

# Caseload Material: Composition for Federal Sentencing Parameters and Reform

## Summary

The call for federal sentencing reform began with the concern that similarly-situated defendants in different courtrooms and different districts received different sentences. To address inter-judge and inter-district sentencing differences, Congress enacted the Sentencing Reform Act of 1984, creating the U.S. Sentencing Commission and empowering the agency to promulgate guidelines for judges. Recent studies have demonstrated that the Federal Sentencing Guidelines have reduced differences in the sentencing decisions of judges within the same district. But inter-district sentencing differences persist. The Commission should not be blamed for the existence of regional sentencing disparity if inter-district sentencing differences are caused by the actions of pre-sentencing players over whom the Commission has little authority. *Caseload Matters* attempts to show that the Guidelines and Commission can do little to reduce some inter-district sentencing disparity because it is caused by regional caseload differences created in part by investigative and prosecutorial decisions. Furthermore, this Paper argues that not all inter-district sentencing disparity should be eliminated because the SRA targeted only *unwarranted* disparity and some inter-district sentencing differences caused by regional variations in caseload are *warranted*.

Whether disparity is *warranted* or *unwarranted* depends on whether policymakers want to preserve or eliminate the causes of the disparity. Many of the regional caseload differences that create inter-district sentencing disparity result when investigators and prosecutors make decisions based on factors such as the types of crime prevalent in a district, community priorities, and local resource constraints. Legislative history suggests that Congress condoned the consideration of such factors by investigators and prosecutors. Since the SRA targeted only *unwarranted* disparity and Congress left the exercise of investigative and prosecutorial discretion relatively unhindered even though it was aware of the disparity such exercises of discretion caused, Congress probably categorized most disparity created by investigators and prosecutors as *warranted*.

Parts II and III of *Caseload Matters* attempt to quantify the degree to which regional variations in caseload that reflect the choices of investigators and

prosecutors explain inter-district sentencing differences. Part IV discusses the role of law enforcement agents and U.S. attorneys in shaping the caseload, analyzes the factors they may consider when exercising their discretion, and explores whether Congress condoned consideration of these factors. Part V concludes that several of the considerations motivating uses of investigative and prosecutorial discretion probably were approved of by Congress, and, therefore, the inter-district sentencing differences that result when these factors are taken into account are warranted and should be preserved. However, agents and prosecutors may take into account some troubling factors, and policymakers should find ways of eliminating those factors from consideration while encouraging pre-sentencing actors to take into account desirable factors.

### I. Empirical Analysis: Caseload Matters

This Paper compares aggregate district sentences to test the hypothesis that differences in the volume and types of cases in each district provide an explanation for inter-district differences in both overall mean sentences and mean sentences for specific types of crimes. Overall mean sentences varied widely by district in 1998. For example, the overall mean sentence was 97 months in the Eastern District of North Carolina and only 20 months in the Western District of Washington. Similarly, mean sentences for specific types of crimes varied widely by district. For example, in 1998 the mean sentence for drug offenses ranged from 149 months in the Eastern District of North Carolina to 25 months in the District of Arizona and the Southern District of California.

To determine whether regional caseload differences cause inter-district sentencing disparity, this Paper compares the number of referrals handled, prosecution rates, conviction rates and mean sentences for eleven types of crimes<sup>1</sup> in twenty-five federal districts.<sup>2</sup> The 1998 data used in the Study came from the Transactional Records Access Clearinghouse, which can be accessed at <http://www.trac.syr.edu>. The term “number of referrals handled” means the referrals received in a fiscal year that the U.S. attorney decided to either decline or prosecute.<sup>3</sup> The “offense-specific mean sentence” is the mean sentence for each of the eleven



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types of crimes in each district. Within each of the eleven crime categories, cases are grouped together even though they involve different statutory violations and varying facts relevant to Guidelines sentencing.<sup>4</sup> Thus the offense-specific mean sentence reflects both the judges' sentencing decisions and prosecutors' charging choices. By measuring what would happen to a district's overall mean sentence if it had the District of Massachusetts' referrals handled, prosecution rates, conviction rates or offense-specific mean sentences, we can determine whether regional variations in these factors explain inter-district differences in overall mean sentences.<sup>5</sup>

We find that caseload matters. The complete results of the Study are captured in Table I.

When the District of Massachusetts' number of referrals handled is substituted for another district's number of referrals handled while holding the other variables constant, the overall mean sentence for the district changes significantly in most cases.

This suggests that regional differences in the proportional composition of referrals handled are a probable explanation for some inter-district sentencing differences. Additional evidence supports this conclusion. In those districts in which offenses that beget comparatively lengthy sentences compose a large proportion of the referrals handled in the district, the overall mean sentence for the district tends to be long. Similarly, in those districts in which offenses that beget comparatively short sentences compose a large proportion of the referrals handled in the district, the overall mean sentence tends to be short.

Table I shows that while regional variation in prosecution rates seems to explain some inter-district sentencing disparity, differences in conviction rates do not. The most important determinant of regional sentencing disparity appears to be inter-district differences in offense-specific mean sentences. The overall mean sentence of the Eastern District of North Carolina is 45.22 months longer than it would be if it had the offense-specific mean sentences of the District of Massachusetts; the overall mean sentences of the District of Arizona and the Southern District of California are at least 30 months shorter than they would be if they had the District of Massachusetts' offense-specific mean sentences. Because the offense-specific mean sentence in this Study reflects in part the charging decisions of prosecutors, the results in Table I suggest that the charging decisions of prosecutors explain some inter-district sentencing differences.

Prosecutorial prioritization provides a likely explanation for why the mean sentence for an offense tends to fall in a district as the number of referrals handled involving the offense in the district increases. Districts with a large number of referrals handled that involve civil rights, environment, regulatory, immigration, drug, official corruption and organized crime

violations are more likely to have lower mean sentences for those offenses than are districts with fewer referrals handled involving those crimes. Thus it appears that (1) regional differences in the proportional composition of referrals handled, declination policies and charging policies account for inter-district differences in overall mean sentences and (2) regional variations in the volume of referrals force prosecutors to make decisions that result in sentencing differences.

## II. Qualitative Analysis: Some Causes of Inter-District Sentencing Differences Should Be Preserved

By evaluating the factors investigators and prosecutors take into consideration when exercising their discretion, and probing Congress' view of such considerations, we can determine whether – and which – regional sentencing differences created by caseload variations are warranted. *Caseload Matters* discusses the desirability of law enforcement agents and prosecutors taking seven factors into account when exercising their discretion: (1) the type(s) of crime prevalent in a district; (2) community values and priorities; (3) resource constraints; (4) the comparative advantages federal authorities have over their state counterparts; (5) the policies of state authorities; (6) where the harshest penalties are available; and (7) idiosyncratic priorities.

*Caseload Matters* suggests that investigative agents and U.S. attorneys act appropriately when they:

- take into consideration the types of crime prevalent in a district when determining what types of crimes to target and prosecute because what is efficient law enforcement in one district may not be in a district with different crime problems;
- consider community values when dealing with federal crimes that are local in nature;
- adapt policies to address resource constraints faced by the district;
- utilize the advantages in investigative capacity, prosecutorial expertise and substantive law that federal authorities and courts have over their state counterparts; and
- fill gaps when state authorities refuse to detect and prosecute particular types of crimes over which there is concurrent—both state and federal – jurisdiction.

The legislative history of the SRA and long-standing practices seemingly fundamental to our system of criminal justice suggest that the inter-district sentencing differences that result when investigative agents and prosecutors follow the above five principles are warranted and should be preserved.