Minutes of the
OHIO CRIMINAL SENTENCING COMMISSION
and the
CRIMINAL SENTENCING ADVISORY COMMITTEE
April 22, 2010

MEMBERS PRESENT
Chrystal Alexander, Victim Representative
Prosecuting Attorney Laina Fetherolf
Defense Attorney Kort Gatterdam
Municipal Judge David Gormley
Public Defender Kathleen Hamm
Ken Kocab, Staff Lt., representing State Highway Patrol Superintendent Col. David Dicken
Bob Lane, representing State Public Defender Tim Young
Prosecuting Attorney Joseph Macejko
Jason Pappas, Fraternal Order of Police
County Commissioner Bob Proud
Sheriff Albert Rodenberg
Municipal Judge Kenneth Spanagel
Steve VanDine, representing Rehabilitation and Correction Director Ernie Moore

ADVISORY COMMITTEE MEMBERS PRESENT
Eugene Gallo, Eastern Ohio Correctional Center
Cynthia Mausser, Chair, Ohio Parole Board
Jim Slagle, Attorney General's Office
Gary Yates, Chief Probation Officers' Association

STAFF PRESENT
David Diroll, Executive Director
Cynthia Ward, Administrative Assistant
Shawn Welch, Law Clerk

GUESTS PRESENT
Sara Andrews, Rehabilitation and Correction
Jim Brady, interested citizen
JoEllen Cline, legislative counsel, Supreme Court of Ohio
Toni DelMatto, Correctional Institution Inspection Committee
Monda DeWeese, SEPTA Correctional Facility
Lusanne Greene, OCCA/OJACC
Gloria Hampton, OCCA
Alicia Handwerk, Rehabilitation and Correction
Linda Janes, Asst. Director, Rehabilitation and Correction
Shana Kaplanov, ODADAS
Lori Lovins, University of Cincinnati

Irene Lyons, Rehabilitation and Correction
Caitlyn Nestleroth, House Minority Caucus
Phil Nunes, OJACC
Maggie Priestas, Legislative Service Commission
Ed Rhine, Rehabilitation and Correction
Matt Stiffler, Legislative Service Commission
Ed Stockhausen, legislative aide to Senator Shirley Smith
Phil Teasley, Hannah News Network

Executive Director David Diroll called the April 22, 2010 meeting of the Ohio Criminal Sentencing Commission to order at 10:12 a.m.

Dir. Diroll expressed deep condolences over the recent death of Sentencing Commission Chair Chief Justice Tom Moyer. All have appreciated the way he kept the Commission meetings focused and directed discussions toward a vote. Dir. Diroll said that he especially enjoyed the Chief's deference and dry wit. In respect to the Chief, his seat at the head table was left vacant throughout the meeting.

Justice Pfeifer is currently serving as Acting Chief Justice and was planning to attend today's meeting until Probate Judge Eric Brown was recently appointed by Governor Strickland to fill that role on an interim basis, beginning May 3rd. Dir. Diroll said he would be in contact with the new Chief Justice.

After the Governor named Rep. Tyrone Yates to the municipal court bench in Hamilton County, Rep. Tim DeGeeter became Chairman of the House Criminal Justice Committee. He is likely to seek appointment to the Commission to fill the vacancy left by Rep. Yates, noted Dir. Diroll.

Dir. Diroll reported that he recently met with one of the representatives from the Council of State Governments who shared that they had gathered a great deal of data, but found significant gaps regarding information on the probation-bound population. Their handout summarizes the "justice reinvestment initiative" and shares their concerns about data. The group hopes to have some policy recommendations by the end of the year. CSG representatives are likely to be at the June meeting of the Sentencing Commission, he added.

Much of the focus has been on the lower level felony offenders (F-4 and F-5s) entering the prison system, with various risk assessment instruments used to gauge who was considered high risk, medium risk, and low risk. According to 2008 data, there were about 8,500 F-4 and F-5 felons who entered the prison system. 85% of those are considered low or medium risk of recidivism and reoffending. One counterintuitive finding is that low risk offenders placed in more intensive sanctions tend to have higher recidivism rates, Dir. Diroll noted.

According to the 2008 data, about half of the F-4 & F-5 offenders were sentenced directly to prison and half entered as violators of community control sanctions. The data also shows the CBCF population appears to be becoming a tougher group, with fewer low level offenders.

LEGISLATIVE UPDATE

At the last meeting the Commission finalized some suggestions via Municipal Court Judge Kenneth Spanagel relating to restitution orders.

Judge Spanagel reported that two Judicial Conference Committees are supporting those suggestions.

Dir. Diroll noted that Rep. Pryor has a bill floating that pushes for mandatory restitution. In addition, another group is encouraging legislators to steer judges away from allowing community service work in "restitutionable" cases.

Law Clerk Shawn Welch announced that a bill has been introduced by Sen. Tim Grendell and Sen. Bill Seitz which suggests renaming the Ohio Judicial Center to honor Chief Justice Thomas Moyer, although that decision ultimately falls to the Supreme Court. In addition, the bill suggests increasing the amount of time required to practice law before becoming a judge and course requirements.

PAROLE BOARD GUIDELINES

The population of offenders subject to parole has changed significantly since the implementation of S.B. 2, based on recommendations of the Sentencing Commission, in 1996. After S.B. 2, the only felons who receive indefinite sentences are either those sentenced to life terms or sex offenders who get a designation of sexual predator added to their sentence, noted Director Diroll.

Cindy Mausser, Chairwoman of the Ohio Parole Board, reported that, in April, the Ohio Parole Board rescinded the Parole Board Guidelines that were implemented in 1998. Prior to the implementation of S.B. 2, the Board had discretionary releasing authority over indeterminate sentences. After S.B. 2 the prison population had a combination of offenders with either determinate or indeterminate sentences, depending on whether they were sentenced before or after S.B. 2.

To address the differences, the Parole Board developed an internal guideline tool that was modeled after the federal system, which is essentially a grid. It involves two numbers – one that represented the person's previous criminal history and the other represented the seriousness of the offense for which they were convicted. At that time, there were 12 Parole Board members and 25 hearing officers around the state, so the guidelines helped promote consistent decision making among them. Through the years, the manual has gone through some changes, with the most significant occurring in 2007, based on litigation.

Since the implementation of S.B. 2 in 1996, most or all nonviolent offenders serving indeterminate sentences have been released. The prison population has since evolved into a composite of very serious offenders.

Some changes made to the manual in 2007 were the result of recognizing that there were no longer any people serving prison time for certain offenses. The list of offenses was reduced from 93 to 36. Offenders still subject to the Board's discretionary release authority are now a small portion of the prison population.

Ms. Mausser reported that the Parole Board is down to seven to nine members. Hearing officers are no longer hearing parole cases. Instead

they are imposing post release control and conducting the field violation hearings. Rather than traveling to all prisons, Board decisions are now done through video conferences collectively.

Rather than continuing use of the manual, decisions will be based on mandatory factors listed in statute, she added.

There are currently approximately 4,500 inmates under the old law, excluding parole violators and death row inmates. About 2,500 of those inmates are serving a life sentence. More than half were convicted of murder, aggravated murder, or manslaughter. About 1,500 are serving time for sex offenses.

Only about 500 of these pre-S.B. 2 inmates are serving time for something other than sex offenses or homicide. Only 27 pre-S.B. 2 inmates are still serving time for 3rd or 4th degree felonies and 19 of those are for sex offenses.

About 150 to 200 institutional hearings, said Ms. Mausser, are conducted per month. Full Parole Board hearings occur only when a petition is filed by Victim Services opposing the release of the offender. Those usually occur at the rate of 5 to 10 per month, but are gradually decreasing. At least four Board members hear each case. She added that there is a conference day for victims and inmate supporters. The only change is that the Parole Board no longer uses the manual in the decision-making process.

DRC Research Director Steve VanDine remarked that some of these cases go back prior to 1973.

Recognizing that the Parole Board has the right to exercise discretion, and that it meets in private with no other formal check on its authority, Dir. Diroll asked if it wouldn't still be helpful to retain some kind of guidelines.

With the pre-S.B. 2 offenders that are left in the prison system, Ms. Mausser responded, the evidence and fact patterns are so specific that they cannot be standardized easily. There are other controls within the system and the mandatory factors already in place under Administrative Rule 5120.1107 will continue to guide Parole Board decisions.

Ms. Mausser noted that the guidance for sexual predators is even narrower. The passage of S.B. 260 in 2006 created a penalty of 25 to life for sexual offenders with the additional stipulation of the same release process as a sexually violent predator. The focus is on whether the offender poses a substantial risk of physical harm upon release. If the Board recommends terminating control over the sentence, then it goes back to the sentencing court for review prior to release. There is a review every two years for those offenders.

Defense Attorney Kort Gatterdam remarked that his clients often ask what they need to do to prove themselves to the Parole Board.

The Parole Board, Ms. Mausser responded, will continue to look at an inmate's institutional conduct and program participation, etc. She stressed that even with impeccable behavior there is never a guarantee of release since this population consists of very serious offenders.

The typical inmate, she noted, feels that once he serves the minimum term, he should be released. The general public, on the other hand, believes that a "life" sentence should mean a lifetime.

The new Parole Board handbook, said Mausser, is on the DRC website and is designed to help the public and interested parties understand more about what the Parole Board does and how they do it and the applicable Administrative Rules.

In response to a question about the Parole Board's role regarding post release control, Ms. Mausser explained that upon entrance to DRC, the Parole Board checks whether an inmate has mandatory or discretionary post control attached to his prison term. That is determined mostly by the level of offense. If post release is listed as part of the sentence, then the Parole Board was mandated under S.B. 2 to make sure that it is imposed.

Post release control violators can be returned for up to half of the original sentence, in increments of 9 months. Parole violators, on the other hand, can be returned to serve the entire remainder of an indeterminate sentence.

Mr. VanDine reported that the recent *Barnes* review by the Supreme Court orders judges to specifically state that someone is going under post release control supervision. After a review of all post release control cases, 5,500 were released from supervision because the language was not appropriate.

COMMUNITY CORRECTIONS STUDY

Guest Lori Lovins was the Project Director for the 2010 "Community Corrections Study" conducted by the University of Cincinnati.

Program Evaluation Findings. Ms. Lovins explained that this study, concerning halfway houses and community-based correctional facilities (CBCF) is a follow-up evaluation of a 2002 study. The key focus was on the facilities' program evaluation findings and how they did in terms of reduction of recidivism. Once those results were evaluated, the focus turned to the program characteristics of the programs that were most effective.

This and other studies have shown that merely increasing criminal sanctions causes an increase in recidivism. Treatment, on the other hand, is effective in changing offender behavior and decreasing recidivism.

With this in mind, the focus turned to examining what types of treatment work, under what conditions, and how that treatment is delivered. The most effective approaches tend to be based on principles of effective interventions.

The "risk" principle emphasizes a need to target the higher risk offenders. The "need" principle speaks to what specific areas needed to be targeted, which involves factors that are changeable and directly related to recidivism. These include criminal attitude, substance abuse, antisocial behaviors, etc. The "treatment" principle addresses the modality used to conduct effective programming. Cognitive behavior

models across the board, said Ms. Lovins, tend to be the most effective. Finally, the "program integrity" principle addresses how well the combination of the other principles work to achieve the program's goals.

2002 Findings. Since this study was a follow-up of the original study conducted in 2002, she offered a quick summary of the 2002 findings.

The 2002 study involved a retrospective examination of approximately 13,000 offenders who were in correctional programs in 1999. It involved a treatment group and comparison groups. It looked at the program characteristics and recidivism rates of 38 halfway houses and 15 CBCFs The Recidivism indicator was incarceration and there was a 2 year follow-up. Overall, there was a 5% reduction in recidivism across the board. There was a lot of variation among the variety of facilities and the effectiveness of which ones reduced recidivism and which did not.

The study revealed that the recidivism rate depended largely on which group, low or high risk offenders, was being targeted by the program.

2010 Follow-Up Study. The 2010 study focused on most of the same issues. This included evaluating what type of offender benefits most from the programming offered and which model characteristics work best to reduce recidivism. This time, site visits of 20 CBCF facilities and 44 halfway houses were conducted from August through November, 2006. Recidivism measures for this study included reconvictions or incarceration to a state facility, with a 2-year follow-up time frame. Rather than separating the data based on whether the return was due to a technical violation or new crime, that information was combined.

Ms. Lovins emphasized that the 2010 study was an improvement over the 2002 study because it used separate comparison groups, more reliable recidivism measures, a treatment sample that included **all** cases, and a more in depth examination of the program characteristics. In addition, the outcome data related to conviction of a new crime were collected via a more reliable source than data sources available in 2002.

Findings. CBCFs had a successful completion rate of 79%, with an average length of stay for successful completers at 140 days. The CBCFs averaged 100 offenders at a time and 7% of those were low risk.

Halfway houses had a successful completion rate of 55.5%, with an average length of stay of 115 days for successful completers. Halfway houses tended to serve 63-64 offenders at a time and 10% of those were low risk.

Outcome Data. The 2002 study looked at all offenders who participated in the treatment programs, regardless of whether they completed the programs. It then looked specifically at offenders who successfully completed the treatment programs then examined their rates of recidivism, as measured by violations, felony convictions, and/or new incarcerations, over a two year timeframe.

For CBCF programs, the overall success rate for all risk levels (low, moderate, and high risk) was 1%. The low risk offenders had a 3.2% **increase** in recidivism, while the high risk offenders demonstrated a

12-13% **reduction** in recidivism. 75% of the offenders who did not successfully complete the CBCF programs moved on to prison.

For halfway house programs, the overall success rate for all risk levels was 6%. The moderate risk offenders had a 5.8% reduction in recidivism and the high risk offenders had a 14% reduction in recidivism.

With regard to low risk offenders, programs with structured intensive intervention demonstrated a negative treatment effect and, in fact, proved harmful, resulting in increased recidivism. Those offenders tend to do better in less restrictive community sanctions.

For moderate risk offenders the effects ranged from a 50 percentage point improvement to a 50 percentage point increase in the program's recidivism rate. On the other hand, when high risk cases were examined, it was found that most programs produced positive effects and were effective at reducing recidivism.

Across all risk levels, most programs produced positive treatment effects and were successful in reducing recidivism for moderate and high risk offenders.

Summary of Findings. In summary, moderate and high risk offenders tend to benefit most from intensive correctional programs.

On average, CBCF programs had much higher rates of successful completion than halfway houses, due in part to these programs being secure facilities. On the other hand, halfway house programs appeared to outperform CBCFs with respect to recidivism rates. Overall, programs clearly produced more favorable results with high risk offenders, and tended to increase recidivism for low risk individuals.

The 10 years of data consistently show the importance of considering risk factors, although there has been no uniform measure of risk used across the state. Some programs fail to focus on the "big four" risk factors related to criminal behavior, making it difficult to match the right offender with the right treatment program. Hopefully, use of the upcoming Ohio Risk Assessment System (ORAS) will bring consistency.

There is limited information on the quality of aftercare, which Ms. Lovins said should be addressed in future studies. Since continued success for the offender may be somewhat affected by the existence and quality of aftercare, she recommended that programs that strive to offer evidence based treatment should look to supplement residential programming with comprehensive and effective aftercare treatment.

Finally, she said, programs that failed to produce favorable outcomes should examine their treatment practices, including whether they are using an evidence-based model and curricula, or are targeting appropriate risk factors.

OHIO RISK ASSESSMENT SYSTEM (ORAS)

DRC Assistant Director Linda Janes explained that the new Ohio Risk Assessment System (ORAS) is a set of tools that begins at pretrial to assess the risk level and needs of an offender and continues through

community supervision, prison entry and community reentry. As DRC automates this tool, all facilities will be able to use the same assessment tool and have access to assessments conducted at all levels of the offender's progress through the criminal justice system.

She noted that this tool will also provide some continuity with Youth Service's use of the Ohio Youth Assessment System (OYAS) for a smoother transition of information between the juvenile and adult systems.

It will serve as a gateway into the process for external providers, provision staff, and judges to tunnel through the system and pull up reports and see various results. It is intended to provide more information for judges, prosecutors, and defense attorneys when making placement decisions for an offender, she added.

Since DRC is in the process of completely replacing its IT systems and converting its reentry accountability plans, the goal is to have the ORAS system completely automated by January 2011 so that it can be used as a case planning tool by all DRC staff and external users.

For pretrial use, the tool would show whether the offender is likely to show up for court or likely to be arrested, which in turn helps to determine whether the offender is high or low risk. When evaluating an offender for the option of community supervision versus prison, the major indicator would be the offender's risk to reoffend. As a prison intake tool the ORAS will offer a look at the predictability of misconduct. It will enable better pretrial placement for offenders.

Deputy Director Ed Rhine pointed out that there is an ORAS Oversight Committee that will address issues and concerns as they come up. This committee will address concerns pertaining to external users, information technology, quality assurance, research, and training.

Atty. Gatterdam remarked that he would advise his client not to talk to anyone pretrial without counsel present.

Noting that pretrial officers already make assessments, Atty. Slagle acknowledged that this would certainly standardize the assessment tool.

In Franklin County, Atty. Gatterdam noted, the client is not interviewed before the trial.

Representing the Chief Probation Officers' Association, Gary Yates said that they screen everyone in Butler County since it helps them determine if an offender should be released on bond.

The tricky issue, said Mr. VanDine, is whether to give the community sanction portion of the instrument before the conviction because it may imply that the judge made a decision and the defense bar will want to know that before they enter a plea bargain.

Defense attorneys should use this tool to their advantage, said Phil Nunes, since it will help to get the right people to the right places.

Atty. Gatterdam contended that he wants to make sure the tool and information is not used in trial.

Asst. Dir. Janes said practitioners will be trained to make sure that it is used appropriately. The state spends about $100 million on CBCFs and halfway houses, and the ultimate goal of the assessment tool is to assure that money is used wisely. She noted that, based on this study, DRC has already decided to discontinue contracts with three halfway houses that exhibited poor results. DRC will continue to provide training, resources, and technical assistance to help improve programs that have exhibited a need for higher rates of success.

With an improved understanding of the basics that make a good program, DRC Bureau of Community Sanctions Chief Alicia Handwerk said that DRC will be working with the CBCFs and halfway houses to coach the programs through the best program characteristics. Future funding will be denied if a program cannot demonstrate progress.

As Director of SEPTA Correctional Facility, Monda DeWeese questioned who will be conducting the coaching on the new tool.

According to Ms. Handwerk, the Bureau will be working together with the University of Cincinnati on certifying people.

Mr. Yates raised concerns about budget cuts and what will happen with Halfway Houses being closed and the lost beds as a result. He wondered where the offenders will go.

That money, said Asst. Dir. Janes, will be reallocated to successful programs. She noted that $12 million prison dollars have already been transferred to community corrections.

***COLON* AND CULPABLE MENTAL STATES**

After lunch, the Commission members turned their attention to the ongoing task of filling the mental state gaps in the Criminal Code based on the recommendations of the *Colon* Work Group.

Atty. Welch pointed out that the first case heard in the Ohio Supreme Court after Chief Justice Moyer's death, was a *Colon* case involving aggravated robbery. This just shows that the *Colon* issue is not going away. Since the litigation is out there, Atty. Welch remarked that we may have more clarification soon on some of these issues.

Dir. Diroll explained that the *Colon* work group has been choosing "knowingly" as the default mental state for many statutes when it isn't a clear "strict liability". He said the group gave mixed signals on some offenses and wanted the larger Commission to help to clarify.

Noting how difficult it has been for the Commission members to reach agreement on the mental element for some offenses, Atty. Welch pointed out that it has been even more difficult for prosecutors throughout the state to reach agreement. This effort should eventually help to provide consistency across the state.

§2919.225(A) – Disclosure Regarding Death or Injury of Child. In a family daycare home, knowing that there has been an injury or death within the preceding ten years, the provider cannot accept a child into the home without first disclosing that fact to the parents or guardian.

Failure to disclose this information results in an M-4. The *Colon* work group recommends "knowingly" as the mental state for this offense.

Knowing the event occurred is actual knowledge, said Atty. Slagle, so that should be sufficient.

The question, said Atty. Welch, is whether knowing that the event occurred but failing to disclose it results in strict liability.

According to Atty. Slagle, if the person knows about the event but forgot to disclose it or thought someone else had done so, it is strict liability.

§2919.227 – Notice of Death of a Child. This offense is parallel to the previous one, except it involves a child care facility. Due to the similarity, the *mens rea* should also be strict liability.

This crime, Atty. Slagle contended, is triggered by a customer making a request so it would have to be a knowing failure to disclose. It also focuses on the licensee whereas the previous one had a broader focus.

§2921.38 – Harassment by Inmate. This statute involves the action by an inmate with "intent" to harass, threaten, etc., by throwing or expelling a bodily substance, including doing so with knowledge of HIV.

According to Atty. Welch the majority opinion was to make this a "knowingly" offense. However, John Murphy, Executive Director of the Ohio Prosecuting Attorneys' Association, had reported to him that prosecutors say this should be "recklessly" because there might be an issue with "knowingly" under (A).

These actions, said Dir. Diroll, can occur during a fit of temper when the inmate flings the substance, but not necessarily directly toward a guard, although some ends up on the guard.

Mr. VanDine believes that DRC would prefer "recklessly" for this offense. He reported that there are currently 28 people in the system for this crime.

City Prosecutor Jay Macjeko argued that the *mens rea* should be "strict liability" because some inmates save up certain bodily substance with the full intention of flinging it on a certain person.

Atty. Slagle stressed that under current law the *mens rea* for this offense is "recklessly" or nothing. To suggest anything else would be a change to current law. He said "knowingly" would be difficult to prove.

Consensus emerged in favor of "recklessly" for §2921.38(A)&(B).

Judge Spanagel wondered if the General Assembly might have intended "strict liability" for (C) which involves knowledge of having HIV. He noted that (A) involves conduct in a detention facility, but (B) & (C) could occur anywhere.

The action in (C) does not require sexual conduct, said Dir. Diroll, and could even include sharing a dirty needle.

Members agreed that §2921.38(C) should be a strict liability offense.

§2923.121 – Possession of Firearm in Liquor Permit Premises. There is no *mens rea* stated for possession, but "possession" is defined in 2901.21(D)(1) as "knowing".

Noting that the offense is an F-5, Atty. Welch said that the general opinion of the work group was that this crime should be committed "knowingly", but there was sentiment towards "recklessly".

According to Pros. Macejko, H.B. 239 would amend this. But that bill does not address the *mens rea* issue, said Dir. Diroll.

Judge Spanagel admitted that he was torn between "knowingly" and "recklessly". Atty. Macejko was torn between "recklessly" and "strict liability".

Eventually, the members settled on "knowingly".

§§2950.04, 2950.05, 2950.06 - SORN Violations. These offenses involve failure of a sex offender to register, update, *etc*. his residency or a change. Although these do not specifically provide a mental element, Dir. Diroll assumes the General Assembly intended strict liability.

Referencing a certain case where an offender moved to Ohio from another state and was unaware of the details of Ohio's law, Defender Hamm argued "strict liability" is too harsh and could be unfair in his case.

Atty. Lane contended that it is not as simple as forgetting to renew a driver's license.

DRC admissions has seen massive growth in that category, said Mr. VanDine, noting that, as of January 1010, there have been 700 admitted for some form of SORN registration violation.

Because "knowingly" would be difficult to prove, Atty. Slagle remarked the he would not oppose "recklessly" as the *mens rea*.

Members tentatively settled on "recklessly" without further comment.

§2923.20 – Unlawful Transactions in Weapons. Atty. Welch stated that the (A)(2) offense lists no *mens rea*.

Atty. Slagle pointed out that "with purpose" serves as the *mens rea* in this segment.

Another portion missing a *mens rea*, said Atty. Welch, is (A)(3). It is an M-2 offense.

As a practical matter, Atty. Slagle argued, if you manufacture or possess for sale, or sell any of these items you're going to know what it is and what it used for.

Members settled on recommending "knowingly".

§2923.201 – Possessing a Defaced Firearm. (A)(1) Involves changing, altering, removing, or obliterating the identification on a firearm. It is an M-1 offense, unless there is a prior, enhancing it to an F-4.

The group agreed to recommend "knowingly" for §2923.201(A)(1) & (2).

§2923.21 Improperly Furnishing Firearms to Minor. Dir. Diroll noted that the offenses under (A)(1-7) are all F-5s.

Atty. Slagle argued against applying "knowingly" as the *mens rea* here, noting that it then becomes a ploy of "don't ask/don't tell." He suggested either "strict liability" or "recklessly", with a preference for the latter. The statute, he said, implies a duty on the seller to check identification to verify the buyer's age. He prefers "recklessly" for (1)-(3).

Judge Spanagel argued that (6) & (7) should be "knowingly" because knowledge is in the intent.

Members settled on "recklessly" as the appropriate *mens rea* for §2923.21(A)(1)-(3) and "strict liability" for (4)-(7) once intent or knowledge is shown.

§2923.32 – Engaging in Pattern of Corrupt Activity. Dir. Diroll said a "pattern" involves more than one offense and the *mens rea* is presumably imputed from the underlying offenses.

The offender, Defender Hamm argued, may not be aware of others being involved. He may be unwittingly participating in corrupt activity. He may be part of a bigger enterprise without realizing it, particularly if the enterprise involves illicit as well licit activities.

According to Atty. Lane the problem here is in application. He maintained that these statutes were directed at organized crime and get at the people in charge of the organization.

Atty. Slagle contended that "knowingly" should apply to (A)(1) "no person "knowingly" employed by or associated with, any enterprise shall conduct or participate in …".

Atty. Welch feels (A)(1) should be "knowingly" participate in, not "knowingly" employed by. He argued that the "knowingly" should apply to the participation, not the employment.

Eventually consensus was reached to adopt ""knowingly" for §2923.32(A)(1) & (2).

FUTURE MEETINGS

Future meetings of the Ohio Criminal Sentencing Commission are tentatively scheduled for May 20, June 17, and July 15, 2010.

The meeting adjourned at 2:30 p.m.