

**TESTIMONY**

**of**

**Chuck Canterbury  
National President,  
Grand Lodge, Fraternal Order of Police**

**at a Public Hearing  
before the  
United States Sentencing Commission**

**on**

**Federal Cocaine Sentencing Policy**

**14 NOVEMBER 2006**

Good morning Mr. Chairman, Vice Chairmen Castillo, Sessions and Steer, and distinguished members of the United States Sentencing Commission. My name is Chuck Canterbury, National President of the Fraternal Order of Police, the largest law enforcement labor organization in the United States, representing more than 324,000 law enforcement officers. The FOP has previously addressed the Commission on the issue of the disparate penalties associated with crack and powder cocaine offenses and this morning, I am here to provide our views on the current U.S. Sentencing Guidelines for cocaine offenses. I appreciate the Commission giving the FOP this opportunity.

Drug abuse and narcotics trafficking in the United States has always been a top concern of our nation's law enforcement agencies. But in the 1980s, our nation experienced an explosion in violence that was fueled almost entirely by the emergence of crack cocaine-- a cheaper, more dangerous form of the drug, which was revealed to have a devastating psychological and physiological effect on its users. The rapid spread of crack cocaine's use and availability in our nation's major cities caught many of us in the law enforcement community by surprise, particularly the increased number of related crimes and the violence on the part of drug dealers trying to protect their turf and users who were willing to do anything to pay for their next fix. As a result, drug-related crime became our nation's number one source of crime and law enforcement's number one priority.

Congress moved quickly to confront this violence and the ongoing threat of crime and addiction by giving law enforcement the tools they needed to combat drug traffickers and dealers. Measures like the Anti-Drug Abuse Acts of 1986 and 1988 put stiffer penalties into place for those who would bring the poison of drugs and violence into our neighborhoods and communities. In the experience of the FOP, tougher penalties work. They worked in the 1980s and 1990s and were a very significant factor in the ability of law enforcement to counter the "crack" explosion. Mandatory minimum sentences, especially those which take into consideration the type of drug, the presence or use of firearms, the use or attempted use of violence, mean longer sentences for the worst offenders. The lessons law enforcement learned in fighting the "crack wars" of the 1980s have been applied to other anti-narcotic and anti-crime strategies and have proven to be effective. As recently as this year, Congress adopted the Combat Meth Act which provides enhanced sentences for persons smuggling methamphetamines or the precursor chemicals needed to manufacture this drug into the United States, for persons who function as meth "kingpins" and for those who manufacture or deal the drug where children live or are present. According to local and State law enforcement, the abuse and manufacture of methamphetamines is the number one law enforcement problem in the nation and Congress has acted to give us the tools we need to bring this problem under control by using the success we had in fighting crack as a model.

The current sentencing guidelines for cocaine offenses are based primarily on the quantity of the drug in the possession of the defendant at the time of his arrest and the law does make a significant distinction between the possession of crack and cocaine in its powder form. Under current guidelines, a person convicted of distributing 500 grams of powder cocaine or 5 grams of crack cocaine receives a mandatory 5-year sentence, and a 10-year sentence for those convicted of distributing 5,000 grams of powder or 50 grams

of crack. This Commission and Congress has considered the impact of this disparity on several occasions. In a report to Congress in 1997 required by Public Law 104-38, this Commission recognized that some drugs “have more attendant harms than others and that those who traffic in more dangerous drugs ought to be sentenced more severely than those who traffic in less dangerous drugs.” The FOP believe that the evidence demonstrates that crack cocaine does in fact inflict greater harm to both the user and to environment—the communities—in which it is available. One such example is that while only 22% of all cocaine users use crack cocaine, they represented 72% of all primary admissions to hospitals for cocaine usage in the past year.

The Commission’s findings in the 1997 report also stated that crack cocaine is more often associated with systemic crime, is more widely available on the street, is particularly accessible to the most vulnerable members of our society, and produces more intense physiological and psychotropic effects than the use of powder cocaine. As a result, Federal sentencing policy must reflect the greater dangers associated with crack and impose correspondingly greater punishments. The FOP agrees strongly with this assessment. Anyone who has ever seen a child or adult addicted to crack, or talked to the families who are forced to live locked inside their own homes for fear of the crack dealers who rule their streets, would also agree with this statement.

There are, however, other factors which should go into the sentencing of those convicted of crack-powder cocaine offenses. The Commission notes that some have suggested that proportionality in drug sentences could be better served by providing enhancements that target offenders who engage in aggravating conduct, and by reducing the penalties based solely on the quantity of crack cocaine to the extent that the Drug Quantity Table already takes aggravating conduct into account. For example, possession of 5 grams of crack is currently assigned a base offense level of 26, which translates into a sentence of between 63 and 78 months for individuals with 0 to 1 Criminal History Points. The Commission has previously considered a differentiation regarding the use and possession of firearms in drug-related offenses, and providing sentencing enhancements for the distribution of drugs at a protected location or to underage or pregnant individuals. We believe that the sentencing guidelines should include additional aggravating factors—the presence of firearms or children, use or attempted use of violence are a few examples--in the determination of a final sentence. However, these and other enhancements should continue to be in addition to a reasonable mandatory minimum sentence that is based first and foremost on the quantity of the controlled substance as provided for under current law.

The FOP has heard and appreciates the concerns of some regarding the 100:1 drug quantity ratio for crack cocaine and powder cocaine offenses. As I mentioned previously, we testified before this Commission on that very issue several years ago and we continue to reject proposals which would “fix” this disparity by *decreasing* the penalties which have proven to be effective in law enforcement’s fight against crack cocaine. We hold that this approach is at variance with common sense and strongly disagree with the assumption that 5- and 10-year mandatory sentences should be targeted only at the most serious drug offenders. The so-called “low level dealer,” who traffics in small amounts

of either powder or crack cocaine, is no less of a danger to the community than an individual at the manufacturing or wholesale level. Despite the fact that these individuals may represent the bottom of the drug distribution chain that does not necessarily translate into a decrease in the risk of violence that all too often accompanies these offenses, or in the serious threat they pose to the safety of our children and the quality of life in our communities. A 2002 report published by this Commission stated that “the majority of crack cocaine and powder cocaine offenders performed low-level trafficking functions” and that “aggravating factors occurred more often in crack cocaine cases than in powder cocaine cases.” The most recent report from the Arrestee Drug Abuse Monitoring (ADAM) Program indicates that in four major metropolitan areas (Miami, Phoenix, Seattle, and Tucson), the number of transactions in the crack market was much larger than in the powder cocaine and marijuana markets. In these sites, the estimated size (measured in dollars) of the crack cocaine market in a 30-day period was 2 to 10 times larger than the size of the powder cocaine and marijuana markets. The range among these sites in the market size of crack cocaine was about \$226,000 to \$1,400,000.

Powder cocaine, while the same in some respects to crack cocaine, does not have the same impact on a community, nor is it associated with the same type of related crime. The efforts of law enforcement to control it must be different as well. The Fraternal Order of Police would support *increasing* the penalties for offenses involving powder cocaine through a reduction in the quantity of powder necessary to trigger the 5- and 10-year mandatory minimum sentences, thereby decreasing the gap between the two similar offenses and addressing the concerns of those who question the current ratio without depriving law enforcement with the tools they need to control the possession, use, and sale of powder cocaine.

There are other reasons to support an increase in the penalties associated with cocaine-related offenses. In its 1995 report on “Cocaine and Federal Sentencing Policy,” the Commission wrote that the Drug Enforcement Administration noted that in prior years some wholesale distributors who initially handled crack cocaine were moving to distribute powder cocaine to avoid the “harsh Federal sentencing guidelines that apply to higher-volume crack sales.” More recently, in its 2002 edition, the Commission noted that while average prison sentence for someone convicted of possessing crack cocaine has remained fairly static from 1992 to 2000 (an average of 118 months), the average prison sentence for someone found violating the powder cocaine statutes has decreased from 99 months in prison to 74 months in prison—that is 40 percent less than those convicted of possession of crack cocaine. The FOP would strongly oppose attempts to equalize the outcome by decreasing the average time served for crack cocaine offenses, as we believe such an approach would harm the overall effort to keep drugs off the street and violence out of our communities.

The dangers associated with both crack and powder cocaine have not completely disappeared. In fact, the opposite is true. The most recent available information indicates that cocaine is still the primary drug involved in Federal arrests. Between 1 October 2004 and 11 January 2005, there were 1,205 Federal offenders sentenced for crack cocaine-related charges in U.S. Courts, approximately 95% of which involved

crack cocaine trafficking. Between January 12, 2005 and September 30, 2005, there were 4,077 Federal offenders sentenced for crack cocaine-related charges in U.S. Courts, approximately 95.3% of which involved trafficking.

The National Survey on Drug Use and Health (NSDUH) reports that the rate of past year use for cocaine (powder and crack combined) among individuals aged 12 and older (2.4%) has remained stable since 2002. Yet this percentage is still unacceptably high and its use is higher than that for methamphetamine (0.6%) or heroin (0.2%). Among adults, NSDUH data show that rates of past year use for cocaine among young adults (aged 18 to 25) are stable but remain the highest among all age groups.

It is also telling that the number of treatment admissions to publicly funded facilities for cocaine has decreased since the mid-1990s despite increased access to drug treatment. Cocaine is the *only* major drug of abuse for which treatment admissions have decreased.

This year alone, more than 5.5 million Americans will use cocaine, and 872,000 will try it for the first time. Similarly, 1.4 million Americans will use crack cocaine and 230,000 will try it for the first time. These are very disturbing numbers. And despite indications that cocaine production has stabilized since 2002, U.S. law enforcement authorities seized 196 metric tons of cocaine in 2005—a five year high.

All of this information argues strongly against any “step back” in the U.S. Sentencing Guidelines in the fight against cocaine traffickers, dealers, and users.

The Fraternal Order of Police supports tough penalties for all drug-related offenses. Each illegal drug carries with it different effects on their users, as well as different problems associated with their manufacture and distribution. One thing is clear, however, although our nation has seen across the board reductions in crime rates in recent years, early data analysis suggests that we will see a significant increase in homicides, aggravated assaults and robberies in 2006. The relationship between drugs and crime is well-documented and further analysis of the impending increase in the crime rate will certainly provide further information about the negative effect narcotics have on our society. Our nation’s law enforcement community, along with this Administration, the Congress and the Commission must continue to send the message to drug dealers and traffickers that the Federal government will deal harshly with those who continue to deal in drugs and engage in the violence that goes hand-in-hand with the drug trade.

The FOP appreciates the invitation of the U.S. Sentencing Commission to appear today and we look forward to working with you as you consider any changes to the sentencing guidelines for cocaine or other drug-related offenses. On behalf of the membership of the Fraternal Order of Police, let me thank you again, Mr. Chairman and the Commission, for the opportunity to appear before you here today.

I would be pleased to answer any questions you may have at this time.