Modifications
Following a review of the issues raised during the Public Hearing, the Commission adopted a slightly modified final-form Release of Information Policy on February 24, 1999. Oversight and maintenance of the policy was given to the Commission’s Data & Field Services Committee. During the intervening four years, numerous modifications and enhancements were recommended by the committee and approved by the Commission, including but not limited to the following:

- Revisions to the Policy to provide: release of offender name; inclusion of race and gender in the offense-specific information report (SR-3); reports based on all sentences reported, as well as based on only the most serious offense of an incident; inclusion of concurrent/consecutive sentencing information; streamlining judicial notification process; streamlining custom report approval process; development of protocols for processing of data set and report requests and fee schedule.22
- Implementation of verification process to provide each judge with an opportunity to review and correct reported cases and provide missing cases.
- Solicitation of county contextual information and development of state contextual information on sentencing policies and practices; incorporation of state contextual information into Annual Report; provision of relevant contextual information with all data requests; posting of all contextual information on Commission website; adding disclaimer to reports.23
- Revisions to the guideline sentence form, effective January 2000, to provide more accessible space for recording departure reasons and to improve documentation of concurrent/consecutive sentences; creation of two supplemental guideline sentence forms to address high volume proceedings, that is, those with numerous charges for which sentences must be imposed.
- Scheduling of Sentencing Seminars for the media in conjunction with release of Annual Report.

Impact of the Policy
Requests for Information
Prior to the adoption of the Release of Information Policy, the dissemination of sentencing data sets by the Commission was rare, and limited primarily to those conducting academic research in collaboration with Commission staff. In contrast, during the first year following the adoption of the policy a total of 68 annual data sets were disseminated, representing 20 separate requests and involving research institutes, universities, government agencies and the media. Additionally, general data sets were provided to the ICPSR at the University of Michigan and to the Population Research Institute (PRI) at the Pennsylvania State University at no charge for use by faculty and students. While the volume of orders has diminished in recent years, a spike in requests occurs with the release of each new data set. The data sets are available in multiple formats (e.g., .dbf File, SAS Export File) and include extensive documentation. Commission staff is available to provide basic technical assistance and support, since use of the data sets involve matching numerous files, the data sets are large, and a given data year may include multiple editions of the guidelines and therefore different codes. Additionally, misinterpretation or misunderstanding of the data are possible absent contextual information on sentencing guidelines and practices.

A substantial but less pronounced increase in requests for reports has occurred during the past four years. Prior to the adoption of the policy, the majority of data runs and reports were generated for government agencies, including legislative committees, executive departments and offices, local courts, probation departments and correctional facilities. Since the adoption of the policy, the greatest increase in requests has been generated by the media, followed by judges and then by a mix of requests from the general public (e.g., private attorneys, offenders, victims, and private organizations). In recent years, Standard Report 5, which provides detail on each conviction offense, is being requested in lieu of a data set, especially if the requesting party is not able to do extensive data analysis.
Utilization of Data

Perhaps the greatest concerns raised during the development of the Release of Information Policy related to fears of inappropriate use of sentencing data and misinterpretation of sentences imposed by judges. For the most part, such problems have been relatively minor. Several newspapers published articles that could be viewed as negative or critical of specific judges. Some failed to consider or provide important contextual information, and some were just wrong. However, most of the coverage was accurate, and generally not sensational. The Commission has provided Sentencing Seminars for the media in conjunction with the release of each Annual Report, at which time topics such as sentencing fundamentals and data issues are discussed. During the release of the 2000 data set, three separate seminars were held in response to media requests.

One positive consequence of the policy has been an increase in the amount of research undertaken using the sentencing data. The most surprising aspect of that research has been the quality and scope of the projects. Since the adoption of the policy, data sets have been obtained in order to study: race and gender differences in sentencing; factors predicting decisions to impose restitution orders; the impact of truth-in-sentencing on length of stay in prison; models of criminal behavior; sentencing patterns of judges in several counties; judicial retention and geographical disparity; and numerous special interest academic and media projects. The Commission would not have had the time or the resources to engage in so many research projects, and the Commission’s high priority for research. Also, the Commission’s research tends to focus on statewide analysis, while other bodies disseminating incomplete or misleading information.

The Philadelphia Inquirer, on the other hand, published an article based on its own analysis of the sentencing data, finding a substantial under-reporting of sentences to the Commission by Philadelphia judges. The coverage highlighted shortcomings and raised legitimate questions regarding local practices and procedures. Perhaps the most impressive impact was found in the Philadelphia Courts itself. The President Judge responded immediately to the article by implementing local procedures and coordinating with the Commission in an effort to identify under-reporting. In the two years since the publication of the article, the reporting of sentences from Philadelphia has increased by over 20%, and at a time when convictions have remained relatively flat.

In serving as a watchdog, the media can assume an important role in holding the judiciary accountable to the electorate. The public benefits from full and accurate reporting. The danger lies in the media or any other body disseminating incomplete or misleading information.

Ancillary benefits

Sentencing data drives many policy decisions made by the Commission, and better data supports better decisions. As noted previously, the public release of judge-specific sentencing data has led to some improvement in the reporting of sentences. As the Commission expands contacts with public users of the data, it has been pressured to improve the quality of its work product. As an example, the documentation of the data sets has been standardized and enhanced in response to the needs of new users not familiar with sentencing data. The controversy and public discussion of the release of sentencing information has sensitized judges to the need to report accurately on all sentences, and has raised the awareness of the general public to the availability of sentencing information. In Philadelphia, a limited jurisdiction court that handles misdemeanor offenses voluntarily agreed to provide the Commission with aggregate disposition data for publication with the Annual Report, thus providing the public with a more complete picture of county sentencing.
The participation of the Conference of State Trial Judges and several Bar Associations in discussions of sentencing information increased substantially during the development of the policy. This expanded dialogue produced concrete results, such as suggested changes to the guideline form that both expanded the type of information collected and made the form more practical to use. It also increased the Commission’s involvement in Continuing Legal Education programs. Increased cooperation with the Administrative Office of Pennsylvania Courts (AOPC) is advancing efforts to create a web-based interface between the Courts and the Commission so as to reduce redundancy, enhance detail and accuracy, and eliminate under-reporting of sentences to the Commission. The Commission’s web-based Sentencing Guidelines Software application (SGS Web), deployed in 2002, permits authorized users to determine the correct guideline recommendations, enter the sentence imposed, submit the information electronically to the Commission through the Commonwealth’s secure justice computer network (JNET). The recently completed first phase of the AOPC interface permits information from preliminary hearings to be imported into SGS Web; in 2004, the second phase of the interface will provide a virtual integration with the sentencing court. This AOPC/SGS Web integration holds the promise that more complete and reliable information on the offender (e.g., Presentence Investigation Report, Risk/Needs Assessment), the specifics of the offense, and related information (e.g., type of disposition, victim information) will be consistently available to improve sentencing decisions, policy development, and public understanding of the sentencing process.

Lessons Learned & Future Challenges
Pennsylvania, like many other jurisdictions, has enacted legislation that guarantees the public access to most government meetings and records. This access has been viewed as vital to the democratic process, and as an appropriate check on those holding office. It has been suggested that a restriction of access “. . . undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic government.” Although the judiciary is independent of the electorate and its representatives, it is not unchecked. In essence, the public is both a check on the government and a partner in the process of governing. Throughout the development and implementation of the Release of Information Policy, the Commission has experienced and benefited from the public’s exercise of both of these roles. The same may be true of Pennsylvania’s sentencing judges. A recommendation from the Report of the ABA Commission on Separation of Powers and Judicial Independence provides sound advice for those seeking to maintain judicial independence while achieving judicial accountability: “State and local bar associations should develop and expand effective mechanisms for evaluating criticism of state judges and judicial decisions and, when appropriate, promptly responding to it.”

The initial purpose of the Release of Information Policy was to provide a framework for the dissemination of sentencing information in a complete, accurate and consistent manner while recognizing the limited resources available to staff. Four years later, the greatest lesson learned is that such a policy requires a great deal of time and ongoing effort. The need for accuracy is heightened when the decision is made to attach the names of judges and offenders to publicly released data. In such an environment, the verification of the information becomes more important than the timing of its release. The need for education and technical assistance also takes on greater importance. The broader dissemination of the data translates into new and different audiences and consumers of the information. And the increase in the number of requests enlarges the overall task. Fortunately, the same individuals and entities that add to the workload provide benefits in return. As a direct result of the expanded dissemination, the Commission’s efforts to identify gaps in reporting, to improve data collections and field services, and to study various aspects of sentencing have all been enhanced. Many of the negative outcomes predicted during the development of the policy have not materialized. One reason for this is that a number of those who opposed the policy assisted with the implementation.

The greatest challenges facing the Commission relate to the planned improvements of sentencing information systems. Within the next several years, through enhanced automation and integration of criminal justice information, complete, accurate and real-time sentencing data will be available to court personnel and to the Commission. At what point will this information be available to the public? How will such information be used, and what impact will it have? Will it make a difference if the data set released is for the previous month rather than a previous year or two years? What is the advantage of announcing views on disputed legal issues in each case rather than announcing general views on disputed legal issues? Will the U.S. Supreme Court’s removal of the prohibition against announcing views on disputed legal issues by judicial candidates increase the use of the sentencing data for political purposes? Should it matter if it does? Will it change the nature of the sentencing guidelines? It is hoped that the framework created by the Release of Information Policy and the partnerships formed through the implementation of it will serve the Commission well as it addresses these future challenges.

Notes
1 Remarks to the Symposium on Judicial Independence at the University of Richmond T. C. Williams School of Law, March 21, 2003.
An internal study by the Commission in 1996 failed to find which of the following most closely reflects the type of plea, trial or other disposition which applies to the offense sentenced: negotiated guilty plea, non-negotiated guilty plea, bench trial, jury trial, no contendere, other. Any research utilizing this field is limited due to the self-reporting nature of the form and the differing case-processing practices across judicial districts.

A data year includes all sentences imposed during a given year. Commission sentencing data is presently available for data years 1985–2000. In 2000, 111,296 sentences for specific offenses were reported to the Commission, representing 80,238 criminal incidents.

The Commission has adopted eight amendments or revisions since the initial sentencing guidelines took effect in 1982. The current sentencing guidelines, the 5th Edition, have been in effect since June 13, 1997. The Commission, pursuant to rules and regulations, shall have the power to: . . .

1. Establish a research and development program within the Commission for the purpose of:
   (i) Serving as a clearinghouse and information center for the collection, preparation and dissemination of information on Commonwealth sentencing practices.
   (ii) Assisting and serving in a consulting capacity to State courts, departments and agencies in development, maintenance and coordination of sound sentencing practices.

2. This was particularly true in the case of sentence lengths and conformity relating to the use of Treatment Courts and the imposition of Intermediate Punishments in lieu of incarceration.


5. The number cited in the article (7,921 Philadelphia sentences reported to the Commission) reflects only the most serious offense of a criminal incident, not all sentences reported. In 1998, 12,272 individual offenses were reported to the Commission by Philadelphia Courts. Based on the 13,610 total sentences cited in the article, this represents 90% of the cases.


7. While statute requires the consideration of the guidelines and the reporting of sentences for all misdemeanors and felonies, the Commission only requires forms to be submitted by courts of record. The Philadelphia Municipal Court is not a court of record. In 2000, Municipal Court disposed of 10,201 misdemeanor cases.

8. As examples, Pennsylvania’s Sunshine Act (65 P.S. §701, et seq.) and Right to Know Law (65 P.S. §66.1 et. seq.).


11. Ibid.
Appendix
The Pennsylvania Commission on Sentencing
Release of Information Policy
(Adopted 2/24/99; Revised 8/9/00, 2/12/03, 8/20/03)

[1] Entire Data Set
[A] General Release — The Commission will provide data for each sentencing year to the Inter-University Consortium for Political and Social Research (ICPSR), a national clearinghouse based at the University of Michigan. These data sets will be provided upon completion of data entry, verification and documentation. Data verification is the process of preparing data for analysis, and involves removing or correcting invalid variables, obtaining missing information regarding the sentence imposed, and providing the sentencing judge with an opportunity to review the data for completeness and accuracy. For 1997 and prior sentencing years, defendant name, social security number and judge name will be removed from the general release data sets. For 1998 and subsequent sentencing years, defendant social security number will be removed from the general release data sets. The data sets provided to ICPSR will be publicly accessible for those requesting an entire data set. These data sets will also be available for purchase from the Commission.

[B] Contracted Release — By contract, the Commission may provide data for any sentencing year to an agency or individual conducting research on behalf of the Commission, when such research is determined by the Commission to be necessary and beneficial to the enumerated duties of the Commission (42 Pa.C.S. §2153). These data sets will be provided upon completion of data entry, verification and documentation. Defendant name, social security number and judge name may be included in any sentencing data sets. Due to the confidential nature of the information, the recipient of this data will be prohibited from releasing the data or any identifying information to any third party.

[2] Specific Reports
[A] Standard Reports — The Commission has established a menu of standard reports that are available to the general public. Standard reports are available for each sentencing year, but only if data entry, verification and documentation of all sentencing year data have been completed. All standard reports are available in a county-specific and statewide format. The information available and included in the standard reports varies depending on sentencing year. For 1998 and prior sentencing years, reports are based on the most serious offense of each criminal incident reported. For 1999 and subsequent sentencing years, reports are based on the most serious offense of each criminal incident as well as all offenses reported. The following standard reports are available:

[i] Type of Sentence
This report will provide information on sentences reported, indicating the type of sentence imposed (probation, IP, jail, prison) and mean sentence for each, and restitution orders. Data will be presented as follows:
- by offense category (Report SR-1A)
- by offense category with OGS/PRS (Report SR-1B)

[ii] Conformity of Sentence
This report will provide information on sentences reported, indicating the guideline conformity (standard, aggravated, mitigated, departure above, departure below). Data will be presented as follows:
- by offense category (Report SR-2A)
- by offense category with OGS/PRS (Report SR-2B)

[iii] Mandatory Sentences Imposed
This report will provide a table of sentences reported which included a mandatory minimum. Data will be presented by offense category as follows:
- non-DUI mandatories (Report SR-3A)
- DUI mandatories (Report SR-3B)
[iv] **Place of Confinement**

This report will provide a table of sentences reported with a maximum period of incarceration between two and five years, with an indication of whether the sentence was served in a county or state facility. Data will be presented by offense category.

- (Report SR-4)

[v] **Offense-specific information**

This report will provide relevant offense-specific information on sentences reported, including the gender and race of the defendant, case identifiers, OG§PRS, type of conviction (i.e., negotiated vs. non-negotiated plea), mandatory provisions, standard guideline range, sentence imposed, conformity and reasons provided for sentence.

- (Report SR-5)

[B] **Custom Reports**—Any requests not available through the menu of standard reports are considered custom reports. As an agency of the General Assembly, the Commission may respond to requests from members of the General Assembly for custom reports relating to population projections and/or legislation. The Commission may respond to similar requests from Commonwealth Executive Branch agencies and the Administrative Office of Pennsylvania Courts. Minor variations to Standard Reports may be completed by staff and subsequently reported to the Commission. Other custom reports must be approved by the Commission’s Data and Field Services Committee and subsequently reported to the Commission. Any judge-specific custom report request must be approved by the Commission.

[C] **Annual Report**—The Commission produces an Annual Report of Commission activities to the General Assembly, the Administrative Office of Pennsylvania Courts and the Governor, in compliance with 42 PA. C.S. §2153(b). This Annual Report is also made available to the public.

[3] **Staff Priorities and Fees for Services**—In responding to requests for data sets or reports, the Commission reserves the right to establish priorities based on staff resources and the statutory goals of the Commission. The Commission further reserves the right to establish a fee for data sets or reports prepared by staff.

[4] **Judicial Notification**

[A] **Entire Data Sets**—At the time each annual report is initially released, judges who provided Guideline Sentence Forms for that data year will be notified that the annual data set will be provided to anyone requesting it under General Release, and to anyone receiving Commission approval under the Contracted Release.

[B] **Specific Reports**—For 1997 and prior sentencing years’ reports, judge-specific reports may only be prepared at the request of the sentencing judge, but any such report will be made available to the public. For 1998 and subsequent sentencing years’ reports, when any judge-specific request is made, the identity of the requesting party will be provided to the judge, provided that the judge has signed a request for notification as indicated below. A copy of the report will also be made available to the judge.

[i] **Request for Notification**—All sentencing judges from 1998 and subsequent sentencing years will be asked to sign a request for notification in order to be notified any time a request for their own judge-specific report is made. The Commission will send a confirmation of receipt to each judge who signs the request for notification, and to each judge who subsequently changes his or her decision concerning notification. Each judge’s most recent decision will be used by the Commission in the notification process.

[ii] A copy of the Request for Notification is appended to this Release of Information Policy.