National Association of Sentencing Commissions
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Keynote Address
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I am honored to have been invited to address this national conference of Sentencing Commissions. The social power gathered in this room that affects how we, as a society, deal with those that offend the social norms and violate established laws is immense. The policies you recommend, and in some cases implement, affect human lives everyday, both collective as citizens living together, and individually whether a victim or offender, with the impact extending to families of both.

As you begin your conference of candid comparison, reflection, and examination of criminal sentencing and the part you play in this powerful process, I'd like to begin with a quote from a former prison inmate, an inmate that after years in prison was finally released, and soon after elected President of South Africa – – of course I'm quoting Nelson Mandela:

> Our deepest fear is not that we are inadequate. Our deepest fear is that we are powerful beyond measure. It is our light, not our darkness, that most frightens us. We ask ourselves, who am I to be brilliant, gorgeous, talented, and fabulous? Actually, who are you not to be? You are a child of God.

> Your playing small doesn't serve the world. There is nothing enlightened about shrinking so that other people won't feel insecure around you. We are born to make manifest the Glory of God that is within us. It's not just in some of us, it's in everyone, and as we let our own light shine, we unconsciously give other people permission to do the same. As we are liberated from our own fear, our presence automatically liberates others."
>
> Nelson Mandela
>
> President of South Africa

I urge you to reflect on who you are and at the conclusion of my remarks will challenge you as a group and you as individuals to increase your talent to better society.

When I was asked nearly ten years ago to serve my state on the Utah Board of Pardons and Parole I questioned our Governor about appointing someone so steeped in cowboy logic. His response was a simple task..." I've already got them behind a fence in prison, and just like you sort out the weak cows from your cattle herd each fall to make a stronger herd next year, I want you to sort out the best of the worst to make room for more of the worst to come" I did not turn him down and as I approach my ten year anniversary, We, and a Board, have sat in judgement of nearly 50,000 human tragedies. We have tried to find ways to place criminals in categories and

judge them for the risk they pose to society, but every time we think we've got it outlined a new factor comes along. I cannot be convinced that criminal sentencing can be so simple as to crete a series of boxes with set terms and then place individual criminal circumstances neatly in each box.

The State of Utah has a strong indeterminate sentencing system that has the courts determine guilt or innocence. If guilty, a sentence of 0-5 years, 1-15 years, 5-life, Life Without Parole, or Death. Once an offender is committed to prison it then is the responsibility of the Board of Pardons and Parole to determine how long they stay in prison and if released on parole under what conditions. There are five Board Members, and every decision must be reached by three concurring votes. Our primary review is "risk to society" if the offender is released. We then look at aggravating and mitigating factors primarily in five categories:

1. Offender's Background
2. Characteristics of the Offense
3. Offender's Traits During the Offense
4. Victim Characteristics
5. Offender's Present Characteristics

(*Rational for Decisions attached)

We also review the state sentencing guidelines and weigh all of this and more, in reaching judgement on another human being.

Justice is a difficult ideal, vulnerable to attack by benevolence on one side and vengeance on the other. We that work in the criminal justice

system work in a very complex system. Professor James Q. Wilson who has authored The Moral Sense, and Moral Judgement has outlined better what I'm trying to get at:

> "Ordinary people have complex views of moral worth and, accordingly, of justice. They will often weigh the motives and character of both victims and defendants and adjust their verdicts accordingly; in extreme cases they will engage in what legal scholars call jury nullification by acquitting a defendant despite overwhelming evidence of guilt."

Whether you represent a state that has determinate or indeterminate sentencing, a strong parole system or have abolished parole, a state with a three strikes rule or even a two strike rule, we are all working for a safer society through strong, yet fair, laws that govern sentencing. The law we must not forget, holds us all to a high standard: We must never intentionally and without justification harm others, and to conform to that standard we must learn, as Oliver Wendell Homes put it, "not only the law but the lessons of common experience."

I believe this was the strong political courage found in Utah in 1995 when we removed minimum/mandatory sentencing for sex offenders. As a member of Utah's Sentencing Commission I participated in a summer long series of community public hearings to discuss this issue. What we came back with was a strong community consensus that sex offenders should be

sent to prison but not for a set minimum time as you could not fairly place all offenders in the same sentence when comparing an 18 year old having sex with his 14 year old girlfriend vs. a homosexual pedophile with multiple young victims. The extreme sentences regardless of the individual criminal circumstances has the potential of filling up prison beds, at great social expense, with minimal public safety value.

I believe there are 23 states that have adopted some form of a "three strikes" law with a recent study indicating it is not widely used. The major exception is the state of California. The California law allows for a 25 to life prison term for a third strike, which can be any felony, as well as doubling the penalties of second strikes. As of July 1998 there were 26,000 second strike and nearly 4,500 third strike inmates in the California system.

While some may say that crime is down in California, because of the "three strikes" laws, there is evidence that states without three-strikes laws also have seen drops in crime, some at a greater rate than California. The threat of punishment has little impact on criminal behavior because most criminals believe they will not be caught, they have little knowledge of what sentencing laws would apply to them, or they commit crimes while intoxicated, angry, or high and thus are not rationally analyzing the consequences of their behavior. An AP wire story out of Los Angeles had the headline "Judges Uphold 3-Strikes Term In Food Burglary" citing the case of Gregory Taylor, who tried to pry open a church kitchen door, as a third-strike felon. This case with trappings from "Les Miserables" found the

offender with 2 robbery convictions from the 1980's and a 1988 parole violation. His sentence of 25 years to life for this attempted St. Joseph's Church Breaking seems high. But maybe I'm missing something.

As policy makers we must all ask ourselves at what expense to society are we willing to guide criminal sentences. Are the three strikes, two strike, minimum/mandatory, 85% laws really benefitting public safety or are they an emotionally and politically charged challenge to the criminal justice system and can't make a mistake.

> The philosopher Halifax said: "He that leaveth nothing to chance will do few things ill, but he will do very few things." E Hubbard added: "The greatest mistake you can make in life is to be continually fearing you will make one." President Theodore Roosevelt stated: "It is not the critic who counts, not the man who points out how the strong man stumbles or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and soot and blood, who strives valiantly, who errs and comes up short again, because there is not effort without error and shortcomings, who knows the great devotion, who spreads himself in a worthy cause, who at the best knows in the end the high

> achievement of triumph and who at worst, if he fails while daring greatly, knows his place shall never be with those timid and cold souls who know neither victory nor defeat."

The Utah Board of Pardons and Parole had an elderly grandpa, sex offender, who was not a threat to children unless they came around him. He was legally blind, in a wheel chair, and had a supportive wife who committed not to invite any children into the home, and he would never leave. We took a chance, knowing we could keep him for life in prison, and granted parole with many special conditions including a sign posted on both front and back doors which reads: "Warning, a convicted child sex offender lives here. No children allowed on the premises." The offender has not violated his parole, his family accepted the special conditions of parole, and we have freed up a bed for another threat to society.

In conclusion, may I challenge you collectively, as Sentencing Commissions to review your laws that take away individual review and judgement in favor of one sentencing box for all criminal action. Question the cost to society of minimum/mandatory sentences, 3-strikes, and 85% federal mandates. Don't be soft on crime, be smart on crime, and sort out those that need to be in prison for a long time from those whose short stay can redirect their energies.

Finally, as individuals, may we accept the challenge of Ralph Waldo Emerson who said: "To laugh often and love much; to win the respect of

intelligent persons and the affection of children; to earn the approbation of honest citizens and endure the betrayal of false friends; to find the best in others; to give of one's self; to leave the world a bit better, whether by a healthy child, a garden patch or a redeemed social condition; to know even one life has breathed easier because you have lived... this is to have succeeded.

Thank you and best of luck at this conference that effects our society in so many ways.

_____ Name

_____ USP #

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

RATIONALE FOR DECISION ON _____ (Hearing Date) FOR _____ (Hearing Type)

The Board of Pardon's decision is based on the following factors:

AGGRAVATING | MITIGATING

OFFENDER'S BACKGROUND

_____ Criminal history significantly underrepresented by guidelines (i.e., more than 4 felony convictions and/or 8 misdemeanors)
_____ History of similar offenses
_____ Pattern of increasingly or decreasingly serious offenses ..... _____
_____ History of unsuccessful or successful supervisions ..... _____

CHARACTERISTICS OF THE OFFENSE

_____ Use of weapons or dangerous instrumentalities
_____ Demonstration of extreme cruelty or depravity
_____ Abuse of position of trust, special skill, or responsibility
_____ Multiple incidents and/or victims
_____ Personal gain reaped from the offense ..... _____

OFFENDER'S TRAITS DURING THE OFFENSE

_____ Motive (intentional, premeditated vs. impulsive, reactionary) ..... _____
_____ Role (organizer, leader vs. follower, minimal participant) ..... _____
_____ Obstruction of justice vs. early withdrawal or self-surrender ..... _____

VICTIM CHARACTERISTICS

_____ Extent of injury (physical, emotional, financial, social)
_____ Relatively vulnerable victim vs. aggressive or provoking victim ..... _____
_____ Victim in position of authority over offender

OFFENDER'S PRESENT CHARACTERISTICS

_____ Denial or minimization vs. complete acceptance of responsibility ..... _____
_____ Repeated, numerous vs. first incarceration or parole revocation ..... _____
_____ Extent of remorse and apparent motivation to rehabilitate ..... _____
_____ Timeliness and extent of efforts to pay restitution ..... _____
_____ Programming (effort to enroll, nature of programming) ..... _____
_____ Disciplinary problems or other defiance of authority ..... _____
_____ Employment possibilities (history, skills, current job, future) ..... _____
_____ Extent of community fear, condemnation ..... _____
_____ Degree of meaningful support system ..... _____
_____ Nature and stability of release plans ..... _____
_____ Unusual institutional vulnerability (due to age, health, other) ..... _____
_____ Overall rehabilitative progress and promise ..... _____
_____ Lengthy history of alcohol/drug abuse vs. apparent rehabilitation ..... _____
_____ Substantial continuous period in custody on other charges ..... _____
_____ Likely release to detainer ..... _____

OTHER

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_____ Date

_____ Board Member