

STATEMENT OF CHARLES SULLIVAN

CURE (Citizens United for Rehabilitation of Errants) is a national prison reform organization whose membership is comprised of prisoners, prisoners, ex-prisoners and concerned citizens.

CURE started in Texas in 1972. My wife, Pauline, and I are the founders of CURE, and presently function as the national staff here in Washington. Before coming to D.C. in August of 1985 and expanding CURE to a national organization, we spent twelve years in Texas as staff persons of Texas CURE.

In effect, we try to organize the "consumers" of the sentencing guidelines-- those persons whose lives are directly affected.

My comments are from that perspective. Also, I have attended all the hearings of the Commission here in Washington, and CURE has filed position papers on all the issues considered at the public hearings. In this latter regard, I have coordinated prisoner input.

Thus, when I say that my general reaction to the preliminary draft is extreme disappointment, I feel that I have a record of involvement to state this position. In fact, I am amazed that such progressive testimony and discussion could produce a document that does not consider alternatives to incarceration as true punishment. In reading the draft, I thought, for a minute, I was back in the "lock 'em up" state of Texas.

I was hoping that the Sentencing Commission, free from political pressure, would set an example for the states by recommending modifications in the severity of present sentencing laws. Breaking out of the current "can you top this" demagoguery in regard to sentencing is long overdue.

I would like now to make some specific comments, and then return and conclude with the biggest reason for my overall disappointment. This final comment will be from the rehabilitative perspective.

First of all, specific comments. (1) "The ability of the government to function effectively and without disruption" on page 21 is a reason to enhance punishment in offenses involving the person. For example, if the victim in a homicide is a government official, then 36 points are added to the base offense value.

I would suggest that this principle be applied to mitigating factors as well as aggravating. Why not a lessening of culpability for those Vietnam veterans if their criminal behavior can be traced to the defense of the country.

(2) I would disagree on the classification of the consumption of alcohol and drugs. At times, I would consider them mitigating rather than aggravating circumstances.

(3) There is also token treatment of non-custodial sanctions in the draft. For example, there is not any reference to victim/offender reconciliation or to any other form of mediation. Obviously, victim/offender mediation is impossible for some types of crimes; but the Guidelines should make reconciliation and reparation the highest priority of the criminal sanctions. In the same way, the present provision of the Guidelines permitting restitution and community service merely in combination with imprisonment can only compound punishment that is already excessive.

(4) Giving priority to restitution over a fine is highly desirable. Certainly, a major component of victim/offender reconciliation is restitution.

(5) There has undoubtedly been a laudable attempt by the Commission to eliminate economic discrimination in the Guidelines. However, there are still, I feel, some items. Sanction units assigned to economic crimes in the white-collar category are far more lenient than those assigned to street crimes. A comparison of the sanction units for fraud and for burglary reveal how wide this disparity is.

Also, why does the unlawful possession of the ghetto drug, heroin, have a base offense value of 18 while the more middle class drug of cocaine is considered less serious at 16?

Of course, I am not suggesting that cocaine be increased to 18, but rather that heroin be reduced to 16.

(6) Another suggestion on remedying economic discrimination in the Guidelines is the proportionate ("ability to pay") approach. For example, on page 124, acceptance of responsibility for the offense should have "proportionate to his or her economic status" added to restitution of a substantial nature.

Non-custodial options should be available too for enforcing payment of restitution (and fines). These options include extending the period over which the money is to be paid; permitting payment by installments; substituting community service; or remitting the fine in whole or in part when default results from changed circumstances such as the offender's loss of employment or serious accident or illness.

(7) CURE would like to make a suggestion on further refinement of the Guidelines. If the current offense involved is less serious and not related to the previous offense, then a less multiplier should be used than a multiplier for the same type of offense. Of course, CURE supports only an enhancement of the offense if the criminal record indicates the offender is presently serving a felony sentence. This was basically Dr. Burton Galaway's position who testified this summer before the Commission. As CURE sees it, juvenile convictions, unadjudicated offenses, and completed sentences should be irrelevant in sentencing.

(8) There is potential for abuse with "psychological injury" factored into the base values as an aggravated element. This is particularly disturbing when such a finding can be based

only on a preponderance of the evidence.

(9) The provision for capital punishment was eliminated from the new drug laws. The Commission could provide an example to the states-a way out of the legislators' dilemma-if they also recommended abolishing the federal death penalty.

Most of these comments have been gleaned from the more extensive comments and analysis in CURE's written submission. This submission consists of two papers-one from a prisoner and the other from an individual who has just returned from a Northern European People to People study of alternatives to prison crowding. I think you will find both of these perspectives very informative.

I would like to conclude with sharing my experience on rehabilitation in Texas and its application to the Guidelines. Almost ten years ago in Texas, the Governor and the Legislature decided to "get tough" with criminals by substantially increasing the severity of sentences. This "get tough" policy, however, was not matched with the doubling and tripling of prison capacity as the policy required.

The impact was obviously overcrowding. The federal courts intervened, and the term "rehabilitation" was not only secondary, but was given practically no emphasis as the state confronted its daily overcrowding crisis. This crisis included 52 inmate-on-inmate killings over a twenty-one month period.

Today, the prison population has somewhat stabilized due chiefly to a substantial increase in good time (up to three days for one) and paroles. However, rumors about mass releases (or "kickouts" as the prisoners call them in Texas) have replaced any concern for rehabilitation in the mind of the prisoner and the administration.

As I read the Guidelines, I felt like I was back in the seventies in Texas. It seems to me that you are setting the stage for a tremendous increase in prisoner population. Since you have no direct authority over federal prison capacity (and we are living in a Gramm-Rudman era), the result will be massive overcrowding of the already crowded federal facilities. This, in turn, will provoke federal litigation and daily crisis management.

In my fifteen years of experience of working with prisoners and their rehabilitation, I have concluded that there are three elements that must be present in order that a prisoner might begin to rehabilitate or habilitate him or herself. The first is that of uniform sentencing for which you are striving. The second is due process in sentencing and in disciplinary infractions. The third is that a prisoner has to know where he or she stands in relation to release.

If this draft of the Guidelines is implemented, this third element will be lost, and, in my opinion, rehabilitation will be vitiated. Instead of prisoners possibly asking themselves, "how best to do my time", they will be "laying in" because they

will be thinking that the next "kickout" is right around the corner.

What I am saying is that if you have Guidelines that require (as I think you do) a doubling or tripling of prison capacity and can't fund this increase, the tail of capacity begins to wag the dog of the Guidelines instead of vice versa.

Thus, I ask for the sake of rehabilitation that you make certain as your congressional mandate states that you "take into account the nature and capacity of the penal, correctional and other facilities and services available". Realistically, however, I think these Guidelines are the first step toward more prison overcrowding, prison management by crisis and "kickout".