



**National District Attorneys Association**  
99 Canal Center Plaza, Suite 510, Alexandria, Virginia 22314  
703.549.9222 / 703.863.3195 Fax  
www.ndaa.org

Written Testimony of  
Joseph I. Cassilly  
State's Attorney Harford County, Bel Air, Maryland  
and  
President-Elect, National District Attorneys Association

“Federal Cocaine Sentencing Laws: Reforming the 100-to-1 Crack/Powder Disparity”

Subcommittee on Crime, Terrorism & Homeland Security  
House Committee on Judiciary  
United States House of Representatives

February 26, 2008

I am testifying on behalf of the National District Attorneys Association, the oldest and largest organization representing State and local prosecutors. Attached is a resolution adopted by NDAA regarding the sentencing disparity between crack and powder cocaine. NDAA agrees that some adjustment is warranted, but just as the 100:1 disparity cannot be justified by empirical data we believe that the proposed 1:1 realignment of Federal penalties for crack versus powder cocaine also lacks any empirical or clinical evidence. A random adjustment will have severe negative consequences on the efforts of this nation's prosecutors to remove the destructive effects of crack and violence from our communities.

The cooperation of Federal and State prosecutors and law enforcement that has developed over the years is due in large part to the interplay of Federal and State laws. I have been a criminal prosecutor for over 30 years. My prosecutors and I work on one of the most active and successful task forces in Maryland. We actively operate with federal agents and prosecutors from the U. S. Attorney for Maryland.

Maryland state statutes differentiate sentences between crack and powder cocaine offenders on a 9:1 ratio based on the amount that would indicate a major dealer. There is not a 100:1 difference in the sentences given to crack versus powder offenders. A DOJ report states, “A facial comparison of the guideline ranges for equal amounts of crack and powder cocaine reveals that crack penalties range from 6.3 times greater to approximately equal to powder sentences.”

In recent years local prosecutors have brought hundreds of large quantity dealers for Federal prosecution, primarily because of the discretion of Federal prosecutors in dealing with these cases. This discretion allows for pleas to lesser amounts of cocaine or the option of not seeking sentence enhancements. The end result is that the majority of these cases are ultimately resolved by a guilty plea to a sentence below the statutory amount.

The practical effect of guilty pleas is that serious violent criminals are immediately removed from our communities, they spend less time free on bail or in pre-trial detention, civilian witnesses are not needed for trial or sentencing hearings and are therefore not subject to threats and intimidation and undercover officers are not called as witnesses: all of which would happen if we were forced to proceed with these cases in courts. Yet meaningful sentences are imposed, which punish the offender but also protect the community and allow it to heal from harm caused by these offenders. Moreover the plea agreements often call for testimony against higher ups in the crack organization. It is critical that Federal sentences for serious crack dealers remain stricter than State laws if this coordinated interaction is to continue.

First let me dispel some of the myths about controlled substance prosecutions that are propagated by those who would de-criminalize the devastation caused by illegal drugs.

Myth 1. Prisons are full of first time offenders caught with small quantities of C.D.S.

The fact is that in joint Federal or State investigations small quantity dealers are delegated to State prosecutors for prosecution. First time users are almost never sent to jail but are directed into treatment programs; a jail sentence is suspended to provide an incentive for them to participate in treatment.

Myth 2. There is no difference between the affect of crack versus powder cocaine on the user <sup>1</sup>

In a study entitled “Crack Cocaine and Cocaine Hydrochloride: Are the Differences Myth or Reality?” by D. K. Hatsukami and M.W. Fischman, Department of Psychiatry, Division of Neurosciences, University of Minnesota, Minneapolis it is stated,

“The physiological and psychoactive effects of cocaine are similar regardless of whether it is in the form of cocaine hydrochloride or crack cocaine (cocaine base). However, evidence exists showing a greater abuse liability, greater propensity for dependence, and more severe consequences when cocaine is smoked (cocaine-base) ... compared with intranasal use (cocaine hydrochloride). The crucial variables appear to be the immediacy, duration, and magnitude of cocaine's effect, as well as the frequency and amount of cocaine used rather than the form of the cocaine.”

Smoked cocaine results in the quickest onset and fastest penetration. Generally, smoked cocaine reaches the brain within 20 seconds; the effects last for about 30 minutes, at which time the user to avoid the effects of a “crash” re-uses. The Drug Enforcement Administration's (DEA) intelligence indicates that a crack user is likely to consume

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<sup>1</sup> Most of the following comments are taken from reports of the United States Sentencing Commission or of the Department of Justice.

anywhere from 3.3 to 16.5 grams of crack a week, or between 13.2 grams and 66 grams per month.

Intranasally administered cocaine has a slower onset. The maximum psychotropic effects are felt within 20 minutes and the maximum physiological effects within 40 minutes. The effects from intranasally administered cocaine usually last for about 60 minutes after the peak effects are attained. A typical user snorts between two and three lines at a time and consumes about 2 grams per month.

Using these amounts, the cost per user per month for crack cocaine is between \$1,300 and \$6,600 as compared to a cost for powder cocaine of \$200 per month; a 6.5 to 33:1 ratio in cost.

Myth 3. There is no difference in the associated crimes and the effect on the community caused by crack as opposed to powder cocaine.

The inability to legitimately generate the large amount of money needed by a crack addict leads to a high involvement in crimes that can produce ready cash such as robbery and prostitution. Studies show crack cocaine use is more associated with systemic violence than powder cocaine use. One study found that the most prevalent form of violence related to crack cocaine abuse was aggravated assault. In addition, a 1998 study identified crack as the drug most closely linked to trends in homicide rates. Furthermore, crack is much more associated with weapons use than is powder cocaine: in FY 2000, weapons were involved in 10.6% of powder convictions, and 21.3% of crack convictions.

One of the best-documented links between increased crime and cocaine abuse is the link between crack use and prostitution. According to the authors of one study, "hypersexuality apparently accompanies crack use." In this study, 86.7% of women surveyed were not involved in prostitution in the year before starting crack use; one-third become involved in prostitution in the year after they began use. Women who were already involved in prostitution dramatically increased their involvement after starting to use crack, with rates nearly four times higher than before beginning crack use.

One complaint about the sentencing disparity is that it discriminates against blacks crack dealers versus white powder dealers. Unfortunately, what most discriminates against our black citizens is the violence, degradation and community collapse that is associated with crack use and crack dealers and their organizations. It is the black homeowners who most earnestly plead with me, as a prosecutor, for strict enforcement and long prison sentences for crack offenders. The stop snitching video was made by black crack dealers in Baltimore to threaten black citizens with retaliation and death for fighting the dealers. A black family of five was killed by a fire bomb which was thrown into their home at the direction of crack dealers because they were reporting crack dealers on the street in front of their house.

Many Federal, State and local prosecutors who struggle with the problems of crack can point out those areas in their jurisdictions with the highest violent crime rates are the same areas with the highest crack cocaine use.

Congress should consider that many persons serving federal crack sentences have received consideration from the prosecutors in return for a guilty plea. (i.e. pleas to lesser amounts of cocaine or the option of not seeking sentence enhancements) Many criminals who could be affected by a retroactive application of a new sentencing scheme have already received the benefits of lower sentences and would get a second reduction. New sentencing hearings would mean that citizens from the communities the crack dealers once ruined would have to come forward to keep the sentences from being cut.

The nation's prosecutors urge Congress to adopt a sentencing scheme with regard to the destruction caused by crack cocaine to our communities. If there is a need to reduce the disparity between crack and powder cocaine then perhaps the solution is to increase sentences for powder cocaine.



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**RESOLUTION CONCERNING THE DISPARITY IN FEDERAL PENALTIES  
FOR COCAINE BASE (CRACK) AND POWDER COCAINE**

**WHEREAS** Federal law provides for a 100:1 ratio in the amounts of powder cocaine and cocaine base (crack) that trigger mandatory minimum sentences; and

**WHEREAS** there currently exists a disparity between federal sentences for cocaine base (crack) and powder cocaine; and

**WHEREAS** the United States Sentencing Commission has recently lowered the sentencing tiers for cocaine base (crack) in order to reduce the disparity between penalties for cocaine base (crack) and powder cocaine; and

**WHEREAS** the United States Sentencing Commission has given consideration to the retroactive application of the sentencing guidelines changes; and

**WHEREAS** there currently exist several varying pieces of legislation in the 110<sup>th</sup> Congress that attempt to address the disparity; and

**WHEREAS** the National District Attorneys Association (NDAA) recognizes that significant differences exist in the manner in which cocaine base (crack) and powder cocaine are ingested, the onset of euphoria, the duration of the effects, the rate of addiction; and the likelihood of non-drug, revenue producing criminal activity; and

**THEREFORE BE IT RESOLVED**, that the National District Attorneys Association (NDAA) believes that there exist evidence-based reasons to recognize the differences between cocaine base (crack) and powder cocaine, however, the NDAA acknowledges that the current level of sentencing disparity that exists between cocaine base (crack) and powder cocaine is not justified nor evidence-based; and

**BE IT FURTHER RESOLVED**, that the National District Attorneys Association believes that the issue of sentencing disparity can and should be revisited by the United States Congress; and