

# THE FUTURE OF SENTENCING THEORY AND RESEARCH



# A FOCUS ON DISPARITY REDUCTION

- Early Research – weak but influential
- Frankel and Pound Revisited
  - Sentencing is a “lawless” process. AG Levi: there is an accidental quality to the imposition of punishment.
- The Logic of Guidelines



# The Shift In Sentencing Research: The 1970's

- Guidelines as a temporary focus
- As John Hogarth noted in 1971:
  - The fundamental problems in sentencing arise from the fact that there is a lack of agreement as to the social purposes that sentencing should serve, (and a) lack of evidence as to the effectiveness (of different sentences)



# The Nightmare on First Street

- The Freddie Krueger of Sentencing Guidelines?
- The Impact of Booker
  - On Guidelines
  - On Sentencing Research



# Two Models of Sentencing

- The Empty Box Model
- Sentencing Decision Process
  - Sentence Fits the Crime and the Offender
  - Purpose Matters
  - Prosecutors and Judges Matter -- Plea Bargaining



# What We Know About the Models

- Model 1
  - Disparity More Apparent Than Real
  - Disparity Can and Has Been Reduced
  - In a Post Booker Era Guidelines Even More Important to Monitor Disparity
  - Substantial Unexplained Variation
- Model 2
  - Work Groups/Focal Concerns Matter
  - Little Else Since the 1980's



# The Future

- Continue Efforts to Reduce Unwarranted Disparity
- Bringing Prosecution In -- Displacement
- Reintroducing Purpose
- Beyond Two Dimensional Guidelines

