



# Monitor

## Commission Mourns Loss of Long-time Member

Senior Judge Robert E. Dauer of Allegheny County, a member of the Commission for most of the last decade, died in his sleep on April 2, 2002. Judge Dauer was a member



**Judge Robert E. Dauer  
1929-2002**

of the Commission from 1990 to 1996, during which time he served as Chair from 1995 to 1996. He was reappointed to the Commission in April 1997 and continued to serve until his passing. He most recently served on the Commission's Data & Field Services Committee.

Judge Dauer received an undergraduate degree from Georgetown University (1950) and a J.D. degree from the University of Pittsburgh School of Law (1956). He was appointed to the Court of

Common Pleas in 1972 and was subsequently elected three times to ten-year terms (1975, 1985, 1995). In 1977 he was elected by his fellow judges as Administrative Judge of the Criminal Division, a position held until 1993 when he was unanimously elected President Judge of the Court of Common Pleas. He held this position until December 1998 when he became a Senior Judge.

Excerpts from Pittsburgh *Tribune-Review* article found on Page Two.

## Commission Solicits Policy Comments

During its February 13, 2002 Quarterly Meeting, the Commission voted to solicit comments from various state agencies and associations regarding modifications to the current Sentencing Guidelines (5<sup>th</sup> Edition, effective 6/13/97). The Commission is seeking comments on two prior record score policies: (1) the use of juvenile adjudications in the prior record score calculation; and (2) simplification of the 'totally concurrent' policy.

The Commission's Policy Committee found that the nature of juvenile court proceedings often leads to inconsistent use of juvenile adjudications in the prior record score calculation, and that the 'totally concurrent' policy is difficult to apply because of missing or incomplete criminal history records. Inconsistent application of these policies frustrates the Commission's efforts to eliminate unwarranted sentencing disparity.

Comments are being solicited from the Conference of State Trial Judges, the District Attorneys Assoc., Assoc. of Criminal Defense Lawyers, JCJC, and PAPPC. For those supporting changes in the Guidelines, the Commission requested specific recommendations. The Commission will review the comments received during its next meeting before deciding whether modifications are warranted.

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### Second Quarter 2002 Training Sessions

- Wednesday, April 3 (State College)
    - In-Depth Look at Sentencing (3 CLE)
  - Wednesday, May 1 (State College)
    - Sentencing Fundamentals (3 CLE)
  - Wednesday, May 29 (Harrisburg)
    - 5th Edition Guidelines (6 CLE)
  - Wednesday, June 12 (State College)
    - In-Depth Look at Sentencing (3 CLE)
- For more information, contact Carrie Peters [(814) 863-2797, ext. 2 or carriep@psu.edu].**

# Judge Remembered for Leadership, Humor

By Robert Baird

**TRIBUNE-REVIEW**

Wednesday, April 3, 2002

The sound of bagpipes filled the noon-time air Tuesday in the courtyard of the Allegheny County Courthouse in honor of Senior Judge Robert E. Dauer, who died earlier at his Shadyside home.

As Deputy Sheriff Richard Manning played "Going Home" on the bagpipes, court employees, visitors and Dauer's judicial colleagues looked down from the windows of the courthouse with tears in their eyes. Friends and colleagues remembered him as a dedicated judge and a personable, decent man, full of wit, charm and grace.

...

"He was my friend for 30 years. He was my mentor as he was to all of us, a mentor and a guide," said Common Pleas Judge Jeffrey Manning, father of the bagpiper. "Someone who said there is no indispensable man never met Bob Dauer. He was the heart and soul of our court system," Manning said.

...

"What a good guy he was," said Common Pleas Judge Gerard Bigley, now administrative judge of the Criminal Division. "He worked like a horse around here. You could call and ask him to do anything in the world and he'd do it."

In January 1999, Dauer resigned two weeks before reaching the mandatory retirement age of 70, so he could come under a "grandfather clause" that would permit him to be a senior judge beyond the age of 75. "It makes me a senior judge forever. And I plan to live forever and ever," Dauer said at the time with a chuckle in his voice.

In keeping with Dauer's tradition of putting the courts first, Common Pleas Judge Lester Nauhaus handled the cases Dauer would have heard yesterday. Nauhaus, who recalled Dauer liked to be called "The General," said, "He was a general. He would do what was best for the people he was responsible for. He was a leader, pure and simple. "He had a good sense. He knew when a case was nonsense, and he knew when a defendant was a predator and, if he was a predator, he went away for a long time," said Nauhaus, who was the Allegheny County public defender before becoming a judge.

And attorneys reminisced about their favorite Dauer story. At Christmas, Dauer would don a top hat festooned with holly and lit with electric lights powered by a 9-volt battery. On St. Patrick's Day, the outfit was green, of course, and Halloween brought out costumes, the most recent one being when he dressed as Harry Potter, complete

with tape on his glasses and a pointy hat. "He loved a good story and he loved a good joke," said attorney John P. Gismondi, whom Dauer hired while president judge to fight cuts in the court's budget by the former county commissioners. Dauer "was a jovial guy, but you didn't want to get his dander up if he thought the court was being pushed around or backed in a corner. He was going to stand up for the courts and that's what he did. He was very protective of the courts and the court system."

As a jurist, Dauer was known as a tireless worker. He handled high-profile criminal cases along with his administrative duties, and thousands of hearings for the Accelerated Rehabilitative Disposition program for nonviolent offenders. As administrative judge of the criminal division, the case backlog was eliminated, due in part to development of individual trial calendars for judges and of programs such as ARD to dispose of nonviolent cases.

As president judge, he oversaw the other 40 sitting judges plus the senior judges, and the county's 67 district justices and elected constables. "One of the nicest gentlemen I ever knew. He ran this court system extremely well," said Richard M. Scaife, owner of the Pittsburgh Tribune-Review.

## Sentencing Verification Reports Mailed

Beginning the first week of May, each criminal court judge will be mailed a summary of all sentences reported to the Commission during 2000. As in previous years, judges will then have the opportunity to request additional details of all 2000 sentences for review. The 2000 sentencing data includes all offenses reported to the Commission. The reports present offenses by judicial proceeding, and include information on concurrent and consecutive sentences. The decision to include all offenses in this verification process, and to include concurrent/consecutive information, was made as part of the Commission's *Release of Information Policy*.

Prior to preparing these reports, Commission staff returned problem forms (e.g., missing information, illegal sentences, etc.) to judges for review and completion/correction. Those problem forms recently returned to the Commission may not be included in the reports.

Also in early May, the President Judge of each county will be mailed a summary report identifying the reporting judges in his or her county, along with the total number of guideline sentence forms that each of the judges sent to the Commission. This is part of the Commission's effort to identify and eliminate under-reporting of sentences.

The President Judge will also be requested to provide any county contextual information that would assist users in interpreting and understanding the county's sentencing data.

Any questions about this data verification process may be directed to Joan Lisle, Field Services Manager at (814) 865-8213.

For more information on the Commission's *Release of Information Policy*, or on the electronic submission of sentencing data via *SGS Web*, visit the Commission's web site (<http://pcs.la.psu.edu>) or call (814) 863-2797.

# Recent Commission Activities & Decisions

The Commission's first quarterly meeting of 2002 was held at the Harrisburg Hilton & Towers on February 12 & 13, 2002.

## WORK SESSION

During the Tuesday evening work session, members briefly discussed the Governor's FY'02/'03 Budget, presented to the General Assembly during a Joint Session on February 5, 2002. The Governor's Budget included full funding of the Commission's request. Members also viewed a videotape produced by the JNET Office that included information on the Commission's *SGS Web* application. Members briefly discussed several Policy Committee recommendations scheduled for consideration during Wednesday's meeting.

## QUARTERLY MEETING

### Budget & Management

Chairman Dermody welcomed a new member, Professor Steven Chanenson of Villanova Law School, who was appointed by Governor Schweiker to fill the balance of Professor Laurie Magid's term.

The Commission authorized staff to prepare and submit the following DCSI continuation grants: Corrections Policy Research Support, and IP Technical Assistance & Training.

### Data & Field Services

Staff updated the Commission on *SGS Web* activities, including a recent meeting held with the five pilot counties and the development of Flowchart and Protocol for use by participating counties. Staff also provided information on completed data requests, sentencing training sessions, and other field services activities.

### Research

Staff provided an update on the three research projects underway (Boot Camp Evaluation, RIP/D&A Treatment, and Restitution). A meeting was held in January with the RIP Evaluation Advisory Committee. The Commission approved publication of a *Research Bulletin* on the annual Boot Camp Evaluation as an insert in the April mailing of the Monitor. The Commission also approved a contracted release request from Yale University; the proposal was

reviewed and approved by the PSU Institutional Review Board (IRB).

### Policy

The Commission approved the following policy directive to staff: (1) After a sentence is imposed, staff will not comment on the appropriateness of a sentence; (2) Guidelines provide general structure for sentencing; Courts determine specific application to a case; and (3) The legality of a sentence is determined by the appellate courts. The Commission also voted to solicit comments from several state agencies and associations on a Policy Committee recommendation to remove juvenile adjudications from the prior record score calculation and to simplify the 'totally concurrent' policy (see related article, Page One).

The next Commission Meeting is scheduled for May 14-15, 2002 in Harrisburg. All Commission meetings are open to the public. Details and tentative agendas are found at the "What's New" tab on the Commission's web site: <http://pcs.la.psu.edu>

## Key Sentencing-Related Decisions (December 2001-April 2002)

### General Sentencing Issues

*Com. v. Berry* (785 A.2d 994)(juv. transfer)  
*Com. v. Fisher* (787 A.2d 992)(merger)  
*Com. v. Miller* (787 A.2d 1036)(registration)  
*Com. v. White* (787 A.2d 1088)(plea)  
*Schneider v. DOT* (790 A.2d 363)(interlock)  
*Com. v. Syno* (791 A.2d 363)(IP/eligibility)  
*Com v. Wegley* (791 A.2d 1223)(IP/escape)  
*Com. v. Lewis* (791 A.2d 1227)(plea)

### Mandatory Sentences

*Com. v. Williams* (787 A.2d 1085)  
*Com. v. Bess* (789 A.2d 757)

### Sentencing Guidelines

*Com. v. L.N.* (787 A.2d 1064) ►►

**Brief summaries of these and other cases are now found at the "Sentencing Guidelines & Information" tab on the Commission's web site:** <http://pcs.la.psu.edu>

**Before a challenge to the judgment of sentence will be heard on the merits, an appellant must demonstrate there is a substantial question that the sentence imposed is inappropriate under the sentencing guidelines... We recognize the imposition of a consecutive sentence does not present a substantial question regarding the discretionary aspects of sentencing.**

*Com. v. L.N.* (787 A.2d 1064)

## Sentencing Guidelines Q&A...

### Topic... DUI

#### **What factors must be considered when imposing a sentence for DUI?**

Three factors must be considered: (1) grading; (2) mandatory minimum requirement; and (3) sentencing guideline recommendation.

- ⇒ The grading of the current DUI offense is determined by the number of lifetime Pennsylvania convictions (*Com. v. Kinney*, 777 A.2d 492, PA Super. 2001). The first or second lifetime DUI is an M2; a third or subsequent lifetime DUI is an M1.
- ⇒ The mandatory minimum sentencing provisions are based on a seven year look-back period, anchored by the date of commission of the current offense

and the date of conviction of the previous offense(s). Only prior convictions (or admission to ARD) within the seven year look-back period are counted as prior DUI's for purposes of the mandatory (*Com. v. Beatty*, 411 A.2d 1253, PA Super. 1992). Equivalent convictions in other jurisdictions and juvenile adjudications are counted. The mandatory penalties based on the seven year look-back are as follows: first DUI (48 hours); second DUI (30 days); third DUI (90 days); fourth or subsequent DUI (one year). Certain intermediate punishment programs, described at 42 Pa.C.S.A. §9804(b)(3), may be used to satisfy the mandatory minimum sentence requirement.

- ⇒ The sentencing guideline recommendation is based on the combination of the offense gravity score (OGS) (i.e., DUI/M2 = OGS 2; DUI/M1 = OGS 3) and the offender's prior record score (PRS). The PRS includes any applicable prior convictions, both DUI and non-DUI offenses, without regard to a look-back period. If the guideline recommendation is shorter than the applicable mandatory, the mandatory supercedes the guidelines. If the guideline recommendation is longer, the court must first consider the guidelines, and any mitigated or departure sentence may not be less than the mandatory (5th Edition Guideline Manual, §303.9 (i), pp.183-188).

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MONITOR (SPRING 2002)

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Robert E. Dauer  
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The Pennsylvania Commission on Sentencing is an agency of the General Assembly located on the University Park campus of the Pennsylvania State University. The Commission was created in 1978 for the primary purpose of creating a consistent and rational statewide sentencing policy to promote fairer and more uniform sentencing practices.

The *Monitor* is a quarterly publication of the Commission. All inquiries should be directed to the Commission at the address or numbers listed above.

**Special Research Bulletin insert in this edition**  
***Pennsylvania's Motivational Boot Camp:  
 Summary of 2001 Legislative Report***

## Legislation from 2002 Session of General Assembly (January-April)

TITLE/SECTION	OFFENSE	OLD	NEW	1997 OGS	2001-02 SESSION	EFFECTIVE DATE
<b>18/7330</b>	<b>Internet child pornography</b>				<b>Act 2002-5</b> (HB1333/PN3184)	<b>April 22, 2002</b>
(c)(1)	- first offense by internet service provider	new	M3	[Omnibus] 1		
(c)(2)	- second offense by internet service provider	new	M2	[Omnibus] 2		
(c)(3)	- third/subsequent offense by internet service provider	new	F3	[Omnibus] 5		