

**Testimony of**

**Alfred Blumstein**

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**Carnegie Mellon University**

**before the**

**United States Sentencing Commission**

**on**

**Sentencing Guidelines for Crack and Powder Cocaine**

**November 14, 2006**

**Judge Hinojosa and Members of the Commission:**

Thank you for inviting me to testify on this important issue. I am honored by the opportunity to appear before you today as you consider the various issues involved in the important question of sentencing guidelines for drugs. I testified at the hearings held by this commission on these issues on February 21, 2002. I have appended my testimony at that hearing to this testimony, because many of the points made there are still applicable. Also, as a follow-up to that testimony, I published an article entitled "The Notorious 100:1 Crack: Powder Disparity" in the *Federal Sentencing Reporter* (**16**:1, October 2003) and that article is also appended. Also, as requested, I am enclosing a short biographical summary.

As background to my own involvement in this issue, I have engaged in a variety of criminological research since my involvement as Director of Science and Technology for the President's Commission on Law Enforcement and Administration of Justice in 1966. I have been involved in practical policy matters as a member of the Pennsylvania Sentencing Commission for ten years between 1987 and 1997, and I served for over eleven years from 1979 to 1990 as the chairman of the Pennsylvania Commission on Crime and Delinquency, the state's criminal justice planning agency, which manages Federal criminal justice funds in Pennsylvania.

In my testimony, I would like to address the following issues: the origins of the crack powder disparity, trends in violent behavior, the problems associated with the crack: powder disparity, and more general concerns about mandatory minimum sentences. I have indicated in bold my specific responses to the four questions you raised.

**The Origins of the Crack: Powder Disparity**

An important theme of my earlier testimony was that it might have been understandable that Congress, in passing the Federal Anti-Drug Abuse Act of 1986, was engaging in a typical legislative act of passion in response to the violence that then

characterized crack markets. Crack was a new version of cocaine that made its “pleasures” accessible to a much larger population that could not afford the minimum quantity of powder, and so that new market saw many vigorous entrants competing in one of the principal modes of competition in illicit markets – through violence. The Congress must have thought it could deter that violence by imposing a mandatory minimum sentence of five years for possession of 5 grams of crack, while the same mandatory minimum would apply to possession of 500 grams of powder cocaine – the notorious 100:1 ratio. It is very doubtful that that punishment had any great deterrent effect – after all, the participants in the market faced far more extreme punishment from their competitors than from the criminal justice system. But the simple maturation and stabilization of the market did have an important effect in reducing the level of violence in the crack markets. But also, since crack was typically sold in street markets, sellers there are inherently vulnerable to street robbers, and so must carry weapons for self-defense since they cannot call the police for help.

### **Trends in Violence**

The levels of violence associated with crack markets increased appreciably between 1985 and 1993 – about a 25% increase in homicide and robbery. See Figure 1 for a graph of trends in robbery and homicide). All of that increase was attributable to young people – under 25, but mostly under 20 - with handguns. See Figure 2 for an indication of the growth of the use of handguns in homicide, especially the quintupling since 1985 of handgun homicides by juveniles). That growth was largely a result of the recruitment of young people into crack markets in response to the growing demand for that drug and especially as replacements for the large number of older sellers who were sent off to prison. (Figure 3 indicates the growth in the juvenile drug arrest rate, especially after 1985, several years after crack became a popular drug.) That growth in the incarceration rate for drug crimes – an increase of a factor of 10 between 1980 and 2000 – was not likely to have averted many drug transactions because the resilient drug market recruited these young people as replacements.

Events since that time have led to a significant reduction in violence. From 1993 to 2000, there was a reduction of over 40% in both homicide and robbery. A major contributor to that drop was the decline in the demand for crack by new users. That contributed to the reduction of the crack street markets and led to the dismissal of the young sellers that had previously been recruited. Fortunately, there was a robust economy that could absorb them. While the demand for cocaine in both its forms, crack and powder, continued, we have seen a significant reduction in the violence associated with these markets because the persistent demand was much more by longer-term users than by new users, and that demand could be more readily met personally rather than by the violence-prone street markets.

Since 2000, the level of violence in the United States has been impressively low, rather stable at less than 6 homicides per 100,000 population and under 150 robberies per 100,000, levels that had not been seen since the 1960s. This does not mean that all cities shared in this same level, but that the national aggregate rate was flat. Some individual cities went up, some went down, some went up and down, and others went down and up.

The largest deviation from this flat trend occurred in 2005 when robbery rates went up by 2.9% and homicide rates went up by 2.5%. Even then, most cities were quite flat, but the homicide increase was driven by a limited number of cities that had relatively large increases. These include Birmingham, AL (up by 76%), St. Louis (up by 51%), Kansas City, MO (up by 42%), and Cleveland (up by 38%). **(In response to your Question #1 re recent increase in violence)** As far as I have been able to discern these trends have very little to do with either crack or cocaine trafficking. Rather, the situation is more complex and very similar to the situation described in Elijah Anderson's book, *Code of the Street*. He finds that some poor neighborhoods are characterized by large numbers of "decent people" and a smaller number of "street people". The street people have a very low threshold of insult and are willing to take extreme measures to avenge such insult. Apparently that has always been the case, but until the 1980s, the weapons of retaliation were largely fists and knives. Beginning in the 1980s with the advent of crack markets, those neighborhoods were suddenly filled with guns and the guns appear

never to have left. During the crime and drug period, police were rather aggressive in taking those guns from those who had no right to carry them. What we have seen lately is the reemergence of guns in the hands of the "street people", who can often be major contributors to the rise in violence where it occurs.

**(In response to your Question #2 re changes since 2002)** The period since 2002 has been impressively stable. In many ways, as indicated earlier, violence rates have been quite stable. I did obtain some data on gun involvement from Amy Baron-Evans of Federal Defenders. They indicate an impressive stability in weapon involvement in powder markets, and some increase of about 25% in crack markets since 2002.

**(In response to your Question #3 re changes in cocaine sentencing policy)** My sense is that there have been no appreciable changes in federal cocaine sentencing policy, particularly in reviewing the latest sourcebook. The dominant observation has been the striking stability, and the degree to which that stability has continued to serve people who deal in crack with no particular rationale for that distinction. Thus, this continuing stability should provide some indication of the continuing inappropriateness of the 100:1 crack-powder sentencing disparity.

### **Problems Associated with the Crack: Cocaine Disparity**

**(In response to your Question 4 re relative harms of crack and powder cocaine)** My understanding is that crack and powder cocaine are inherently similar as drugs and in their effects on the user, and so that there is no meaningful difference in their relative harms, and so that there should be no difference in the punishment associated with these two chemically and biologically similar products.

Furthermore, because of the difference in the penalties imposed, and in light of the similarity of their effects, it is too easy to interpret the rationale for punishing them differently appears to derive from the important differences in the race of the people marketing the two drugs. Crack is marketed predominantly by African-Americans

(82.8%) and powder predominantly by whites and Hispanics (69.7%)<sup>1</sup>. Thus, any difference in the punishment associated with the two drugs could readily be interpreted as displaying an intention to discriminate based on race – albeit subtly – because there would be no reasonable basis for choosing punishments on the basis of the effects of the drugs.

As indicated earlier, the initial intent in introducing the difference in the Federal Anti-Drug Abuse Act of 1986 was understandable as a typical political response - become more punitive - to the violence associated with the introduction of the highly marketable crack version of cocaine. But that violence was associated with the intense competition associated with the new drug market. That competitive violence has certainly abated, and any difference that might appear between cocaine and crack markets has nothing to do with the difference between the drugs themselves. Those differences could be attributable to differences in the venue of the market (e.g., street crack markets compared to closed powder markets) or to the dispute-resolution culture of the communities in which the market is located.

One of the attractive features of sentencing guidelines is that they provide ample opportunity for augmenting a basic guideline with additional points for aggravating features of the basic crime. Thus, there could be additional points for carrying a gun and still more points for using it. That opportunity precludes the need to respond differently to the different drugs in drug-offense guidelines. I believe this is particularly important in the crack -- powder comparison, because of the concern associated with the interpretation of the difference as racially discriminatory

### **Mandatory minimum sentences.**

One of the important lessons that should have been learned from the 20 years of experience with the Federal Anti-Drug Abuse Act of 1986 is the general

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<sup>1</sup> Here, for simplicity, I have averaged the very close rates in the pre- and post-Booker periods from 2005 *Sourcebook of Federal Sentencing Statistics* of the United States Sentencing Commission

inappropriateness of legislating mandatory minimum sentences. Typically, these mandatory sentences are imposed in response to a particularly serious breach (typically a sentence to probation that is seen as excessively lenient or possibly a lenient sentence to a particularly serious criminal act), but that response is made to apply to a wide variety of situations that are far less serious than the event that triggered the mandatory provision.

Such sentences are almost always enacted as an act of passion by a legislative body to address an immediate problem of concern. In many cases, even that act is inappropriate, but it draws on the very limited repertoire of responses available to legislatures when confronted with an immediate public concern. This act serves the legislature by abating the public's anxiety, even when that abatement is unwarranted because it is unlikely to truly remedy the problem of concern. Over time, however, as the immediate problem diminishes in importance and is replaced by other immediate problems, the passionate solution remains on the books and can become increasingly inappropriate. That is certainly the case in the crack – powder disparity, but that lesson readily generalizes to any other mandatory minimum sentence enacted. It would be so much more appropriate when the legislative body felt compelled to enact some mandatory minimum sentence to accompany it with a "sunset" provision that dropped the mandatory minimum sentence after five years. Of course, if the statute were still seen as appropriate following an assessment, it could be then be reenacted rather than letting it expire.

Even more valuable would be passage of a new law that declared all mandatory minimum sentences sunsetted within five years, still providing the opportunity for the Congress to rethink all of them at a time that is much less frantic than the time when they were enacted. I would hope that the Sentencing Commission would encourage the Congress to adopt such policies.

Fig. 1. Trends in UCR Murder and Robbery Rates

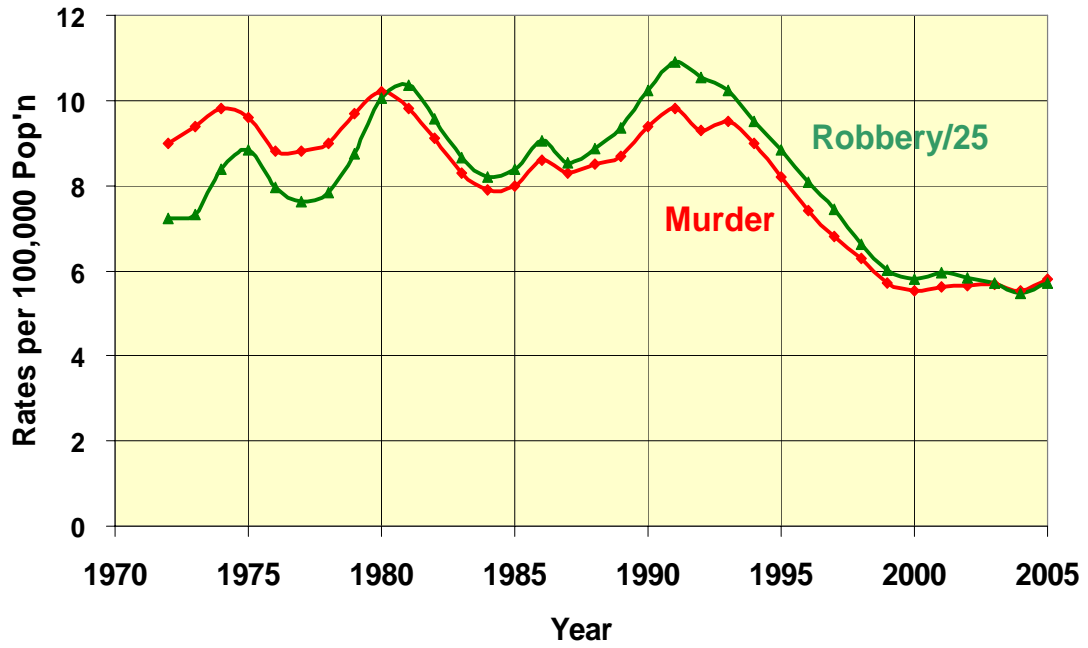
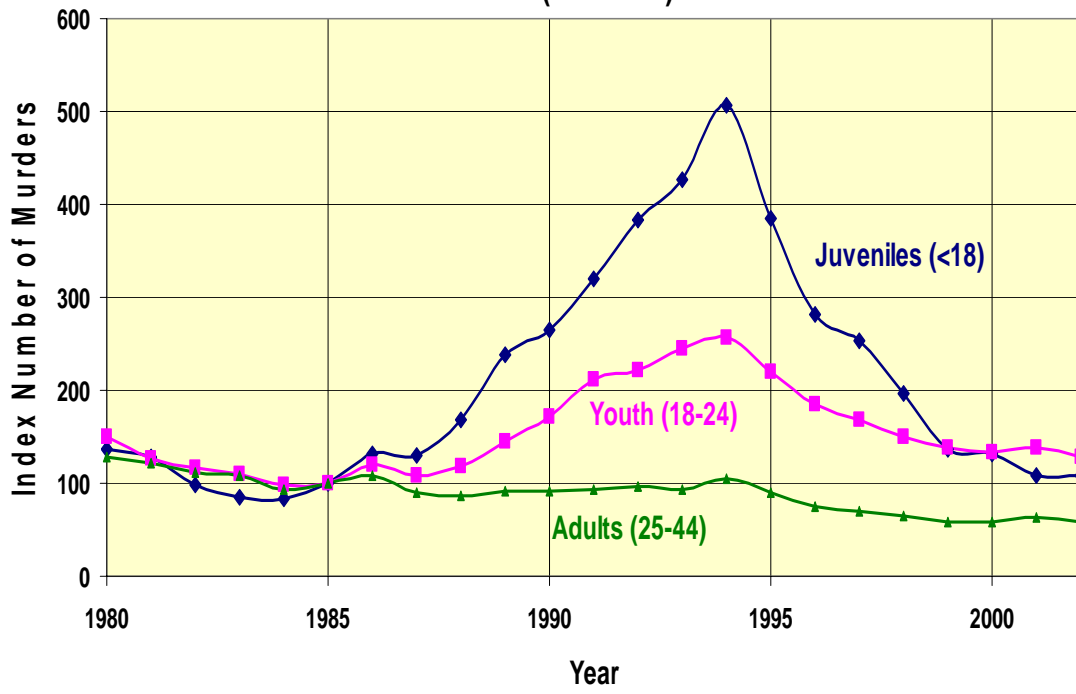
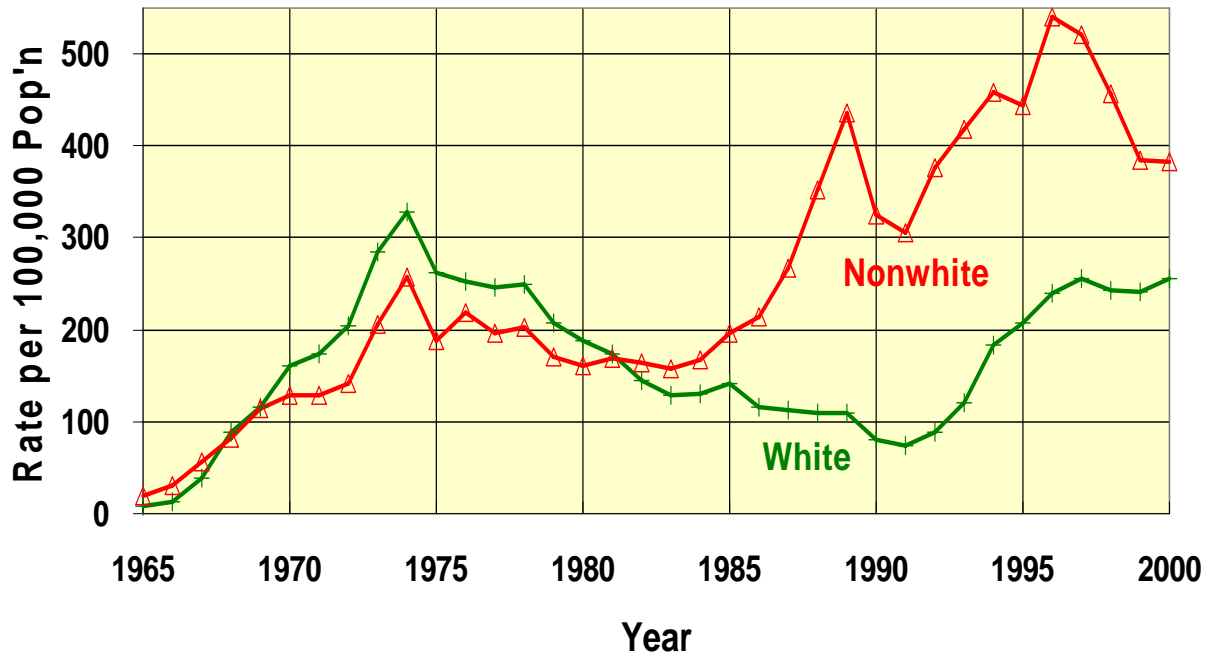




Fig. 2. Use of Handguns in Murders by 3 Age Groups - Indexed (1985=100)



**Fig. 3. Drug Arrest Rate - Juveniles**



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**February 21, 2002**

## **Abstract**

In my testimony, I focus on the most distressing and embarrassing 100:1 disparity in the sentencing guidelines for crack compared to powder cocaine. Because crack markets are operated predominantly by blacks, this difference conveys a strong sense of racial discrimination and is a profound challenge to the legitimacy of the criminal justice system. Since the rationale for the original disparity may have been attributed to differences in the violence associated with the respective drugs, I discuss why those differences may have occurred as a result of the nature of the markets much more than as a result of any pharmacological differences between the drugs. The evolution of the crack markets has resulted in a significantly lower level of violence today than that which characterized their early years. Also, it seems much more rational to use sentencing enhancements to punish those individuals who use violence regardless of the drug they are dealing with than to base the sentencing difference on the chemical itself. Similarly, enhancements should be considered to account for an offender's role in the distribution hierarchy. If that were done, then Federal crack offenders would be treated even more leniently than powder-cocaine offenders. Thus, with appropriate use of enhancements for those aspects of drug markets that are of particular concern, I see no clear reason why there should be any difference in sentencing guidelines between crack and powder. If the Commission feels it necessary to create a difference even in the presence of an appropriate array of enhancements, then it should negotiate for the smallest difference that would be accepted.

So many of these problems derive from the constraints put on sentencing policies by the passions that are reflected in mandatory-minimum sentences. I would hope that the Commission could capitalize on the growing national enlightenment on drug policy (e.g., Proposition 36 in California mandating treatment instead of incarceration) to urge the Congress to at least sunset its drug-related mandatory-minimum sentencing laws if it is unwilling to repeal them outright. I am confident that such an action would lead to enthusiastic cheers throughout the nation's judiciary.

## Testimony of Alfred Blumstein

### Judge Murphy and Members of the Commission:

Thank you for inviting me. I am honored by the opportunity to appear before you today as you consider the various issues involved in the important question of sentencing guidelines for drugs.

As background to my own involvement in this issue, I have engaged in a variety of criminological research since my involvement as Director of Science and Technology for the President's Commission on Law Enforcement and Administration of Justice in 1966. I have been involved in practical policy matters as a member of the Pennsylvania Sentencing Commission for ten years between 1987 and 1997, and I served as the chairman for over eleven years of the Pennsylvania Commission on Crime and Delinquency, the state's criminal justice planning agency, which manages Federal criminal justice funds in Pennsylvania. Attached to my testimony is a short biographical statement for your information.

### Some Background on Sentencing and the Drug Problem

I began to think hard about sentencing policy when I chaired a National Academy of Sciences Panel on Sentencing Research, which recommended the development of sentencing guidelines<sup>1</sup>. I thought particularly hard about sentencing for drug offenses in my Presidential Address<sup>2</sup> to the American Society of Criminology in 1992 when I came to recognize that prisons were filling up with drug offenders in the mid-1980s (see Figure 1 for a clear indication of this growth)<sup>3</sup>, but that growth was not likely to have much effect on drug markets because the resilient drug markets were quite able to recruit new sellers to replace those sent to prison and even those deterred from drug selling because of the draconian sentences being imposed. As a result, drug transactions would continue to respond to the articulated demand, and the number averted through incarceration would be negligibly small as long as the demand persists.

It was only subsequently that I came to appreciate that the massive incarceration was not only ineffective, but was seriously counter-productive. The young people recruited as replacements in the crack markets were primarily African-American youth drawn from inner-city areas who had little opportunity in the legitimate economy at the time. This recruitment is indicated in Figure 2, which displays the ratio of arrests of non-whites compared to those of whites; here, we see that the ratio for adults began to climb in the early 1980s, whereas that for juveniles didn't begin to climb until 1985 (as the prisons were filling with the older sellers) and reached a peak of four times that of whites from 1989 until 1992, and then began a sharp decline as the demand for crack by new users dried up in the early 1990s<sup>4</sup>. Since these were street markets, these youths had to carry handguns to protect themselves against street robbers, and these young folks were far more volatile with their guns than the older people they replaced. Not only were these replacements a violence problem, but because of the tight networking among young people (remember the sneakers epidemics of the 1970s), we saw a major diffusion of handguns from these recruits to their friends, and on out into the larger community<sup>5</sup>. That was the major factor contributing to the rise of violence that began in about 1985, reached a peak in 1993, and has been declining since. The entire rise in homicide from 1985 to 1993 was attributable to young people with handguns<sup>6</sup>.

### The Infamous Crack-Powder Disparity

With this background, I would like to address what I consider the most blatant embarrassment of the current guidelines and sentencing statutes – the 100:1 disparity between the 5 grams of crack and the 500 grams of powder warranting a 5-year mandatory-minimum sentence. Because crack is dealt primarily by blacks (85% of Federal crack offenders are black), whereas powder cocaine is dealt with primarily by whites (18%) and Hispanics (48%) (data from DB, Figure 27)<sup>7</sup>. This disparity associated with race is so extreme and is far more egregious than the relatively minor differences in

stops claimed to be racial profiling (differences in the order of factors of two to five, nowhere near 100). The vigorous challenges against racial profiling have been widely responded to in most quarters.

The 100:1 disparity is widely seen as blatant proof of racial discrimination by the criminal justice system<sup>8</sup>, and thereby contributes in important ways to serious challenge to the legitimacy of that system. It is crying for careful reconsideration, at a minimum because of the powerful symbolic import of that difference. That reconsideration should focus on issues of culpability of people arrested for drug offenses, their level in the distribution hierarchy (particularly the degree to which they are the “king-pins” against whom the rhetoric surrounding severe sentences are almost always focused), and especially the societal harm associated with their involvement

### **Societal Harm and Violence**

The first and probably most important basis for reconsideration relates to the issue of societal harm, specifically the violence associated with the marketing of crack, especially at the time the Congress introduced the original 100:1 disparity. But, as with all illegal drugs, that difference in violence is far less associated with the pharmacological nature of crack and its behavioral effects than with the nature of its market. We have to understand that market, both in its initial years and how it has changed in recent years.

Crack came on the scene in the early 1980s as an important technological innovation that made the “pleasures” of cocaine available to a stratum of society that could afford a hit-at-a-time purchase of crack but did not have the capital to buy powder in its minimum available quantities. That innovation started initially in the coasts, particularly New York City and Los Angeles, and worked its way into the center of the country<sup>9</sup>. As with any innovation that significantly expands the size of the market, there was vigorous competition for a share of that growing market. However, as with all illegal markets that are denied access to civil dispute-resolution mechanisms, that competition often shows itself in the use of violence against competitors.

Also, the means and locus of distribution contributed to the growth of violence. First, the aggressive marketing of crack, particularly to the new customers, typically took place in street markets, typically in the poorest neighborhoods of the city, neighborhoods where violence is much more common than in the more affluent neighborhoods where powder would be more likely to be sold. Also, the participants in street drug markets need their own protection against street robbers, who might see these markets as prime targets because their victims would not be likely to call for help from the police. Thus, those in the street markets were likely to carry a handgun for self-protection, and the presence of these handguns inevitably escalated the level of violence in any disputes.

Finally, the phenomenon discussed in the Background section became a major factor in the late 1980s and early 1990s: recruitment of young people as replacements for the crack dealers sent to prison, arming of these volatile individuals, and diffusion of guns to their friends, and resort to the traditional mode of teen-age dispute resolution – fighting – but with much more lethal consequences because of the nature of the weapons that had suddenly appeared.

### **Recent Developments in Violence**

Thus, for all these reasons, we saw considerably more violence associated with crack during its early years, and that difference may well have provided the rationale behind the disparity in the mandatory minimums. But that situation has changed considerably. The nation’s violence rates are now well down, lower than they have been for over 35 years. The rates of violence by young people are down to or below the level they started at in 1985. The crack markets have matured with the absence of new users, and so there is no longer a need for the young participants (see the decline after 1993 in Figure 2), it is much easier to sell to established customers, sellers’ market shares have largely stabilized, and police have been effective in getting the guns out of the hands of the kids

## **Taking Account of Differences in Violence in Different Drug Markets**

Thus, while there may still be somewhat more violence associated with crack markets, it seems to make little sense to associate the penalty with the chemical composition of the drug. It seems so much more appropriate to associate the penalty with the violent behavior itself. Thus, the Commission's proposal to provide sentencing enhancements for gun carrying – and especially for gun use – seems to carry out that concern with a principle that is so much more appropriate than associating it with the drug involved.

## **Role of Offenders in the Distribution Network**

The principle of culpability would seem to apply much more strongly to those high in the distribution hierarchy and whose distribution scope is national as opposed to local. The Drug Briefing provides some striking data reflecting on this issue. Fully two-thirds of the Federal crack offenders are street-level dealers compared to 29% of the powder cocaine offenders (Figure 12). Also, the street-level dealers for both crack and powder are the functionaries with by far the lowest median quantity of drugs in their possession (Figure 18). Furthermore, the crack offenses are predominantly confined within a city or neighborhood (75% are neighborhood or local compared to 37% for powder cocaine). Thus, based on this consideration alone, the sanction for powder should be higher than for crack. But, as with violence, any such distinctions should be based on the role and behavior of the individual offender through sentencing enhancements rather than through the chemistry of the drug.

## **Mandatory Minimums**

The fundamental principle underlying the creation of sentencing commissions is that they provide a means for giving careful deliberation to the level of sentence that is most appropriate for a particular class of offense and offender broadly defined, and that they provide enough slack to the individual judge dealing with a particular case to address those relevant factors not incorporated in the guidelines. Indeed, many state legislatures created their sentencing commissions in the 1980s as a blocking action against the then faddish mandatory minimums. In their calmer moments, they realized the inappropriateness of the political passions that so often drive sentencing decisions by a legislative body. This can happen after a particularly heinous crime has captured the headlines. It can also happen when the public becomes sufficiently concerned about some crime problem that it demands the political system “do something”; if there is nothing obvious to do, then the legislature can always resort to passing a mandatory-minimum sentencing law. Regardless of whether it does any good in addressing the crime problem, it has indeed seemed to work in at least temporarily satiating the public's demands. This has certainly been the case with the drug mandatorys. When the early two-year mandatorys didn't work, then they were cranked up to five years, and then to ten years, never with any clear or careful assessment of what good – or harm in terms of the replacements recruited – they did.

I think it is fair to say that the political passions that fueled the passage of many mandatorys – especially in the drug area – have cooled considerably. This is reflected in the passage in California of Proposition 36 calling for community treatment in preference to incarceration for drug offenders. Similar moves are under way in a number of other states. The pressure to make such changes results from a combination of fiscal problems faced by the states and a growing recognition of the ineffectiveness – often pure futility - of the often-draconian mandatory-minimum sentencing laws. I have for a long time advocated sunseting mandatory-minimum sentencing laws because I have been skeptical that legislatures would be willing to risk being labeled “soft on crime” by repealing any of them. At least, with sunseting, the law would have to be reconsidered after some period of time, and the ineffective ones left to disappear quietly in the absence of a strong reason to extend them.

I believe the time may well have come for the Commission to urge to Congress to at least sunset its mandatory drug laws to enable the Commission to emerge with a careful and rational structure in a deliberative way.

## Summary

In these few pages, I have tried to highlight the concern about the most distressing and embarrassing 100:1 disparity in the sentencing guidelines for crack compared to powder cocaine. Since the rationale for the original disparity may have been attributed to differences in the violence associated with the respective drugs, I have discussed why those differences may have occurred as a result of the nature of the markets much more than as a result of any pharmacological differences between the drugs. The evolution of the crack markets has significantly lowered the level of violence that characterized their early years. Also, it seems much more rational to use sentencing enhancements to punish those who use violence regardless of the drug they are dealing with than to base the sentencing difference on the chemical itself. Similarly, enhancements should be considered to account for an offender's role in the distribution hierarchy. If that were done, it becomes apparent that Federal powder cocaine offenders should fare even worse than crack offenders. Thus, with appropriate use of enhancements for those aspects of drug markets that are of particular concern, I see no clear reason why there should be any difference in sentencing guidelines between crack and powder. If the Commission feels it necessary to create a difference even when an appropriate set of enhancements is in place, then it should negotiate for the smallest difference that would be accepted.

So many of these problems derive from the constraints put on sentencing policies by the passions reflected in mandatory-minimum sentences. I would hope that the Commission could capitalize on the growing national enlightenment on drug policy to urge the Congress to at least sunset its drug-related mandatory-minimum sentencing laws if it is unwilling to repeal them outright. I am confident that such an action would lead to vigorous cheering throughout the nation's judiciary.

## Notes

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<sup>1</sup> See Blumstein, Alfred, Jacqueline Cohen, Susan Martin, and Michael Tonry (eds.), *Research on Sentencing: The Search for Reform* (2 volumes) (1983). Report of the National Academy of Sciences Panel on Research on Sentencing, National Academy Press, Washington, D.C.

<sup>2</sup> See Blumstein, Alfred "Making Rationality Relevant - The American Society of Criminology Presidential Address" (1993), *Criminology*, Vol. 31, No. 1, pp. 1-16.

<sup>3</sup> Figure 1 is taken from Blumstein, Alfred, and Allen J. Beck, "Population Growth in U.S. Prisons, 1980-1996" (1999) in *Prisons*, vol. 26 of *Crime and Justice*, (Michael Tonry and Joan Petersilia, eds.), University of Chicago Press, Chicago, IL, pp. 17-61. It depicts the growth of incarceration rate by crime type in state prisons, a ten-fold increase from 1980 to 1986. Drug offenders comprise over 20 percent of state prisoners and over 60 percent of Federal prisoners.

<sup>4</sup> See Johnson, Bruce, Andrew Golub, and Eloise Dunlap, "The Rise and Decline of Hard Drugs, Drug Markets, and Violence in Inner-City New York", Chapter 5 in Blumstein, Alfred, and Joel Wallman (eds.), *The Crime Drop in America*, (2000), Cambridge University Press, Cambridge, England.



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<sup>5</sup> These issues were introduced in Blumstein, Alfred, “Youth Violence, Guns, and the Illicit-Drug Industry” (1995) *Journal of Criminal Law and Criminology* Volume 86, No. 4, pp 10-36.

<sup>6</sup> These issues are developed in Blumstein and Wallman, *op cit.*, See especially Chapter 2, “Disaggregating the Violence Trends”

<sup>7</sup> Data from the Drug Briefing (hereafter referred to as DB), January, 2002, prepared by the staff of the Sentencing Commission, available on the Commission’s Web site.

<sup>8</sup> It is important to recognize that the 100:1 disparity is not necessarily reflected in empirical reality of sentences imposed. DB (Figure 3) shows that Federal crack offenders get sentences that are only about 50% higher than cocaine offenders. But those sentences are complex aggregates of cases that differ in many ways, and it is difficult to discern how the sentences of comparable offenders would compare.

<sup>9</sup> See Cork, Daniel, Examining space-time interaction in city-level homicide data: Crack markets and the diffusion of guns among youth. *Journal of Quantitative Criminology* (December 1999) 15(4): 379-406.

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## ALFRED BLUMSTEIN

ALFRED BLUMSTEIN is a University Professor and the J. Erik Jonsson Professor of Urban Systems and Operations Research and former Dean (from 1986 to 1993) at the H. John Heinz III School of Public Policy and Management of Carnegie Mellon University. He is also director of the National Consortium on Violence Research (NCOVR), funded by a five-year, \$12 million grant from the National Science Foundation.

He has had extensive experience in both research and policy with the criminal justice system since serving the President's Commission on Law Enforcement and Administration of Justice in 1966-67 as Director of its Task Force on Science and Technology.

Dr. Blumstein was a member of the National Academy of Sciences Committee on Research on Law Enforcement and the Administration of Justice from its founding in 1975 until 1986. He served as Chairman of that committee between 1979 and 1984, and has chaired the committee's panels on Research on Deterrent and Incapacitative Effects, on Sentencing Research, and on Research on Criminal Careers. He was a member of the Academy's Commission on Behavioral and Social Sciences and Education from 1994-2000. In 1998, he was elected to membership in the National Academy of Engineering.

On the policy side, Dr. Blumstein served from 1979 to 1990 as Chairman of the Pennsylvania Commission on Crime and Delinquency, the state's criminal justice planning agency. He served on the Pennsylvania Commission on Sentencing from 1986-96.

His degrees from Cornell University include a Bachelor of Engineering Physics and a Ph.D. in Operations Research. He was awarded an honorary degree of Doctor of Laws by the John Jay College of Criminal Justice of the City University of New York.

He was President of the Operations Research Society of America (ORSA) in 1977-78, he was awarded its Kimball Medal "for service to the profession and the society" in 1985, and its President's Award in 1993 "for service to society." He was president of the Institute of Management Sciences (TIMS) in 1987-88 and was President of the Institute for Operations Research and the Management Sciences (INFORMS) in 1996. He is a Fellow of the American Association for the Advancement of Science (AAAS).

Dr. Blumstein is a Fellow of the American Society of Criminology, was the 1987 recipient of the Society's Sutherland Award for "contributions to research," and was the president of the Society in 1991-92. At the 1998 meeting of the ASC, he was presented with the Wolfgang Award for Distinguished Achievement in Criminology.

His research over the past twenty years has covered many aspects of criminal-justice phenomena and policy, including crime measurement, criminal careers, sentencing, deterrence and incapacitation, prison populations, demographic trends, juvenile violence, and drug-enforcement policy.



# The Notorious 100:1 Crack: Powder Disparity—The Data Tell Us that It Is Time to Restore the Balance



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This paper is an  
extension of testimony  
delivered to the United  
States Sentencing  
Commission on  
February 21, 2002.

## I. Introduction

No other feature of the Federal Sentencing Guidelines has been viewed more critically than the 100:1 crack-powder cocaine disparity built into the guidelines because of the requirement in the Federal Anti-Drug Abuse Act of 1986. The disparity is particularly distressing because crack defendants are primarily black and powder defendants are primarily white and Hispanic, so the differential treatment can too easily be seen as a manifestation of racial discrimination. Thus, there have been efforts in many quarters to call attention to this concern and to drastically diminish or eliminate this disparity.

It is important to understand the context of the drug market situation during 1986 when the Act was passed. It was a time of considerable expansion in the marketing of a technological innovation — crack, that made the “pleasures” of cocaine available at a much lower price per hit than previous products. That led to a major growth in demand and activity in inner-city street markets. Competition among sellers in these markets was marked by violent turf battles rather than advertising campaigns. At the same time, there was major effort directed at incarcerating the sellers, which encouraged the resilient markets to recruit replacements. Often, these replacements were juveniles, and since sellers in street markets had to carry handguns to protect themselves against robbers, handgun violence among juveniles increased sharply. This raised widespread concern in the political arena to “do something” about the problem of increasing seriousness. Understandably, the Congress did what it knows best how to do — raise the sanction level when it doesn’t have any other demonstrably effective approach. That didn’t necessarily solve the problem, but it did alleviate the pressure to “do something.”

In 2003, seventeen years after passage of the Act, the situation of crack and crack markets has changed considerably. The demand for crack by new users has declined appreciably, the activity in street markets has correspondingly declined since the older, addicted users can be served privately, and the level of violence associated with crack has diminished. Also, some of the preconceptions about the pharmacological effects of

crack on its users and especially on “crack babies” born to crack-using mothers have been shown to be misconceived and not markedly different from powder cocaine, and appreciably less serious to the fetus than alcohol.

Thus, when the situation that gave rise to the initial disparity has changed, that warrants reconsideration of the disparity. In this paper, I would like to examine some of the situations that prevailed in the mid-1980s and examine how they have changed in 2003, and perhaps that re-examination will lead to a willingness to reconsider the disparity. An important part of that re-examination involves consideration of the empirical facts regarding the growth of incarceration, especially for drug crimes; the changes in the rates of violence from the time when the legislation was originally passed, the peak in 1993, and today; and especially the degree to which the growth of violence was an unintended consequence of the growth in incarceration for drug crimes. One cannot intelligently address these issues without examining the data that bear on them.

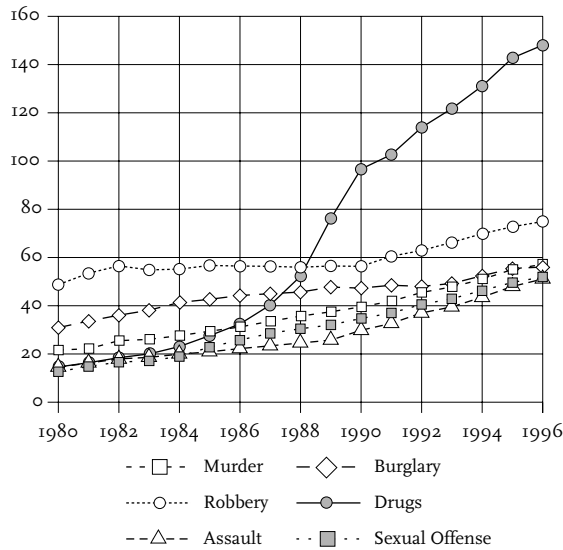
## II. Some Background Data on Violence and Drug Markets

In the mid-1980s, prisons were filling up with drug offenders. Figure 1 provides a clear indication of this growth,<sup>1</sup> with the incarceration rate for drug offenses increasing by a factor of 10 from 1980 to 1996. In my Presidential Address<sup>2</sup> to the American Society of Criminology in 1992, I argued that that growth was not likely to have much effect on drug markets because the resilient drug markets were quite able to recruit new sellers to replace those sent to prison and even those deterred from drug selling because of the draconian sentences being imposed. As a result, drug transactions would continue to respond to the articulated demand, and so the number of transactions averted through incarceration would be negligibly small as long as the demand persists.

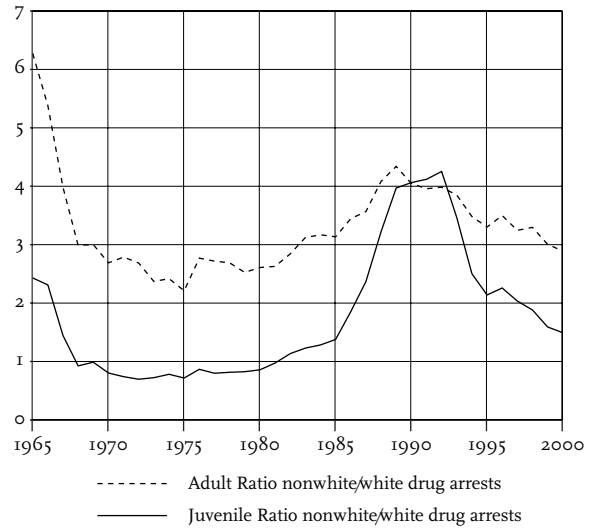
It was only subsequently that I came to appreciate that the massive incarceration was not only ineffective, but was seriously counter-productive. The young people recruited as replacements in the crack markets were primarily African-American youth drawn from inner-city areas who had little opportunity in the legitimate

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**Figure 1**  
Total Prison Population per 100,000 Adult Residents by Year



**Figure 2**  
Ratio of Nonwhite to White Arrests for Drugs: Adults and Juveniles

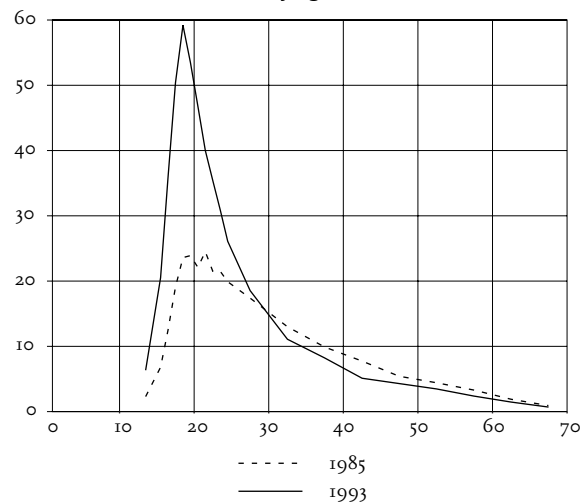


economy at the time. This recruitment is indicated in Figure 2, which displays the ratio of drug arrests of nonwhites compared to those of whites; here, we see that the ratio for adults began to climb in the early 1980s, whereas that for juveniles didn't begin to climb until 1985 (as the prisons were filling with the older sellers) and reached a peak of four times that of whites from 1989 until 1992, and then began a sharp decline as the demand for crack by new users dried up in the mid-1990s.<sup>3</sup> Since the youths were recruited primarily for street markets, they had to carry handguns to protect themselves against street robbers. One characteristic of these young folks was that they were far more volatile in their use of guns than the older people they replaced. Not only were these replacements a violence problem, but because of the tight networking among young people (remember the sneakers epidemics of the 1970s), their carrying guns gave rise to a major diffusion of handguns from these drug-market recruits to their friends, and on out into the larger community.<sup>4</sup> The data bearing on that diffusion process was documented by Daniel Cork,<sup>5</sup> who showed that a sharp rise in arrests of juveniles for drug offenses was followed by a sharp rise in arrests of juveniles for homicide, but with a one- to three-year lag. That diffusion of handguns was the major factor contributing to the rise of violence that began in about 1985, reached a peak in 1993, and has been declining since.

One of the important features of the rise in homicide from 1985 to 1993 was the narrow population group that contributed to it. For young people, that rise was considerable. This shift is reflected in the data presented in Figure 3, the classic age-crime curve. The figure depicts the age-specific arrest rate (arrests at each age divided by the population of that age) for homicide. The lower curve depicts the pattern for 1985, which was

typical of the previous fifteen years, and the upper curve shows how much that had changed by 1993, when homicide rates reached their peak.<sup>6</sup> Comparison of the two curves clearly shows that the entire growth was attributable to young people under 25. Indeed, the 1993 curve is seen to be *below* the 1985 curve for all the ages above 30. Thus, over this period, when the national homicide rate increased by about 25 percent, the increase among the young people was sufficiently great that it overcame the decrease among the older people.

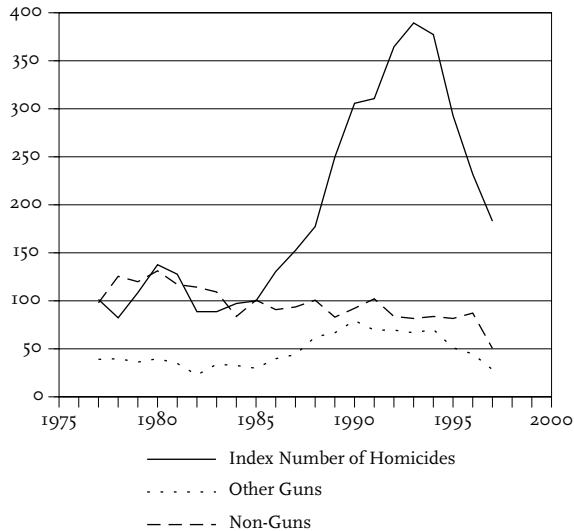
**Figure 3**  
Murder Arrest Rate by Age in 1985 and 1993



Another important feature of the young people's increase was the form of weaponry involved. The data in Figure 4 were drawn from homicide-incident reports compiled in the FBI's Supplementary Homicide Reports (SHR). The figure indicates the dramatic growth in the use of handguns by juveniles in homi-

cides.<sup>7</sup> The figure presents the index, with the use of handguns in 1985 set at 100, so all other values on the chart are relative to that index. This shows that juveniles used handguns in almost four times as many homicides in 1993 as they did in 1985. Over that time, there was a decrease in homicides with means other than guns and somewhat of an increase in homicides with long guns, but those changes were much smaller than the dramatic changes in handgun homicides.

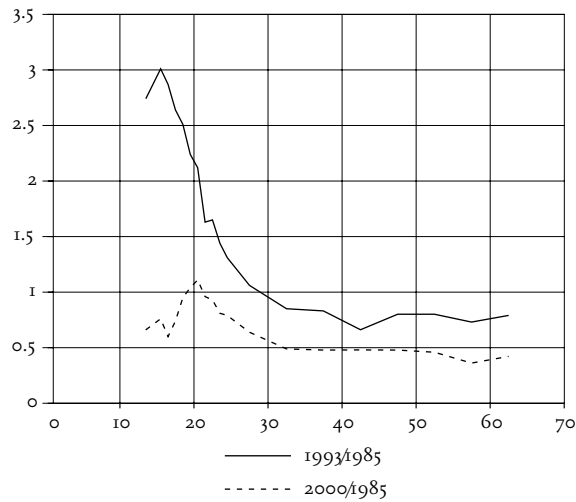
**Figure 4**  
Weapons Used in Homicides by Juveniles under 18  
Index Scale with Handguns in 1985 = 100



The current situation is very close to a complete restoration of the situation that prevailed in 1985. The data presented in Figure 5 depict the ratio of the age-specific homicide arrest rates compared to 1985. The upper curve is based on rates in 1993 (the peak year) compared to the rates in 1985. This graph is the ratio of the two age-crime curves presented in Figure 3. These data highlight the fact that homicide arrests for 15-year-olds tripled between 1985 and 1993, and that the rate more than doubled for all ages of 20 and under. We also note here that the ratio for all ages over 30 is about 0.8, so that the arrest rate for those ages has dropped about 20 percent below the rates that prevailed in 1985, an observation consistent with the observation noted in the age-crime curve.

The lower curve of Figure 5 presents the ratio of the homicide arrest rate by age in 2000 compared to 1985. The striking observation here is that the major rise of young people's rates that happened by 1993 was largely undone by 2000, and that the rates of homicide by these young people are now back to or below the rates that prevailed in 1985 for all ages.<sup>8</sup> The reasons for the recovery by 2000 involve a mixture of factors: the reduction in demand for crack by new users, thereby diminishing the role of and need for street markets, the diminished need for young people in the market, the availability of a robust economy that could absorb those

**Figure 5**  
Ratio of Arrest Rates for Murder by Age  
in 1993 and 2000 Compared to 1985



who might otherwise be in the market, aggressive policing targeted at young people's guns, and the deterrent effect on gun-carrying of that aggressiveness. All of these factors led to a de-escalation of carrying after 1993 that mirrored the escalation that began in about 1985. That de-escalation is reflected in the steady decline of the number of juvenile handgun homicides in Figure 4<sup>9</sup> after the 1993 peak.

### III. The Crack-Powder Disparity

This background of a dramatically changing violence environment, especially involving young people, associated with the rapid growth of crack markets in the 1980s provides some indication of the level of public anxiety—and hence the political panic in which the crack-powder distinction was enacted in the Federal Anti-Drug Abuse Act of 1986. That act introduced the 100:1 disparity between the 5 grams of crack and the 500 grams of powder requiring a 5-year mandatory-minimum sentence. The feature that makes this distinction particularly troublesome is the fact that crack is dealt primarily by blacks (85% of federal crack offenders are black), whereas powder cocaine is dealt primarily by whites (18%) and Hispanics (51%).<sup>10</sup>

The 100:1 disparity is widely seen as a blatant demonstration of racial discrimination by the criminal justice system.<sup>11</sup> Similar concerns surround racial profiling in police stops and racial disproportionality in prison, but in neither of these kinds of situations is the disparity so explicitly built into the law. Also, the racial difference in the outcomes could have legitimate explanations for the disproportionate consequences they produce: disparate police stops could possibly be explained by racial differences in the involvement in the offenses being checked for.<sup>12</sup> The vigorous challenges against racial profiling have been widely responded to in most quarters. The racial disproportionality in prison could be associated with differential involvement in the

crimes leading to prison.<sup>13</sup> Thus, the crack-powder disparity contributes in an especially powerful way to a serious challenge to the legitimacy of that system.

This disparity is crying for careful reconsideration, at a minimum because of the powerful symbolic import of the difference. That reconsideration should focus on issues of culpability of people arrested for drug offenses, their role in the distribution hierarchy (particularly the degree to which they are the “king-pins” against whom the rhetoric surrounding severe sentences is almost always focused), and especially the societal harm associated with their involvement. The disparity would be seen as far more legitimate if these were the considerations involved rather than minor chemical differences in the substances involved.

#### **A. Societal Harm and Violence**

The first and probably most important basis for reconsideration relates to the issue of societal harm, specifically the violence associated with the marketing of crack, especially at the time the Congress introduced the original 100:1 disparity. But, as with all illegal drugs, that difference in violence is far less associated with the pharmacological nature of crack and its behavioral effects than with the nature of its markets. We have to understand that market, both in its initial years and how it has changed in recent years.

Crack came on the scene in the early 1980s as an important technological innovation that made cocaine pharmacology available to a stratum of society that could afford a hit-at-a-time purchase of crack but did not have the capital to buy powder in its minimum available quantities. That innovation started initially in the coasts, particularly New York City and Los Angeles, and worked its way into the center of the country.<sup>14</sup> As with any innovation that significantly expands the size of the market, there was vigorous competition for a share of that growing market. However, as with all illegal markets that are denied access to civil dispute-resolution mechanisms, that competition often shows itself in the use of violence against competitors.

Also, the means and locus of distribution contributed to the growth of violence. First, the aggressive marketing of crack, particularly to the new customers, typically took place in street markets, most often located in the poorest neighborhoods of the city, neighborhoods where violence is much more common than in the more affluent neighborhoods where powder would be more likely to be sold. Also, the participants in street drug markets need their own protection against street robbers, who might see these markets as prime targets because their victims would not be likely to call for help from the police. Thus, those in the street markets were likely to carry a handgun for self-protection, and the presence of these handguns inevitably escalated the level of violence in any disputes.

Finally, the dynamics of the market’s response to the

massive incarceration of drug violators became a major factor in the late 1980s and early 1990s: recruitment of young people as replacements for the crack dealers sent to prison, arming of these volatile individuals, and diffusion of guns to their friends, and resort to the traditional mode of teen-age dispute resolution — fighting — but with much more lethal consequences because of the nature of the weapons that had suddenly appeared.

Thus, for all these reasons, we saw considerably more violence associated with crack during its early years, and that difference may well have provided the rationale behind the disparity in the mandatory minimums. But that situation has changed considerably. The nation’s violence rates are now well down, lower than they have been for over 35 years. As shown in Figure 5, the rates of violence by young people are down to or below the level they started at in 1985. The crack markets have matured with the decline in the number of new users, and so there is no longer a need for the young participants (see the rapid decline in drug arrests of non-white juveniles after 1993 in Figure 2). It is much easier to sell to established customers, sellers’ market shares have largely stabilized, and police have been effective in getting the guns out of the hands of the kids.

In particular, the US Sentencing Commission’s report demonstrates the low level of violence currently associated with the marketing of either drug, and shows the negligible difference between them. No weapons were involved in 82 percent of the powder cases and in 75 percent of the crack cases, and there was no bodily injury in 91 percent of the powder cases and in 88 percent of the crack cases. Death occurred at the same level (3.4 percent) in both sets of cases.<sup>15</sup> Thus, these data show that the crack cases do have somewhat more involvement of weapons and more bodily injury, but these differences are very small, and certainly less than enough to warrant major discrepancy in treatment based on the drug involved.

While there may still be slightly more violence associated with crack markets, it seems to make little sense to associate the penalty with the chemical composition of the drug. It seems so much more appropriate to associate the penalty with the violent behavior itself. Thus, the Commission’s proposal to provide sentencing enhancements for gun carrying — and especially for gun *use* — seems to carry out that concern with a principle that is so much more appropriate than associating it with the drug involved.

#### **B. Role of Offenders in the Distribution Network**

The principle of culpability should apply much more strongly to those high in the distribution hierarchy and whose distribution scope is national as opposed to local. In this context, there are important differences in the roles in the drug markets that are played by Federal

crack defendants. The US Sentencing Commission reports that 67 percent of the crack cases in 2000 involved street-level dealers, but only 29 percent of the powder dealers. On the other hand, 31 percent of the powder cases involved mules, but only 2 percent of the crack cases.<sup>16</sup> Thus, 69 percent of the crack cases were clearly low-level defendants, whereas 59 percent of the powder cases were low level. For these two low-level functions, however, crack defendants' sentences were twice as long as the powder defendants'.

The geographic scope of activities by the crack dealers reflects their predominant low-level function: 75 percent of the Federal crack cases involved sales in a neighborhood or city, whereas only 37 percent of the powder cases were that confined. In contrast, the powder cases covered larger units, and 33 percent involved international transactions.<sup>17</sup> Thus, based on these role considerations alone, the sanction for powder should be appreciably higher than for crack. But, as with violence, any such distinctions should be based on the role and behavior of the individual offender through sentencing enhancements rather than through the chemistry of the drug.

### III. Mandatory-Minimum Sentencing Laws

The mandatory-minimum sentencing laws being considered here were representative of the widespread practice of legislatures during the late 1970s and 1980s to demonstrate their toughness on issues that concerned the public. In many cases, these political acts were taken with little regard to the benefits that might be derived, and with even less regard to the unintended consequences that might result. Indeed, one of the motivations underlying the creation of sentencing commissions was to provide an institutional arrangement that would give careful deliberation to the level of sentence that is most appropriate for a particular class of offense and offender broadly defined, to provide a coherent structure that reflects the seriousness of the offense and the offender, and that would provide enough flexibility for the individual judge dealing with a particular case to address those relevant factors not incorporated in the guidelines. Indeed, a number of the state legislatures created their sentencing commissions in the 1980s as a blocking action against the then faddish mandatory minimums.<sup>18</sup> In their calmer moments, they realized the inappropriateness of the political passions that so often drive sentencing decisions by a legislative body. This can happen after a particularly heinous crime has captured the headlines. It can also happen when the public becomes sufficiently concerned about some crime problem that it demands some action by the political system; if there is nothing obvious to do, then the legislature can always resort to passing a mandatory-minimum sentencing law. Regardless of whether it does any good in addressing the crime problem, it has indeed seemed to work in at

least temporarily satiating the public's demands. This has certainly been the case with the drug mandatories. When the early two-year mandatories didn't work, then they were cranked up to five years, and then to ten years, never with any clear or careful assessment of what good—or harm in terms of the replacements recruited—they did.

It does appear that the political passions that fueled the passage of many mandatories—especially in the drug area—have cooled considerably. This is reflected in the passage in California of Proposition 36 calling for community treatment in preference to incarceration for drug offenders. Similar moves are under way in a number of other states. The pressure to make such changes results from a combination of fiscal problems faced by the states and a growing recognition of the ineffectiveness—often pure futility—of the often-draconian mandatory-minimum sentencing laws. I have for a long time advocated sunseting mandatory-minimum sentencing laws because I have been skeptical that legislatures would be willing to risk being labeled “soft on crime” by repealing them.<sup>19</sup> At least, with sunseting, the law would have to be reconsidered after some period of time, and the ineffective ones left to disappear quietly in the absence of a strong reason to extend them. It is encouraging to note that Michigan has repealed its mandatory-minimum laws,<sup>20</sup> and that a number of states are similarly considering a move to a more rational and coherent approach to sentencing policy.

### IV. Summary

I have tried here to highlight the concern about the most distressing and embarrassing 100:1 disparity in the sentencing guidelines for crack compared to powder cocaine. Since the rationale for the original disparity may have been attributed to differences in the violence associated with the respective drugs in 1986 at the time of original passage of the Act, it is important that the advocates of retaining the disparity recognize that those differences occurred as a result of the nature of the markets at the time much more than as a result of any pharmacological differences between the drugs. Data from the late 1980s and early 1990s clearly showed the growth of violence, but data after the 1993 peak show that the recent evolution of the crack markets has significantly lowered the level of violence that characterized their early years. The data clearly show that there is currently very little difference between the violence associated with crack and that associated with powder. Also, it seems much more rational to use sentencing enhancements to punish those who use violence regardless of the drug they are dealing than to base the sentencing difference on the chemical itself. Similarly, enhancements should account for an offender's role in the distribution hierarchy. If that were done, it becomes apparent that federal powder cocaine offenders should



fare even worse than crack offenders. Thus, with appropriate use of enhancements for those aspects of drug markets that are of particular concern, I see no clear reason why there should be any difference in sentencing guidelines between crack and powder.

The United States Sentencing Commission has proposed raising the crack level from 5 grams to “at least” 25 grams, thus reducing the disparity from 100:1 down to 20:1.<sup>21</sup> Thus, while it is clearly a move in the right direction, this shift is less than a major concession to reasonableness. Perhaps the sanctions for crack and powder might be equalized at some future time, using enhancements for whatever operational differences might remain. That would be an important step in diminishing the widespread concern of racial discrimination in the criminal justice system.

I would also hope that the Congress would capitalize on the growing national enlightenment on drug policy to at least sunset its drug-related mandatory-minimum sentencing laws if it is unwilling to repeal them outright. I am confident that such an action would lead to widespread appreciation by all those concerned with developing more rational sentencing policy.

#### Notes

- <sup>1</sup> Figure 1 is taken from Blumstein, Alfred, and Allen J. Beck, “Population Growth in U.S. Prisons, 1980–1996” (1999) in *Prisons*, vol. 26 of *Crime and Justice*, (Michael Tonry and Joan Petersilia, eds.), University of Chicago Press, Chicago, IL, pp. 17–61. It depicts the growth of incarceration rate by crime type in state prisons, a ten-fold increase from 1980 to 1986. Drug offenders comprise over 20 percent of state prisoners and over 60 percent of Federal prisoners.
- <sup>2</sup> See Blumstein, Alfred “Making Rationality Relevant—The American Society of Criminology Presidential Address” (1993), *Criminology*, Vol 31, No. 1, pp. 1–16.
- <sup>3</sup> See Johnson, Bruce, Andrew Golub, and Eloise Dunlap, “The Rise and Decline of Hard Drugs, Drug Markets, and Violence in Inner-City New York,” Chapter 5 in Blumstein, Alfred, and Joel Wallman (eds.), *The Crime Drop in America*, (2000), Cambridge University Press, Cambridge, England.
- <sup>4</sup> These issues were introduced in Blumstein, Alfred, “Youth Violence, Guns, and the Illicit-Drug Industry” (1995) *Journal of Criminal Law and Criminology* Volume 86, No. 4, pp. 10–36.
- <sup>5</sup> See Cork, Daniel, “Examining space-time interaction in city-level homicide data: crack markets and the diffusion of guns among youth.” (1999) *J Quantitative Criminology* 15(4): 379–406.
- <sup>6</sup> The data for the age-crime curve are drawn from arrest data in the FBI’s Uniform Crime Reports (for the numerator) and

age-specific population from Census data (for the denominator).

- <sup>7</sup> These issues are developed in Blumstein and Wallman, *op cit.*, See especially Chapter 2, “Disaggregating the Violence Trends”
- <sup>8</sup> The rates for the ages over 30 have continued to decline, and are now about half what they were in 1985.
- <sup>9</sup> These issues are discussed in detail in Blumstein and Wallman, *supra* note 3, and summarized in Chapter 1 of the book
- <sup>10</sup> Data from United States Sentencing Commission, *Report to the Congress: Cocaine and Federal Sentencing Policy* May 2002, at 63, Table 3.
- <sup>11</sup> It is important to recognize that the 100:1 disparity is not necessarily reflected in empirical reality of sentences imposed. The US Sentencing Commission report (*supra*, note 10 at 35, Figure 3) shows that Federal crack offenders have recently been getting sentences that are about 50% higher than cocaine offenders. But those sentences are complex aggregates of cases that differ in many ways, and it is difficult to discern how the sentences of comparable offenders would compare. Indeed, there are certainly indications that crack offenders tend to have much lower roles in the market—predominantly street dealers.
- <sup>12</sup> See especially the papers, Fagan, Jeffrey, “Law, Social Science, and Racial Profiling” pp.103–129 and Ayres, Ian “Outcome Tests of Racial disparities in Pollice Practices” pp.131–142 in *Justice Research and Policy* 4 (Fall 2002), Special Issue on Police Data Collection
- <sup>13</sup> For some discussion of this issue, see Blumstein, Alfred, “On the Racial Disproportionality of United States’ Prison Populations” (1972), *Journal of Criminal Law and Criminology* 73 (3) and “Racial Disproportionality of U.S. Prison Populations Revisited” (1993), *University of Colorado Law Review*, (64) 3, pp. 743–760.
- <sup>14</sup> See Cork, *supra* note 5.
- <sup>15</sup> US Sentencing Commission report *supra* note 10 at 54–56, Tables 17 and 19
- <sup>16</sup> *Id.* at 39, Figure 6
- <sup>17</sup> *Id.* at 41–43, Figures 7 and 8.
- <sup>18</sup> I personally know that an important motivation in introducing the legislation creating Pennsylvania’s sentencing commission (the second commission created, following Minnesota’s) was an attempt to pre-empt a variety of mandatory-minimum bills that were then pending.
- <sup>19</sup> See, for example, Blumstein, Alfred, “Prisons” at 418 in James Q. Wilson and Joan Petersilia, eds., *Crime* (1995) ICS Press: San Francisco
- <sup>20</sup> See “Michigan to Drop Minimum Sentence Rules for Drug Crimes”, *New York Times*, December 2, 2002.
- <sup>21</sup> That ratio is consistent with a proposal made earlier by Senators Hatch and Sessions. Unlike the Commission proposal, the Hatch and Sessions approach would include a decrease in the amount of powder cocaine needed to trigger the mandatory penalty and a smaller increase in the amount of crack needed to trigger the mandatory.