

TO: U. S. SENTENCING COMMISSION
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ATTENTION: MR. MICHAEL COURLANDER

FROM: C. U. R. E. (Citizens for the rehabilitation of Errants) on behalf of the
nearly 90,000 federal prisoners

SUBJECT: REQUEST FOR PUBLIC COMMENT (published in Vol. 58, #243 of the Federal Register
dated December 21, 1993 at page 67522)

C. U. R. E. would like to offer the following comments and proposals relevant to the published request of the Commission. These comments are in the Commission's numbered order:

#7. C.U.R.E. supports the availability of departures for the cultural characteristics or collateral consequences to a Defendant that might come to the attention of public officials. In particular, INS detainees invariably are held far past the termination of their sentences. Until the INS sees fit to deport those detainees whose sentences are finished when those sentences are terminated, it is only fair that since INS holds are suffering collateral consequences not taken into consideration by the Commission, they should have discretionary departures available to them to mitigate the extra time they are kept in prison. C.U.R.E. feels that departures should be allowed for any and all unusual cases, not just those under the heading of "public corruption."

#8(A). C.U.R.E. agrees the lowering of levels for drug and other violations is a good first step towards a more just sentence. However, this lowering of the highest grades, is not enough because at the higher levels, sentence add-ons and enhancements are routinely utilized to make the eventual sentence oftentimes the equivalent of a life term.

#8(B). C.U.R.E. opposes Option #2 and any other amendments that sentence "as if the Defendant had been convicted of a separate count charging such conduct." C.U.R.E. opposes any sentence that provides enhancement for conduct for which a Defendant has not been convicted.

#8(C). C.U.R.E. supports a ceiling in Chapter 2 offense levels for Defendants who receive a mitigating role adjustment under §3B1.2 (Mitigating Role). The current guidelines over-punish low level Defendants because the sentences are now driven by drug quantities. C.U.R.E. would also support a greater level departure than is now available under present guidelines practice.

#8(D). C.U.R.E. supports deemphasis on drug quantity to drive all drug sentences and instead supports emphasis on associated violence as a sentence enhancement. Instead of a broader range of quantity at each level, the levels themselves for the present quantities should be lowered.

#9. C.U.R.E. opposes the proposed amendment to §3B1.1(a) and (b) because it appears to simply lower the threshold for "supervisor" liability from five to four participants. C.U.R.E. also strongly opposes the proposed amendment to Note 1 of the Application Notes of the Commentary to §3B1.1, which will allow undercover law enforcement agents to be counted as participants. This concept totally contradicts the history of the criminal law of this country. Requiring recruitment by a criminally responsible participant simply makes a factual issue, which will ultimately be lost by most Defendants because

of credibility problems (posturing by law enforcement personnel will always triumph over a plea of entrapment by the criminal participant).

The proposed amendment for Note 2 of §3B1.1 should be scrapped. Holding a Defendant responsible as a supervisor of people he doesn't know and never spoke to (thus never knew he was supervising) results when a person can be supervised "indirectly." Intent should be the criteria for management and supervision!

C.U.R.E. also opposes Options #1 & #2 for No. 5 in Application Notes under §3B1.2 because possession of a firearm has nothing to do with a participant's role in the offense. Possession of a firearm is already punished stringently by other Guideline provisions.

#11. C.U.R.E. opposes proposed new §2S1.1(b)(2) and Application Note 5, unless a more specific definition for the word "sophisticated" is forthcoming. In its present form, almost any activity can and will be defined as "sophisticated" by each and every AUSA confronted with a Money Laundering offense (resulting in the Defendant having two levels added to his severity). Sophisticated activity should be that which is extraordinarily difficult to detect, so that run-of-the-mill activity applicable in most cases will not qualify. The definition of "sophisticated" in this section should be at least as well defined as the proposed Amendment #12(A).

#12(B) & (C). C.U.R.E. opposes these proposed amendments and all other amendments that raise sentences higher rather than keeping the level as is and adjusting the other levels in that particular table lower.

#13(C). C.U.R.E. would like to see this particular proposed change go farther because the present proposal does not take into account the discretion vested in AUSAs under Rule 20 FRCrP to prosecute separately cases of multiple drug dealing in more than one jurisdiction. If a drug dealer deals twice with police undercover agents in two jurisdictions and the AUSAs decide to prosecute twice for two separate arrests, the Defendant becomes liable as a "Career Offender," whereas, if only one arrest is made for the two separate violations, the Defendant is not a candidate for enhancement. The draconian sanction for "Career Offender" status should not hang on such procedural niceties for Defendants whose criminal activity happens to be "continuing," whether there is one arrest or two, one AUSA or two, one jurisdiction or two.

#13(D). C.U.R.E. opposes this change because a crime should be considered "violent" only where violence occurs. Burglary of dwellings are not ordinarily crimes of violence and should not be so defined. If violence does occur, that is the time for enhancement, not before! "The conduct of which the Defendant was convicted" should be "the focus of the inquiry" - in the same manner as proposed amendment #13(E)'s new Note 3. C.U.R.E. still opposes the use of a "controlled substance offense" as an equivalent to a "crime of violence" for enhancement purposes (i.e. §4B1.2).

#14. C.U.R.E. supports the proposed amendment to §5K2.0 allowing sentence departures in "exceptional cases," so as to give a judge some discretion in those cases that are truly out of the ordinary.

#16. Aging prisoners: C.U.R.E. has steadfastly called for a new look at the issue of geriatric offenders. There are thousands of aged and infirm federal prisoners, most of whom are housed at the U. S. Medical Center at Springfield, MO., FMCs Rochester and Carville and FCIs Ft. Worth, Butner and Petersburg. Title 18 U.S.C. §3582(c)(1)(A), as it is presently written, is totally inadequate to address the compelling reasons why many of those inmates should be released, simply because it is almost never utilized. This particular code section augments the old Title 18 U.S.C. §4205(g) for Old Law inmates, which is also almost never used. Terminally ill inmates, who should be allowed

to die with dignity are still denied release by an intransigent Bureau of Prisons, who together with the collusion of vindictive AUSAs, feel that it is their mission to only allow these inmates direct transfer to the morgue.

In the year 1993, approximately a dozen inmates died at FCI Ft. Worth. It is reported that over 50 inmates have died in one month at USP Springfield. The Commission is strongly urged to design appropriate criteria for the release of terminally ill inmates and formulate additional criteria for the release of those inmates who are a burden on the federal prison budget (and inevitably the American taxpayers) due to age and/or infirmity and who have long since paid their dues to society. Statistics show that these inmates cost twice as much to house than the general prison population and have little propensity to commit crimes. Those prisoners over 60 years of age should qualify for some relief.

#24. C.U.R.E. supports this proposed amendment that suggests where a Defendant establishes he was not reasonably capable of producing a negotiated amount of drugs or did not intend to produce that amount, the negotiated amount cannot be used for Guideline sentencing purposes.

#27. C.U.R.E. opposes this proposed amendment that provides a 4 level increase if violence or substance abuse offenses are done by members of a "gang." First, the term "gang" is poorly defined and could be used against any group of friends who conspire together and who never thought of themselves as a "gang." Second, a Defendant should not be held more liable for a crime that does not involve the gang, but where the Defendant happens to be a gang member. Third, substance abuse sentencing levels are high enough as it is without subjecting so-called gang members to higher penalties solely because of their social associations.

#28. C.U.R.E. opposes any proposed amendment that calls for higher penalties for offenses in "federal facilities" and/or "school zones" without a) a tight definition of what is to be included in the term "federal facility" (a federal prison, a VA hospital and any building with a federal office in it would all presumably qualify) and b) proof that the Defendant had the requisite knowledge that where he was was a federal facility and/or a school zone, so that intent to violate this provision is proven. As it is now, school zone enhancements apply to Defendants who don't even know that a school is there and schools have been held to include any place where any kind of student is taught.

#30. C.U.R.E. conditionally supports a proposed amendment, which would add additional distinctions for the Criminal History Category, but only if it makes reductions in overall sentences, not additions. C.U.R.E. supports distinctions for specific types of offenses and clean records, but withholds comment until a particular proposed amendment is published and comment invited.

#31. C.U.R.E. supports the modification of §1B1.1(b), so that the amendment designated for retroactive application is applied together with any other amendments that would reduce incarceration time for the Defendant. It makes no sense to apply an amendment retroactively and provide relief for the Defendant, if taken together with a new revised Guideline Manual, the relief becomes ephemeral because the new Manual and retroactive amendment results in an increase or no change in the Defendant's sentence. Any relief from retroactive application should be real relief!

#32. C.U.R.E. urges a one level decrease for a Defendant who goes to trial, but avoids actions that unreasonably delay or burden the proceedings. However, this amendment should eliminate the words "undue burden on the government," otherwise a non-cooperating Defendant, who has been forced to go to trial because of nothing else to gain, will always be opposed by the AUSA who has to try the case.

#33(A). C.U.R.E. strongly urges the acceptance of FAMM's proposed amendment to eliminate differences between cocaine and crack offenses. The ludicrous disparity, which unfairly discriminates against the mostly black users of crack, should be changed to a 1:1 ratio. Otherwise, the Commission has every reason to formulate higher sentences for "skunk" weed as opposed to common Mexican brown marijuana and higher sentences for China white heroin as opposed to Mexican brown and any other silly distinction between different grades of purity of different drugs.

#33(B). C.U.R.E. strongly urges the acceptance of 100 grams of marijuana as a ratio for each plant, no matter how many plants are seized (the one kilo per plant equivalency now being used for large seizures has no support from any marijuana experts used by the Government, no less any defense expert). Male plants should be excluded (nobody smokes male plants knowingly) and plants that are immature and not harvestable should be excluded as well.

#34(A) & (B). C.U.R.E. opposes any increase in sentence in multiple victim cases, unless the Defendant knew there would be more than one victim and so intended it.

Once again, C.U.R.E. thanks the Commission for the opportunity to provide input to the rulemaking process that affects the already or soon-to-be incarcerated.

DATED, the 21st day of January, 1994.