

NLWJC - Kagan

DPC - Box 010 - Folder 009

Crime - Crack Sentencing [1]

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letter

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Days - crack sentencing



Jose Cerda III

03/13/98 11:17:14 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Bruce N. Reed/OPD/EOP
cc: Laura Emmett/WHO/EOP, Leanne A. Shimabukuro/OPD/EOP
Subject: Revised Crack Memo

EK/BR:

Attached please find the revised crack memo in BR's name, in case you want a last look. In brief, changes include:

1. EK's line edits;
2. BR's suggestion that reason #3 be moved up to reason #1;
3. BR's suggestion that we add a line to be more sympathetic (intro to paragraph #2); and
4. A final line recommending POTUS ask Judge O to build support for our proposal.

Jose'



CRACKSEN.

March 13, 1998

MEMORANDUM FOR THE PRESIDENT

FROM BRUCE REED

RE: Proposal on Sentencing Certain Drug Offenders

Attached is a proposal from U.S. District Judge Oberdorfer for you to issue an Executive Order creating a "blue ribbon" panel empowered to commute the sentences of certain drug offenders in the Federal Bureau of Prisons. He specifically suggests that such a panel consider the cases of individuals convicted of being crack "couriers" or "cookers" (those who convert powder cocaine to crack) and grant them clemency after serving the powder equivalent of their sentences if they hold the promise of living crime- and drug-free lives. Taking such action, Judge Oberdorfer believes, would go a long way towards addressing the disparity between federal crack and powder cocaine sentences.

Although we share Judge Oberdorfer's concerns about the unfairness of federal crack penalties, we would recommend against his proposal for several reasons. First, we believe much of what Judge Oberdorfer wants to accomplish overlaps with the mandatory minimum "safety valve" that passed as part of the 1994 Crime Act. This provision allowed federal judges to exempt certain drug offenders from mandatory minimum penalties if: (1) they did not have a significant criminal history; (2) they did not use violence, possess a firearm or commit serious injury; (3) they did not play a lead or organizing role; and (4) they provided information about the offense to the government. At the time of passage, the U.S. Sentencing Commission estimated that about 600 drug offenders would be immediately eligible for this exemption.

Second, we believe his proposal is too broad. Our crack sentencing proposal increases the trigger for mandatory minimum sentences for crack from 5 to 25 grams, so that lower-end dealers are not subject to mandatory minimums. By contrast, Judge Oberdorfer's recommendation is not limited to offenders within the lower-end range. We would recommend against any proposal that changes sentencing for mid- and upper-level dealers.

Third, Members of Congress would undoubtedly contest any executive action you take to reduce sentences for crack defendants. Already, key Republicans (Senators Lott, Hatch, Abraham, and Speaker Gingrich) have strongly criticized the Administration's proposal to reduce the disparity between crack and powder cocaine sentences by increasing the trigger for crack. Instead, Republicans are threatening to pass legislation, for which they have bipartisan support, that simply reduces the trigger for powder cocaine. We believe then that any Executive Order you sign on this controversial subject will be overturned by legislation -- either a stand-alone bill or an amendment to juvenile crime legislation or ONDCP's reauthorization bill.

We recommend instead that you ask Judge Oberdorfer to help build support in Congress for the Administration's crack sentencing proposal.

Drugs - crack sentencing



Jose Cerda III

03/09/98 02:40:15 PM

Record Type: Record

To: Peter G. Jacoby/WHO/EOP

cc: See the distribution list at the bottom of this message

Subject: Crack Letter

PJ:

Attached please find the revised letter on crack. Rahm has still not gotten back to me on it, but DPC, WH Counsel and ONDCP have signed off. Also, I've asked Kent about it several times, but not heard back. You may want to double check w/him -- but Rahm's reaction is the key piece we need.



CRACK.LT

Message Copied To:

Leanne A. Shimabukuro/OPD/EOP
Michelle Crisci/WHO/EOP
Elena Kagan/OPD/EOP
Bruce N. Reed/OPD/EOP
Karen A. Popp/WHO/EOP
Charles A. Blanchard/ONDCP/EOP

--- D R A F T ---

March x, 1998

Trent Lott
Majority Leader
United States Senate
Washington, DC

Dear Mr. Leader:

Thank you for your letter regarding crack cocaine sentencing. I am pleased that you, Senator Hatch, and Senator Abraham all agree that the current differential between crack and powder cocaine penalties is too great and creates unfairness. I also appreciate your willingness to support legislation to correct this unfairness.

As you know, Attorney General Reno and General McCaffrey have recommended to me that the current penalties for crack and powder cocaine trafficking should be revised by: (1) significantly reducing from 500 to 250 grams the amount of powder cocaine required to trigger tough mandatory sentences; and (2) slightly increasing from 5 to 25 grams the amount of crack cocaine required to trigger the same sentence. Such a revision would reduce the current sentencing differential by 90 percent, maintain stiff penalties for all cocaine traffickers, and target federal law enforcement resources to mid- and high-level traffickers. This is a sound recommendation, and I hope you will reconsider your concerns and work with Attorney General Reno and General McCaffrey on this issue.

If we are truly committed to building on the success we have had in fighting crime and drugs over the past 5 years, however, we need to do much more than revise federal cocaine sentences. We need to tackle the larger problem of gangs, guns and drugs head on. That is why I strongly urge you and your colleagues to enact the following proposals this year:

(1) Juvenile Gangs. I have called for comprehensive juvenile crime legislation that would target gangs and violent juveniles by: helping communities hire new prosecutors and expand anti-gang task forces; establishing gun and drug courts to promote tough and appropriate punishment for juveniles; and expanding the use of federal racketeering statutes against gang members and curbing witness intimidation by gangs.

(2) Kids and Guns. Juvenile access to firearms is at the heart of our youth crime and drug problem. The number of juveniles killing with guns quadrupled between 1984 and 1994, and more teenagers now die from

gunshot wounds than all natural causes combined. That is why I have proposed banning violent juveniles from owning guns when they become adults, and that is why my budget includes \$28 million for the Bureau of Alcohol, Tobacco and Firearms (BATF) to crack down on illegal gun traffickers.

(3) Drug Strategy. This month General McCaffrey and I released an unprecedented National Drug Control Strategy with the goal of cutting drug use and availability in half. Among other things, the Strategy includes more funds to: make sure that kids get the anti-drug message every time they turn on the television, surf the "net," or listen to the radio; expand and improve the Safe and Drug-Free Schools programs; hire 1,000 new border patrol agents and help close the door on drugs at the Southwest Border; hire new DEA agents to crackdown on methamphetamine and heroin; and help states demand that drug offenders remain drug-free through testing and treatment

(4) After School Programs. Keeping schools open later to provide youth with adult supervision between the hours of 3 and 8 p.m. -- when most violent youth crimes are committed -- must also be a part of our effort to reduce juvenile crime and drug use. Just this past month, more than 170 police chiefs, sheriffs, and prosecutors called on the federal government to increase support for such efforts. That is why my budget proposes quadrupling funds for Department of Education-sponsored after school programs, as well as including after school initiatives as part of our juvenile crime legislation.

Again, thank you for your letter. I hope we will be able to work together on all of these issues before the 105th Session of Congress adjourns.

Sincerely,

01/30/98 FRI 20:17 FAX

JAN-30-98 FRI 05:18 PM

JAN 30 '98 17:01 FR

Drug-crack sentencing

Post-It™ Fax Note	7671	Date	1/30/98	# of pages	1
To	JOSE	From	KENT		
Co./Dept		Co.			
Phone #		Phone #	514-3008		
Fax #	456-7029	Fax #			

P. 02

United States Senate

WASHINGTON, DC 20510

January 29, 1998

*To: SCENA
Fr: JOSE
JPR*

President Bill Clinton
The White House
Washington, DC 20500

Dear Mr. President:

We are writing to request that you reconsider your support for legislation lowering the penalties for dealing crack cocaine. As our nation continues to struggle to reduce teen drug use and to control drug related violence, we are convinced that now is not the time to lower sentences for drug dealers.

We understand that your proposal takes root in the U.S. Sentencing Commission's recommendation to increase the amount of crack cocaine a person may sell before triggering five year and ten year minimum prison sentences. The Sentencing Commission is concerned that because a significant majority of those subject to mandatory minimums for dealing crack are African-American, and because crack dealing brings stiffer sentences than does dealing in powder cocaine (an enterprise predominantly engaged in by whites), current sentencing structures give the appearance of unequal justice. But this reasoning is incorrect for several reasons:

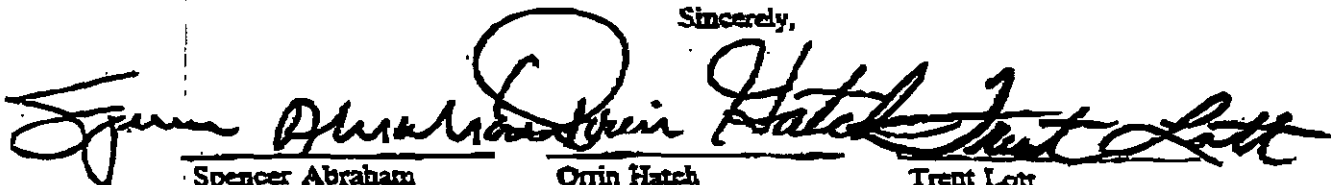
- Your own proposal and the Sentencing Commission's study of the matter recognize that there are strong grounds for having a significant differential in the sentences for dealing the same quantity of crack and powder cocaine, in light of crack's greater addictiveness, attractiveness to younger potential users, and association with violence.
- While we agree that the current differential is too great and creates some unfairness, we do not need to lower crack sentences to reduce that differential. Indeed, as explained in the attached letter from two former Attorneys General and two former drug czars, there are many strong reasons not to do so. Such a reduction would also send a dangerous message to the young people among whom drug use has until very recently been skyrocketing. We can instead reduce the differential by relying exclusively on increased sentences for dealing powder cocaine.
- Moreover, the Commission gave no consideration to and indeed did not examine the possible impact that lowering penalties for the sale of crack would have on the rate of violent crime. This is despite the fact that there is near unanimous agreement that the significant drop in that rate is linked to the nation's halting the spread of the crack epidemic, which took place after the current sentencing structure was put in place.

- In addition, according to the Sentencing Commission's own statistics, it appears that raising the triggers would *increase* the proportion of African-Americans subject to mandatory minimums for dealing crack cocaine. Had the proposal been in effect between October 1995 and September 1996, the proportion of African Americans subject to a mandatory 5 year minimum would have increased slightly, from 82.8 to 85.2 percent.
- Finally, from our meetings with concerned individuals, we are convinced that what parents of any race care about is not the race of the person offering drugs to their children, but preventing any drug dealer from getting their children hooked. We have heard that concern expressed with particular vigor by those who live in the less affluent neighborhoods that have been most threatened and disrupted by the crack trade and the violence associated with it. To quote Reverend Eugene F. Rivers, the co-chair of the National Ten Point Leadership Foundation in inner-city Boston: "To confuse the concerns of crack dealers with the broader interests of the black community is at best inane and at worst immoral. Those who are straining to live in inner-city neighborhoods that are most adversely affected by the plague of crack, and who witness crack's consequences firsthand, want [crack dealers] taken off the streets for the longest period of time possible."

None of this is to argue that the current sentencing structure for cocaine should remain unchanged. In our view, however, the right way to change it is not to cut crack dealers a break but rather to stop cutting the powder dealers one. Powder is the raw material for crack, yet sentences for (predominantly white) powder dealers were set before the crack epidemic, without accounting for powder's role in causing it. Moreover, we occasionally see a large powder supplier get a lower sentence than the low-level crack dealer who resold some powder in crack form, simply because the powder dealer took the precaution of selling his product only in powder form. That is a genuine disparity that should be remedied.

Two years ago, Mr. President, you signed into law a bill blocking an earlier proposal by the Sentencing Commission to lower crack sentences, explaining "I am not going to let anyone who peddles drugs get the idea that the cost of doing business is going down." We urge you to return to this reasoning, reject lower crack sentences, and embrace the kinds of stiff penalties for drug dealers needed to protect our families, our children and our neighborhoods from the scourge of cocaine.

Sincerely,

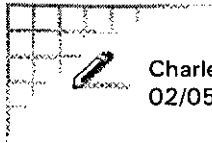


Spencer Abraham
United States Senate

Orrin Hatch
United States Senate

Trent Lott
United States Senate

Crime
Days - Crack sentencing



Charles A. Blanchard
02/05/98 05:31:44 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP, Karen A. Popp/WHO/EOP, Elena Kagan/OPD/EOP

cc:

Subject: Crack Cocaine

As you ponder how to respond to the Lott/Hatch/Abraham letter to the President, I thought you should be aware of the following (some of which you probably already know):

- Sen. Abraham's bill (S. 260) reduces the threshold for the 5 year mandatory for powder cocaine from 500 grams to 100 grams. The ten year mandatory threshold for powder is reduced from 5 kilograms to 1 kilogram. The bill has 14 co-sponsors, including Senators Feinstein and Robb. Mary Harkenrader from DoJ told me that Torricelli also sign-on, but I could not confirm this fact.
- The DoJ is updating its prison impact assessment of this bill. The most recent assessment is that this bill would increase prison costs by \$200 million in the first year, and impose cumulative costs of \$1.5 billion in the first ten years. Whether the cost will have any political impact in light of our present budgetary environment, of course, is doubtful at best.
- Senator Lott's chief counsel Steve Seale told us that the Republicans intend to move the Abraham bill, and suggested that they may want to link the ONDCP reauthorization bill to the bill.
- Director McCaffrey believes that the letter to the President means that there is absolutely no hope of moving the Administration's crack cocaine initiative. Instead, while we should not retreat from that initiative, the Administration's energies should be focused on defeating the Abraham proposal instead of pushing the Administration's proposal. He has asked me to come up with a strategy to do so.

Any thoughts? Once you have had a chance to think about this, I propose that we get together the key players from DoJ, ONDCP and the WH.

--- D R A F T ---

February X, 1998

Trent Lott
Majority Leader
United States Senate
Washington, DC

DRAFT

Dear Mr. Leader:

Thank you for your letter regarding crack cocaine sentencing. I am pleased that you, Senator Hatch, and Senator Abraham all agree that the current differential between crack and powder cocaine penalties is too great and creates some unfairness. I also appreciate your willingness to support legislation to correct this unfairness.

As you know, Attorney General Reno and General McCaffrey have recommended to me that the current penalties for crack and powder cocaine trafficking should be revised by: (1) significantly reducing from 500 to 250 grams the amount of powder cocaine required to trigger tough mandatory sentences; and (2) slightly increasing from 5 to 25 grams the amount of crack cocaine required to trigger the same sentence. Such a revision would reduce the current sentencing differential by 90 percent, maintain stiff penalties for all cocaine traffickers, and target federal law enforcement resources to mid- and high-level traffickers. This is a sound recommendation that does not differ greatly from Senator Abraham's proposal to reduce the sentencing differential by 80 percent. I hope you will reconsider your concerns and work with Attorney General Reno and General McCaffrey on this issue.

But let us be honest; if we are truly committed to building on the success we have had in fighting crime and drugs over the past 5 years, we need to do much more than tinker with federal cocaine sentences. We need to take the larger problem of gangs, guns and drugs head on. That is why I strongly urge you and your colleagues to consider the following proposals:

(1) Juvenile Gangs. Last year, I issued an Anti-Gang and Youth Violence Strategy calling for comprehensive juvenile crime legislation that would target gangs and violent juveniles by: helping communities hire new prosecutors and expand anti-gang task forces; establishing gun and drug courts to promote swift and certain punishment for juveniles; expanding the use of federal racketeering statutes against gang members and curbing witness intimidation by gangs; and keeping schools open later to provide youth with adult supervision between 3 and 8 p.m. -- when most violent youth crimes are committed.

(2) Kids and Guns. Last week, Juvenile access to firearms is at the heart of our youth crime and drug problem. Teenage homicides by firearms tripled between 1984 and 1994, and the number of juveniles actually killing with guns quadrupled during the same period.

That is why I have proposed banning violent juveniles from owning guns when they become adults, and that is why my budget includes \$28 million for the Bureau of Alcohol, Tobacco and Firearms (BATF) to crackdown on illegal gun traffickers.

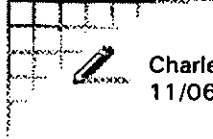
(3) Drug Strategy. This month General McCaffrey and I released an unprecedented National Drug Control Strategy with the goal of cutting drug use and availability in half. Among other things, the Strategy includes more funds to: make sure that kids get the anti-drug message every time they turn on the television, surf the "net," or listen to the radio; expand and improve the Safe and Drug-Free Schools programs; hire 1,000 new border patrol agents and help close the door on drugs at the Southwest Border; hire new DEA agents to crackdown on methamphetamine and heroin; and help states demand that drug offenders remain drug-free through testing and treatment

Again, if you are truly concerned about juvenile crime and drug use, I urge you to take action on these crucial issues before the 105th Session of Congress adjourns.

Sincerely,

DRAFT

Prings - ONDCP reauthorization
and
Crime-crack sentencing



Charles A. Blanchard
11/06/97 02:31:01 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP, Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP

cc:

Subject: ONDCP Update

I was in Baltimore with the Director, and so was unable to attend the crime meeting. Here are highlights about ONDCP activity:

1. Reauthorization: The Hatch/Biden ONDCP reauthorization bill (which closely tracks the Administration bill) passed the Senate Judiciary Committee today. We expect a full Senate vote as early as tonight (but more likely tomorrow). We do not expect a conference before recess as they will likely recess before the beginning of next week. Critically, the Senate bill includes no hard targets. Sen. Coverdale added some reporting obligations that we (and Justice, OMB, etc) do not like, but all in all the bill is a good one. OMB is working on the SAP that strongly supports the bill, but notes several desired amendments.
2. Nominations: The Senate Judiciary Committee is holding hearings this afternoon on the nominations of Robert Warshaw for the State & Local Associate Director position, and Tom Umberg for the Supply Deputy position. All indications are that the nomination of Warshaw will be easy. We expect Grassley to focus on the fact that Tom Umberg received lots of Indian Tribe contributions when he ran for Attorney General of California. The contributions were legal. I will report at the end of the hearing.
3. Performance Measures: John Carnevale is still sick at home with a kidney infection. I will call Leanne to set a briefing once John is back on his feet. I am told by John that we finally received comments from the Department of Justice, which will be incorporated in the next version of the performance measurement system. Again, John can give you the details once he returns.
4. Crack cocaine: Liz Fine of DoJ will revise the Strategy document to conform with the suggestions made at our meeting at the OEOB. the revised document will then be presented to McCaffrey and the AG. We expect agreement by both principals. Nick Gees from DoJ Inter-governmental affairs and Dennis Greenhouse from our office have begun implementing the plan's contact with law enforcement groups. Dennis and I will be meeting with the National Association of Counties on Friday. Dennis raised the issue at the recent meetings of the International Association of chiefs of Police and National Organization of Blacks in Law Enforcement (NOBLE), and received surprisingly positive responses from both groups..

DRAFT

The Clinton Administration Crack-Powder Initiative
November 1997

I. Overview

In July 1997, a Department of Justice, Office of National Drug Control Policy (ONDCP), and White House Working Group was formed to develop and implement a strategy to advance the Administration's proposal to reduce the disparity in sentences for crack and powder cocaine offenses from the current 100 to one disparity down to 10 to one.

Initially, the Working Group worked to generate support for the Administration's proposal among key members of Congress and congressional staff -- including Judiciary Committee members, moderate Democrats and Republicans, and members of the Congressional Black Caucus. The goal was to push for enactment of the Administration's proposal during this Congressional session.

Based upon the feedback the Working Group has received so far, it is clear that many members of Congress agree that there is a need to address the current disparity in crack and powder sentences. They are, however, sharply divided on the question of how to address this disparity.

Current legislative proposals to address the crack and powder sentencing disparity fall into two categories: reducing the disparity by increasing powder penalties or reducing the disparity by cutting crack penalties so that they are equivalent to powder penalties. The Administration's proposal falls squarely in the center of these two extremes, but at the present time there is no movement toward any compromise position or centrist approach, such as that proposed by the Administration.

On the basis of information now available, the Working Group has reconsidered the present strategy to focus on this congressional session and recommends a shift to a longer-term strategy designed to build support for the Administration's proposal and to stave off other proposals that could actually impede federal anti-drug efforts. The revised plan is a one to two year plan -- recognizing that it will take time to build sufficient support in Congress to pass the Administration's proposal and that there may be a need to oppose legislation in the 1998 Congressional session.

Public interest in the crack and powder cocaine disparity is likely to continue in the coming year. The Supreme Court recently granted certiorari in a criminal case, Edwards v. U.S., involving conspiracy to distribute powder and crack cocaine. Although the Court is not expected to address the sentencing disparity issue directly, because the case involves crack cocaine sentencing, we expect it to generate some level of public

interest in the sentencing disparity issue. A National Institute of Justice report on homicide rates and their link to crack cocaine has and may again put the public spotlight on crack cocaine sentences as well. The report, not yet formally released, but summarized in The New York Times, suggests that there is a link between crack and homicide and as crack use has declined so to have homicide rates. The report is said to credit longer prison sentences as being among the factors that have contributed to the decline in homicide rates.

II. Steps Taken to Date

Over the past two and a half months, the Department of Justice and ONDCP have taken the following steps to advance the Administration's proposal in Congress:

- The Working Group identified Members of Congress who are key to the resolution of the crack/powder cocaine sentencing issue.
- The Working Group developed talking points and materials for members of Congress and their staffs.
- Justice Department and ONDCP staff have provided briefings on the Administration's proposal for staff of the House and Senate Judiciary Committees.
- ONDCP Director McCaffrey and Deputy Attorney General Eric Holder have met with members of the House and Senate to discuss the Administration's proposal.
- The Working Group has reached out to former United States Attorneys under President Bush and to other former law enforcement officials to secure their support for the Administration's position.

III. Implementing A Longer-Term Strategy to Advance the Administration's Proposal

The Working Group has developed a revised strategy to advance the Administration's proposal and law enforcement interests over the course of the next session of Congress and during the 106th Congress. The strategy aims to continue to build support in Congress and to secure the backing of outside opinion leaders and organizations that are influential with members of Congress.

A. Continued Outreach in Congress

The Administration will continue to work directly with members of Congress and their staff to provide information about

the crack-cocaine issue, monitor legislative and other Hill activities, and to secure support for the Administration's proposal.

First, we will set up appropriate meetings and phone calls for Attorney General Janet Reno and General McCaffrey. At this time, we propose that the Attorney General and General McCaffrey speak with Senators Abraham and possibly DeWine.

Second, Deputy Attorney General Holder, individual United States Attorneys, DOJ and ONDCP senior staff, and other Administration spokespersons will continue to work with Members on this issue.

B. Line up Support Among Influential Opinion Leaders

Leaders in the law enforcement and civil rights communities can be tremendously helpful to the Administration in advancing the crack cocaine initiative. These individuals have respect in communities across the country and with members of Congress. We will reach out to former United States Attorneys General, former heads of the Drug Enforcement Administration and of the ONDCP, as well as to civil rights leaders to ask them to join in our effort to improve the fairness and efficiency of our nation's drug laws. In particular, we will seek the support from Reggie Walton, former DEA head, Jack Lawn and Robert Bonner, former ONDCP Directors, Gov. Martinez and Lee Brown, as well as former Attorneys General Bell and Ben Civiletti.

C. Outreach to Organizations Outside the Government

A central component of the longer-term strategy to build support will involve work with outside law enforcement organizations, civil rights groups, and organizations that represent state and local governments.

1. Administration Spokespersons

First, the Attorney General and General McCaffrey will be the most effective Administration spokespersons with law enforcement and civil rights groups, as well as with representatives of state and local governments. The Working Group is now finalizing a draft letter that can be sent by the Attorney General and General McCaffrey to interested groups.

Other officials at the Department of Justice and throughout the Administration can also be extremely effective. Deputy Attorney General Eric Holder; Associate Attorney General Ray Fisher; the Administration's nominee to head the Civil Rights Division, Bill Lee; Assistant Attorney General for the Office of Policy Development, Eleanor D. Acheson; Assistant Attorney

General for the Office of Justice Programs, Laurie Robinson; Director of the Bureau of Justice Assistance, Nancy Gist; COPS Director Joe Brann; and many United States Attorneys, are all important spokespersons at the Department of Justice. Deputy Director Hoover Adger and soon to be nominated Associate Director Robert Warshaw are important spokespersons at ONDCP.

Second, Justice Department, ONDCP and White House staff should lay the ground work for and follow up on contacts made by senior Administration officials.

Third, the working group recommends that the Attorney General and Gen. McCaffrey send a memo to all DEA agents setting forth the Administration's position on crack and powder sentencing, why we have taken it and how it will support DEA enforcement operations. DEA agents can then communicate this to their counterparts in state and local law enforcement. The DEA is on the front line in the effort to control illegal drugs. DEA agents work with state and local law enforcement on a regular basis and it is essential that they understand how important the Administration's proposal is to the government's anti-drug strategy.

2. Outreach to Specific Groups

There are a number of groups that would be interested in the Administration's effort to reduce the sentencing disparity between crack and powder cocaine. These include state and local government organizations, law enforcement and civil rights groups and organizations that are involved in providing drug treatment and improving the criminal justice system. The following are specific organizations that the Administration should reach out to -- through contacts with the leadership and staff of the organizations; participation in board meetings and other annual meetings or organizational gatherings. In certain cases it will be useful to have General McCaffrey or Attorney General Reno speak to, meet with or write to the organization, and for the Administration to offer other spokespersons to speak on panels and meet with organization members.

• Organizations representing state and local governments

National League of Cities: This organization represents smaller cities and towns and has recently increased outreach activities in the minority community.

U.S. Conference of Mayors: The current chair, Paul Helmke (Ft. Wayne, IN), has focused "special cities" matters. It is unlikely that this body of elected local officials will involve itself to any great degree in the crack-cocaine issue; still it is important to educate and seek the support

of the organization. There may also be individual Mayors who would take a special interest in the issue.

National Association of Counties: This organization has limited resources but often takes an interest in issues that relate to crime or drug prevention and "fairness."

National Governors' Association: The National Governors Association is not likely to take an interest in the crack-powder issue. However, it is nonetheless useful to educate the organization about the Administration's position on federal sentencing laws for crack and powder cocaine.

National Council of Elected County Executives: While the issue of federal cocaine sentencing is somewhat removed from the scope of matters regularly taken up by the National Council of Elected County Officials, like the National Governors' Association, it would be useful to provide some background information to the group on the Administration's proposal.

National Black Prosecutors Association: This organization should be informed of the Administration's proposal and encouraged to consider the Administration's views.

- **Law Enforcement Organizations**

National Organization of Black Law Enforcement Executives (NOBLE): NOBLE supports a change in crack policy. The group applauded the Attorney General's announcement that the Administration too supported a change in crack policy. NOBLE has not, however, formally endorsed the Administration's proposal, and should be fully informed about the proposal and how the Administration arrived at a 10:1 position. This is a significant organization for the Administration in this effort.

Police Executive Research Forum: The Police Executive Research Forum would likely be interested in the crack and powder cocaine sentencing.

The Police Foundation - Although very small, the Police Foundation is an intellectual conscience for law enforcement. However, the organization rarely opines on legislative proposals.

National District Attorneys Association (NDAA) - While NDAA is not likely to become involved in this federal sentencing issue, we have strong ties to the organization and should offer to speak to and educate the group and its members on the crack and powder sentencing disparity issue. There may

also be individual district attorneys who are interested in working on the issue.

International Association of Chiefs of Police: Like NDAA, the International Association of Police Chiefs is not likely to become involved in this federal sentencing issue. However, individual chiefs of police may be interested in the Administration's proposal.

National Association of Police Organizations (NAPO): NAPO has not been interested in the issue of crack and powder sentencing. However, the organization is often supportive of Administration law enforcement policies and should be kept informed about the Administration's proposal and any action on sentencing for crack and powder cocaine.

Fraternal Order of Police: Like NAPO, the FOP has no significant interest in the Administration's proposal, but should be briefed and kept up to date on developments on the issue.

- **Civil Rights Groups**

Leadership Conference for Civil Rights: The Leadership Conference is an umbrella organization that is already involved in other criminal justice issues (victims, hate crimes, police misconduct). It would be useful to provide information and seek the organization's support for the Administration's proposal on crack and powder.

NAACP Legal Defense Fund: The NAACP Legal Defense Fund is a strong advocate for crack equalization. However, the organization is comprised of excellent litigators who understand the complexity of the crack and powder cocaine issue and the political hurdles faced in any effort to obtain equalization.

National Urban League: The National Urban League is often willing to listen to varying points of view and is likely to give the Administration a fair hearing on the crack/powder sentencing proposal.

Congress of National Black Churches: The Congress of National Black Churches is likely to be interested in learning about the Administration's crack proposal.

National Council of La Raza: La Raza is a civil rights group that works primarily with and on behalf of the Hispanic community and is likely to be interested in the Administration's proposal on crack and powder sentencing.

Mexican American Legal Defense Fund (MALDEF): Like the National Council of La Raza, MALDEF works with the Hispanic community and is likely to be interested in the Administration's proposal and its effect on the MALDEF constituency.

- **Drug Treatment and Related Organizations**

There are several drug treatment and other organizations that may be willing to review the Administration proposal on crack and powder cocaine. These organizations include the National Coalition on Alcoholism and Other Drug Issues, the Legal Action Center, the National Association of Drug Abuse Counselors, the criminal defense bar, and the Sentencing Project.

3. Upcoming Meetings and Events

The following upcoming meetings offer the opportunity for the Administration to discuss and share information about crack and powder cocaine sentencing:

December 3, 1997 Sacramento, CA: Justice and Public Safety in the 21st Century: Building the Justice Enterprise.

December 7, 1997 Phoenix, AZ: The National TASC Conference on Drugs & Crime.

December 8, 1997 Washington, DC: The Prison Population Projection and Forecasting Workshop.

D. **Communications Strategy**

The Working Group recommends a communications strategy that, at least initially, is focused on media outlets with targeted audiences. In particular, we recommend that the Attorney General and General McCaffrey author articles for the following types of publications:

- **Journals/Magazines targeted to Law Enforcement Groups:** Most of the law enforcement organizations listed above have magazines that might welcome an article on the Administration's proposal. Additionally, each of these groups have local affiliates that publish newsletters that might welcome a short article or letter.
- **Journals/Magazines targeted to the Legal Community:** The legal community -- particularly members of the criminal defense bar -- should be a target of a communications strategy. Magazines published by the American Bar Association, state and county bar organizations, and national and state criminal defense bar groups should be

interested in this issue.

- **Magazines/Newsletters published by drug treatment groups:** As with the law enforcement groups, most of the drug treatment organizations have publications that might publish an article or letter on this issue.
- **Newspapers for the African-American Community:** We recommend the use of op-eds in newspapers that have a large African-American readership.

The Working Group also recommends that we seek supportive editorials from key newspapers. Several of these newspapers have already published supportive editorials. We should keep these newspapers informed of any developments, and seek supportive editorials should any adverse legislation begin to move in Congress.

The Working Group recommends that mass media (such as radio and TV) not be used until we have first achieved strong support from the groups targeted by our intergovernmental affairs strategy. An aggressive media campaign could increase the risk of a bad result. At least initially, the proposal is most effectively presented in personal meetings with key decision makers.

Encouraging aggressive media coverage of this issue will favor the proponents of increasing penalties for powder -- and not adjusting penalties for crack -- because our more nuanced message will not sell as well as the "tough on crime" opposition message in an age of sound bites. At some point, of course, we hope to achieve sufficient support in Congress and among our targeted groups to allow a more aggressive media strategy. At this time, however, our communications strategy must be more focused on obtaining the support of individuals and groups that will be essential to our ultimate success.

DRAFT**DRAFT****DRAFT**

The Clinton Administration Crack-Powder Initiative
October 1997

I. Overview

In July 1997, a Department of Justice, Office of National Drug Control Policy (ONDCP), and White House Working Group was formed to develop and implement a strategy to advance the Administration's proposal to reduce the disparity in sentences for crack and powder cocaine offenses from the current 100 to one disparity down to 10 to one.

Initially, the Working Group worked to generate support for the Administration's proposal among key members of Congress and congressional staff -- including Judiciary Committee members, moderate Democrats and Republicans, and members of the Congressional Black Caucus. The goal was to push for enactment of the Administration's proposal during this Congressional session.

Based upon the feedback the Working Group has received so far, it is clear that many members of Congress agree that there is a need to address the current disparity in crack and powder sentences. They are, however, sharply divided on the question of how to address this disparity.

Current legislative proposals to address the crack and powder sentencing disparity fall into two categories: reducing the disparity by increasing powder penalties or reducing the disparity by cutting crack penalties so that they are equivalent to powder penalties. The Administration's proposal falls squarely in the center of these two extremes, but at the present time there is no movement toward any compromise position or centrist approach, such as that proposed by the Administration.

On the basis of information now available, the Working Group has reconsidered the present strategy to focus on this congressional session and recommends a shift to a longer-term strategy designed to build support for the Administration's proposal and to stave off other proposals that could actually impede federal anti-drug efforts. The revised plan is a one to two year plan -- recognizing that it will take time to build sufficient support in Congress to pass the Administration's proposal and that there may be a need to oppose legislation in the 1998 Congressional session.

II. Steps Taken to Date

Over the past two and a half months, the Department of Justice and ONDCP have taken the following steps to advance the Administration's proposal in Congress:

- The Working Group identified Members of Congress who are key to the resolution of the crack/powder cocaine sentencing issue.
- The Working Group developed talking points and materials for members of Congress and

their staffs.

- Justice Department and ONDCP staff have provided briefings on the Administration's proposal for staff of the House and Senate Judiciary Committees.
- ONDCP Director McCaffrey and Deputy Attorney General Eric Holder have met with members of the House and Senate to discuss the Administration's proposal.
- The Working Group has reached out to former United States Attorneys under President Bush and to other former law enforcement officials to secure their support for the Administration's position.
- The Working Group has made initial contact with several law enforcement and drug treatment groups to secure their support for the Administration's position.

III. Summary of Positions Taken by Key Members in the House and Senate

What follows is a summary of the views on the crack/powder sentencing issue taken by key members of Congress:

- **Senator Edward Kennedy:** Senator Kennedy supports a move toward equalization of crack and powder sentencing. At the present time, he is not prepared to support the Administration's position because he does not believe the proposal goes far enough toward equalization. At the time the Administration's proposal was announced, Senator Kennedy was working on a possible compromise proposal that would set the triggering amounts for the five year mandatory-minimum at 250 grams for powder cocaine and 50 grams for crack cocaine. According to his staff, Senator Kennedy does not believe it would be productive to move ahead on any compromise or equalization proposal during the current legislative session.
- **Senator Spencer Abraham:** Senator Abraham has taken the lead on the crack-powder disparity issue for Senate Republicans. Senator Abraham agrees that the disparity in penalties for powder and crack cocaine offenses needs to be addressed. However, he is firmly opposed to any proposal that would lower the penalty for crack cocaine offenses. Senator Abraham proposes a 20:1 ratio where the triggering amounts for the five year mandatory minimum provision would be 100 grams for powder cocaine offenses and 5 grams for crack cocaine offenses.
- **Senator Joseph Biden:** Senator Biden generally supports the approach taken by the Administration to address the crack and powder sentencing disparity. He has raised concern, however, about the Administration's ability to gain the necessary political support needed to enact the proposal into law.

- **Senator Mike DeWine:** Senator DeWine has shown a willingness to consider the law enforcement rationale for the Administration's proposal. While not taking a lead on the issue, Senator DeWine may be in a position to forge common ground among colleagues who bring disparate views to the issue.
- **Senator Orrin Hatch:** Senator Hatch has largely deferred to Senator Abraham on the issue of crack and powder sentencing. He has been a cosponsor of Senator Abraham's 20 to 1 proposal.
- **Senator Patrick Leahy:** Senator Leahy has deferred to Senator Kennedy on the issue of crack-powder sentencing.
- **Senator Jeff Sessions:** In a meeting with the Deputy Attorney General and Assistant Attorney General Fois, Senator Sessions did not support or outright oppose the Administration's proposal. As a former United States Attorney, Sessions understands the law enforcement rationale for the Administration's proposal. While aware of the political challenges faced by the Administration, he, like Sen. DeWine, may be in a position to forge compromise.
- **Representative Bill McCollum:** The Deputy Attorney General and Assistant Attorney General Fois met with Congressman McCollum. McCollum indicated that there are few, if any, votes on his side of the aisle on the Judiciary Committee for lowering crack sentences. He is inclined to address the disparity issue by increasing the penalties for powder cocaine offenses.
- **Representative Maxine Waters:** A leading advocate of equalization at the level of powder, Rep. Waters has not been swayed to date by the Administration's arguments on this issue.
- **Representative Sheila Jackson Lee:** In discussions with both the Deputy Attorney General and former U.S. Attorney Gaynelle Griffin Jones (S.D. Texas), Representative Jackson Lee has been willing to listen but did not commit her support to the Administration's proposal.
- **Representative Corrine Brown:** A proponent of equalization, Representative Brown does not think that the Administration's proposal goes far enough. In discussions with the Deputy Attorney General, Representative Brown has been receptive and has suggested that the Deputy Attorney General discuss the issue at a meeting of the Congressional Black Caucus.
- **House Judiciary Democrats:** Based on meetings with the minority staff of the House Judiciary Committee, it appears that the Democrats may be willing to work with us, but would first like some evidence that we have a good chance of success before they back

the Administration's proposal.

IV. Implementing A Longer-Term Strategy to Advance the Administration's Proposal

The Working Group has developed a revised strategy to advance the Administration's proposal and law enforcement interests over the course of the next session of Congress and during the 106th Congress. The strategy aims to continue to build support in Congress and to secure the backing of outside opinion leaders and organizations that are influential with members of Congress.

A. Continued Outreach in Congress

The Administration will continue to work directly with members of Congress and their staff to provide information about the crack-cocaine issue, monitor legislative and other Hill activities, and to secure support for the Administration's proposal.

First, we will set up appropriate meetings and phone calls for Attorney General Janet Reno and General McCaffrey. At this time, we propose that the Attorney General and General McCaffrey speak with Senators Abraham and possibly DeWine.

Second, Deputy Attorney General Holder, individual United States Attorneys, DOJ and ONDCP senior staff, and other Administration spokespersons will continue to work with Members on this issue.

B. Line up Support Among Influential Opinion Leaders

Leaders in the law enforcement and civil rights communities can be tremendously helpful to the Administration in advancing the crack cocaine initiative. These individuals have respect in communities across the country and with members of Congress. We will reach out to former United States Attorneys General, former heads of the Drug Enforcement Administration and of the ONDCP, as well as to civil rights leaders to ask them to join in our effort to improve the fairness and efficiency of our nation's drug laws. In particular, we will seek the support from Reggie Walton, former DEA heads, Jack Lawn and Robert Bonner, former ONDCP Directors, Gov. Martinez and Lee Brown, as well as former Attorneys General Bell and Ben Civiletti.

C. Outreach to Organizations Outside the Government

A central component of the longer-term strategy to build support will involve work with outside law enforcement organizations, civil rights groups, and organizations that represent state and local governments.

1. Administration Spokespersons

First, the Attorney General and General McCaffrey will be the most effective Administration spokespersons with law enforcement and civil rights groups, as well as with representatives of state and local governments. The Working Group is now finalizing a draft letter that can be sent by the Attorney General and General McCaffrey to interested groups.

Other officials at the Department of Justice and throughout the Administration can also be extremely effective. Deputy Attorney General Eric Holder; soon to be confirmed Associate Attorney General Ray Fisher; the Administration's nominee to head the Civil Rights Division, Bill Lee; Assistant Attorney General for the Office of Justice Programs, Laurie Robinson; Director of the Bureau of Justice Assistance, Nancy Gist; COPS Director Joe Brann; and many United States Attorneys, are all important spokespersons at the Department of Justice. Deputy Director Hoover Adger and soon to be nominated Associate Director Robert Warshaw are important spokespersons at ONDCP.

Second, Justice Department, ONDCP and White House staff should lay the ground work for and follow up on contacts made by senior Administration officials.

Third, the working group recommends that the Attorney General and Gen. McCaffrey send a memo to all DEA agents setting forth the Administration's position on crack and powder sentencing, why we have taken it and how it will support DEA enforcement operations. DEA agents can then communicate this to their counterparts in state and local law enforcement. The DEA is on the front line in the effort to control illegal drugs. DEA agents work with state and local law enforcement on a regular basis and it is essential that they understand how important the Administration's proposal is to the government's anti-drug strategy.

2. Outreach to Specific Groups

There are a number of groups that would be interested in the Administration's effort to reduce the sentencing disparity between crack and powder cocaine. These include state and local government organizations, law enforcement and civil rights groups and organizations that are involved in providing drug treatment and improving the criminal justice system. The following are specific organizations that the Administration should reach out to -- through contacts with the leadership and staff of the organizations, participation in board meetings and other annual meetings or organizational gatherings. In certain cases it will be useful to have General McCaffrey or Attorney General Reno speak to, meet with or write to the organization, and for the Administration to offer other spokespersons to speak on panels and meet with organization members.

- **Organizations representing state and local governments**

National League of Cities: This organization represents smaller cities and towns and has recently increased outreach activities in the minority community.

U.S. Conference of Mayors: The current chair, Paul Helmke (Ft. Wayne, IN), has focused "special cities" matters. It is unlikely that this body of elected local officials will involve itself to any great degree in the crack-cocaine issue; still it is important to educate and seek the support of the organization. There may also be individual Mayors who would take a special interest in the issue.

National Association of Counties: This organization has limited resources but often takes an interest in issues that relate to crime or drug prevention and "fairness."

National Governors' Association: The National Governors Association is not likely to take an interest in the crack-powder issue. However, it is nonetheless useful to educate the organization about the Administration's position on federal sentencing laws for crack and powder cocaine.

National Council of Elected County Executives: While the issue of federal cocaine sentencing is somewhat removed from the scope of matters regularly taken up by the National Council of Elected County Officials, like the National Governors' Association, it would be useful to provide some background information to the group on the Administration's proposal.

National Black Prosecutors Association: This organization should be informed of the Administration's proposal and encouraged to consider the Administration's views.

- **Law Enforcement Organizations**

National Organization of Black Law Enforcement Executives (NOBLE): NOBLE supports a change in crack policy. The group applauded the Attorney General's announcement that the Administration too supported a change in crack policy. NOBLE has not, however, formally endorsed the Administration's proposal, and should be fully informed about the proposal and how the Administration arrived at a 10:1 position. This is a significant organization for the Administration in this effort.

Police Executive Research Forum: The Police Executive Research Forum would likely be interested in the crack and powder cocaine sentencing.

The Police Foundation - Although very small, the Police Foundation is an intellectual conscience for law enforcement. However, the organization rarely opines on legislative proposals.

National District Attorneys Association (NDAA) - While NDAA is not likely to become involved in this federal sentencing issue, we have strong ties to the organization and should offer to speak to and educate the group and its members on the crack and powder sentencing disparity issue. There may also be individual district attorneys who are

interested in working on the issue.

International Association of Chiefs of Police: Like NDAA, the International Association of Police Chiefs is not likely to become involved in this federal sentencing issue. However, individual chiefs of police may be interested in the Administration's proposal.

National Association of Police Organizations (NAPO): NAPO has not been interested in the issue of crack and powder sentencing. However, the organization is often supportive of Administration law enforcement policies and should be kept informed about the Administration's proposal and any action on sentencing for crack and powder cocaine.

Fraternal Order of Police: Like NAPO, the FOP has no significant interest in the Administration's proposal, but should be briefed and kept up to date on developments on the issue.

- **Civil Rights Groups**

Leadership Conference for Civil Rights: The Leadership Conference is an umbrella organization that is already involved in other criminal justice issues (victims, hate crimes, police misconduct). It would be useful to provide information and seek the organization's support for the Administration's proposal on crack and powder.

NAACP Legal Defense Fund: The NAACP Legal Defense Fund is a strong advocate for crack equalization. However, the organization is comprised of excellent litigators who understand the complexity of the crack and powder cocaine issue and the political hurdles faced in any effort to obtain equalization.

National Urban League: The National Urban League is often willing to listen to varying points of view and is likely to give the Administration a fair hearing on the crack/powder sentencing proposal.

Congress of National Black Churches: The Congress of National Black Churches is likely to be interested in learning about the Administration's crack proposal.

National Council of La Raza: La Raza is a civil rights group that works primarily with and on behalf of the Hispanic community and is likely to be interested in the Administration's proposal on crack and powder sentencing.

Mexican American Legal Defense Fund (MALDEF): Like the National Council of La Raza, MALDEF works with the Hispanic community and is likely to be interested in the Administration's proposal and its effect on the MALDEF constituency.

- **Drug Treatment and Related Organizations**

There are several drug treatment and other organizations that may be willing to review the Administration proposal on crack and powder cocaine. These organizations include the National Coalition on Alcoholism and Other Drug Issues, the Legal Action Center, the National Association of Drug Abuse Counselors, the criminal defense bar, and the Sentencing Project.

3. Upcoming Meetings and Events

The following upcoming meetings offer the opportunity for the Administration to discuss share information about crack and powder cocaine sentencing:

November 4 and 5, 1997, in Baltimore, MD: The National Institute of Justice and the National Institute for Drug Abuse are holding a conference on crack cocaine.

November 4, 1997, in San Francisco, CA: SEARCH, the prime organization to deal with justice information and statistics.

November 5, 1997 Green Bay, WI: The National Conference for Community Leaders.

November 6, 1997 Washington, D.C.: Association for Public Policy Analysis and Management.

November 8, 1997 Dallas, TX: The International Association of Women Police.

December 3, 1997 Sacramento, CA: Justice and Public Safety in the 21st Century: Building the Justice Enterprise.

December 7, 1997 Phoenix, AZ: The National TASC Conference on Drugs & Crime.

December 8, 1997 Washington, DC: The Prison Population Projection and Forecasting Workshop.

D. Communications Strategy

The Working Group recommends a communications strategy that, at least initially, is focused on media outlets with targeted audiences. In particular, we recommend that the Attorney General and General McCaffrey author articles for the following types of publications:

- **Journals/Magazines targeted to Law Enforcement Groups:** Most of the law enforcement organizations listed above have magazines that might welcome an article on the Administration's proposal. Additionally, each of these groups have local affiliates that publish newsletters that might welcome a short article or letter.
- **Journals/Magazines targeted to the Legal Community:** The legal community --

particularly members of the criminal defense bar -- should be a target of a communications strategy. Magazines published by the American Bar Association, state and county bar organizations, and national and state criminal defense bar groups should be interested in this issue.

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Crime - crack sentencing

THE WHITE HOUSE
WASHINGTON

10/13/97

RAHM/BRUCE/ELENA -

PER MY COMMENTS TO BRUCE
+ ELENA - AND IN CASE
YOU MISSED THIS, RAHM -
ATTACH IS AN OP-ED
THAT MCGEEFREY SENT
TO THE DC TIMES.

DOJ WAS FURIOUS BECAUSE
THEY'VE SPENT WEEKS
PURSUING A QUIETER,
MORE SUBTLE STRATEGY.

John

BARRY MCCAFFREY 64

War on drugs and stereotypes

“Would you close your eyes for a second, envision a drug user, and describe that person to me?” This question appeared in a survey, the results of which were published in 1995 in the *Journal of Alcohol and Drug Education*. Ninety-five percent of respondents pictured a black drug user while only 5 percent imagined other racial groups.

The truth is: Most drug users in the United States are white. African-Americans constitute only 15 percent of current drug users. Before falsely stigmatizing any minorities, we should bear in mind that more whites than blacks use both forms of cocaine — crack and powder — according to the 1995 National Household Survey on Drug Abuse. Cocaine is a problem that affects the entire country.

The controversy over federal sentencing disparities between the two forms of cocaine contributes to racial tension. At present, federal

laws pertaining to crack cocaine are 100 times more severe than for powder cocaine. As a result of the 1986 Anti-Drug Abuse Act, a five-year minimum prison sentence is required for anyone possessing five grams of crack or 500 grams of powder cocaine.

By comparison, simple possession (no distribution intended) of small quantities of powder cocaine — on the part of first-time offenders — is only a misdemeanor punishable by no more than a year in prison. Because crack cocaine is less expensive and more common in inner cities, harsher punishment for crack has been interpreted as discrimination against blacks.

The current federal sentencing policy has produced disproportionately severe punishment for African-Americans. According to the most recent figures, African-Americans constitute 15 percent of cocaine users. However, 38 percent of those charged with powder cocaine violations, and 88 percent of those convicted of crack cocaine

charges, are black.

For crimes involving 50 to 150 grams of cocaine, crack defendants received median sentences of 120 months compared to 18 months for powder. Since nearly all cocaine is smuggled into our country and transported over state lines in powdered form, the federal sentencing disparity has produced long incarceration for low-level crack dealers rather than for international, interstate, and wholesale traffickers.

Attorney General Janet Reno and I reviewed the U.S. Sentencing Commission's proposals on cocaine. In response, we recommend that relative to federal mandatory sentences, the ratio for cocaine be changed to 25 grams for crack and 250 grams for powder. In other words, crack should be treated as 10 times worse than powder — not 100 times worse, as is currently the case. This difference would reflect the greater addictive potential of crack (which is smoked) compared to powder (when snorted) and the importance of targeting mid- and

1/2

high-level traffickers as opposed to small-scale dealers.

Our second recommendation is that mandatory minimums be abolished for simple crack possession. Among all controlled substances, crack is the only one with a federal mandatory minimum sentence for a first offense of simple possession.

Federal drug enforcement efforts should target drug distribution chains, particularly interstate and international traffickers. Federal agencies should also target midlevel dealers when they can provide information about drug distribution organizations.

Lower-level



Illustration by Bob Newman/LA Times Syndicate

crack dealers should be prosecuted by state and local authorities.

Our recommendations are based on the conclusion that we can't incarcerate our way out of the drug problem. Last year, our country's prison population grew by 55,796 to a record 1,182,169 inmates in federal and state systems. In the decade between 1985 and 1995, the number of prisoners with drug offenses as their most serious crime increased from 38,900 to 224,900 — an upsurge of 478 percent!

The proposed changes in federal sentencing policy reflect our continuing belief that incarceration is appropriate for drug traffickers, violent criminals, and repeat offenders. These recommendations also embody our conviction that the best thing to do with non-violent drug users is to get them off drugs so they can start productive lives.

We need to be smart, not soft, on crime.

Barry McCaffrey is director of the White House Office of National Drug Control Policy.

2/2

Crime-crack sentencing

THE WHITE HOUSE
WASHINGTON

RAHM / BRUCE / ELENA:

FYI - I NEED NOT
MENTION THAT I
AGREE ENTIRELY; THAT
DOJ'S INTERNAL ANALYSIS
CONFIRMS THE SAME;
AND THAT, AS RANDALL
KENNEDY HAS POINTED
OUT, THESE PENALTIES
WERE ORIGINALLY
PROPOSED + SUPPORTED
BY MEMBERS OF THE
BLACK CAUCUS.
Joe'

EMPOWER AMERICA

1776 I Street, NW, Suite 890
Washington, DC 20006
(202) 452-8200

The Honorable Orrin G. Hatch
Chairman
The Honorable Patrick J. Leahy
Ranking Member
United States Senate Committee
on the Judiciary
Washington, D.C. 20510

Founding Chairman
Theodore J. Forstmann

Co-Directors
Lamar Alexander
William J. Bennett
Jack Kemp
Jeanne J. Kirkpatrick
Vin Weber

Chairman
Thomas W. Weisel

Vice Chairman
Nicholas C. Forstmann

Directors
Joseph A. Cannon
Jamie B. Coulter
Steve Forbes
Congressman Newt Gingrich
Senator Trent Lott
Michael Novak
Dennis Prager
Julian H. Robertson, Jr.
Donald H. Rumsfeld
Judy Shelton
John Skoon
Ward W. Woods

Dear Senators Hatch and Leahy:

President Clinton has announced that he will ask you to relax sentences for trafficking in crack cocaine. We write to urge you and your colleagues to reject any such proposal.

Our position is a matter of public record - while we do not oppose stiffer sentences for trafficking in powder cocaine, we strongly oppose weakening sentences against the crack trade.

It seems obvious that crack sentences should not be reduced, given crack's impact on vulnerable inner-city populations (including an unprecedented proportion of female addicts). Moreover crack sentences are not, as you know, 100 times more severe than those for powder cocaine; that widely-cited figure is based on the so-called "trigger" amount for a given sentence. In fact, crack sentences range between two and six times longer than for a comparable quantity of powder. Such a differential is fully justified. After all, crack dealers have destroyed the fabric of peace and harmony in inner-city communities all over America. Crack use is associated with the explosion of especially horrifying child abuse cases in recent years. Many crack sellers are remorseless killers, and need to be taken off the streets.

Nor are crack sentences excessive in any absolute sense. A crack dealer has to traffic at least 50 grams - approximately 1,500 "rocks" -- to trigger the ten-year mandatory minimum. Selling 1,500 rocks of crack is an offense that easily merits ten years in jail. Indeed, the United States Sentencing Commission reports that in fiscal year 1996, the typical dealer convicted under federal law was caught selling 109 grams of crack -- the equivalent of more than 3,000 rocks. Federal crack defendants are also more likely than any other category of federal drug defendant to have a substantial criminal history.

Opponents of the current law argue that law enforcement snags mostly young, non-violent, minority defendants. In fact, very few federal crack defendants are low-level, youthful, and non-violent. Again, according to the Sentencing Commission, of the 3,430 crack defendants convicted in fiscal year 1994, just 51 were youthful, small-time offenders with no prior criminal history and no weapons involvement.

In other words, despite all the rhetoric, just one crack defendant out of 67 qualifies as youthful, non-violent, and low-level. And as you well know, under the so-called "safety valve" provision of the 1994 Crime Act, which overrides mandatory minimum penalties for certain first- or second-time offenders who did not use a firearm in connection with the offense, defendants similar to these 51 are now eligible for more lenient sentences. Even then, federal crack defendants are so unlikely to be low level, non-repeat offenders that, according to the Sentencing Commission, they are proportionately the least likely federal drug defendants to actually qualify for the safety valve.

These are the facts. Unfortunately, this debate is no longer about facts. It is about race.

Yet a basic feature of this debate, one that has apparently eluded even Drug Policy Director Barry McCaffrey, is that while many crack dealers are black, crack's victims are overwhelmingly black, inner-city residents - and these victims dramatically outnumber the crack dealers. Rev. Eugene F. Rivers, III, is co-chair of the National Ten Point Leadership Foundation in inner-city Boston. As Rev. Rivers sees it: "To confuse the concerns of crack dealers with the broader interests of the black community is at best inane and at worst immoral. Those who are straining to live in inner-city neighborhoods that are most adversely affected by the plague of crack, and who witness crack's consequences firsthand, want [crack dealers] taken off the streets for the longest period of time possible."

We associate ourselves with the remarks of Rev. Rivers. Our urban communities want crack dealing in their neighborhoods to stop. We urge you to continue to oppose those who would undermine their efforts.

Sincerely,



William P. Barr



William Bennett



Edwin Meese III



John Walters

Leanne A. Shimabukuro 09/09/97 08:57:21 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Jose Cerda III/OPD/EOP
Subject: follow up item to today's crack meeting

Today's crack meeting was primarily a run through of where DOJ and ONDCP stand on contacting the Hill. Things are going fairly slow so far; critical meetings/discussions with key Republicans have yet to take place. Needless to say, we are still without any Republican interest at this point in time.

An issue arose regarding changes to the 10-year mandatory sentence. Jose and I would like to discuss this with you separately.

In addition, the question was raised again as to whether the original AG/Director letter to the President could be released. At the last meeting which DPC hosted, you mentioned that you would check in with Counsel to see if we could release it. Jose and others are less clear as to whether we should release it, regardless of whether we are able to. We should resolve this point soon since there is a CBC event this Thursday-- DOJ and ONDCP are going to be looking for releasable items to explain our position in case they are asked.

THE CLINTON ADMINISTRATION'S STRENGTHENED STRATEGY TO FIGHT COCAINE TRAFFICKERS

Reducing the Disparity in Federal Penalties for Crack and Powder Cocaine

The Clinton Administration is dedicated to the most comprehensive anti-drug strategy in American history. This effort involves stopping drugs at the border, aggressively prosecuting drug offenders, and teaching youngsters to say no to drugs. Recently, the Administration proposed revising the cocaine penalty structure to reduce the disparity between crack and powder sentences and to further strengthen anti-drug efforts.

A Revised Crack and Powder Penalty Structure Will Help Federal Law Enforcement Battle Illegal Drugs in our Communities

The federal government has extensively studied the problem of crack and powder cocaine in our communities. This review looked at current federal penalties, the profiles of defendants prosecuted for powder and crack cocaine trafficking, and the most effective ways to use our federal law enforcement resources to combat illegal drugs. Current penalties for crack cocaine target a lower-level of the drug trade and fall disproportionately on African'Americans. The Clinton Administration concluded that the federal cocaine laws should be changed so that individuals who distribute 25 grams of crack or 250 grams of powder should be sent to prison for a mandatory minimum sentence of 5 years.

This new penalty structure makes sense for several reasons:

- **First**, it will assure that federal resources and federal laws are targeted on the worst drug traffickers so that we can most effectively dismantle national and international drug rings.
- **Second**, it will reduce the disparity between crack and powder cocaine sentences and will address perceptions that the current sentencing scheme is unfair.
- **Third**, it will bring federal laws in to line with the Administration's determined anti-drug strategy.
- **Fourth**, it will assure that there are tough federal sentences for serious drug offenders and that there is an appropriate distinction between crack and powder cocaine penalties.

The Federal Government Must Target Serious Cocaine Traffickers To Dismantle Major Drug Smuggling Rings

- The federal government should primarily focus its narcotics enforcement resources on mid-level and high-level drug traffickers, generally leaving lower-level traffickers and users for prosecution by state and local law enforcement.

- As partners in the battle against illegal drugs, the job for state and local law enforcement is to aggressively prosecute street dealers. State and local law enforcement officers know who the drug dealers are on their streets and they can most effectively prosecute these lower-level dealers.
- The federal government has powerful enforcement tools, such as the RICO and drug kingpin statutes, wiretapping capabilities, and the witness protection program, as well as national and international enforcement programs. With these tools, the federal government can best target and dismantle major drug trafficking organizations that deal in heroin, LSD, methamphetamine, cocaine, or other dangerous narcotics.
- Successful narcotics prosecutions often involve "working up the chain." To break up major drug rings, the federal government must be able to prosecute mid-level dealers who, if they were to cooperate, could provide information that would lead to the prosecution of these organizations and major drug dealers.
- The current sentencing structure for cocaine undermines the division of responsibility between federal, state and local authorities. Under federal law today, a defendant who traffics in 5 grams of crack faces a five-year mandatory minimum sentence. 5 grams of crack is worth at most a few hundred dollars, and its sale is characteristic of a lower-level street dealer. A mid-level crack dealer typically deals ounce or multi-ounce quantities --about 28 grams of crack and up.
- When federal law enforcement resources are directed against lower-level street dealers, federal agents and prosecutors are diverted from larger-scale drug trafficking operations.
- Imprisoning scores of lower-level crack dealers for long periods of time also consumes costly and limited federal prison resources. Taxpayers pay over \$100,000 to send someone to prison for a 5-year mandatory minimum sentence.

A Revised Penalty Structure Will Address Perceptions of Unfairness in our Federal Criminal Justice

- America's crack and powder cocaine problems are not black or white, Hispanic or Asian. They are as multiracial as the face of America.
- A sentencing scheme that punishes crack defendants much more severely than powder defendants has become an important symbol of racial injustice in our criminal justice system. We cannot turn a blind eye to the corrosive effect this has on respect for law enforcement in certain communities. When communities lose confidence in the fairness of the law, our ability to enforce the law suffers.

- The perception of discrimination is dividing what should be a unified effort to combat illegal drugs.
- By reducing the disparity in sentences between crack and powder cocaine, we will reduce the perception that our laws unfairly target a single racial group.

It is Time to Bring Federal Laws into Line with the Administration's Strategy to Fight Illegal Drugs

- It is time to fix the law and to focus federal efforts on drug dealers who are higher in the distribution chain.
- Federal anti-drug efforts should attack the drug problem at its core -- not at the fringes. Federal sentencing laws should be consistent with the most aggressive and effective anti-drug strategy.

The Administration's Proposed Penalty Structure for Crack and Powder Cocaine Would Maintain Tough Penalties in the Federal System

- A threshold of 25 grams of crack for a five-year mandatory minimum sentence would ensure that the federal government can aggressively prosecute mid-level crack dealers.
- The Administration supports, in conjunction with the proposed revision in crack penalties, a decrease in the triggering amount for the 5-year mandatory minimum sentence for powder cocaine from 500 grams to 250 grams -- recognizing that all crack is imported into this country as powder and can easily be converted to crack.
- A revised penalty system would continue to punish crack dealers more severely than powder cocaine dealers. This properly reflects the additional dangers associated with crack.
- The change in crack penalties would preserve substantial federal tools to focus on violent and dangerous offenders. Federal law enforcement would continue to prosecute lower-level crack cases in the federal system when there is organized drug dealing; use of weapons; using minors in drug trafficking; trafficking near schools and other places; or other aggravating factors. The presence of aggravating factors in these cases will guarantee severe penalties regardless of the amount of crack involved.

Crime - crack sentencing

THE CLINTON ADMINISTRATION'S STRENGTHENED STRATEGY TO FIGHT COCAINE TRAFFICKERS

Reducing the Disparity in Federal Penalties for Crack and Powder Cocaine

After an extensive study of the problems of crack and powder cocaine in our communities, the Administration found that current federal penalties for crack cocaine target a lower-level of the drug trade and fall disproportionately on African-Americans. As a corrective measure, the Administration proposes revising the cocaine penalty structure so that individuals who distribute 25 grams of crack or 250 grams of powder are sent to prison for a mandatory minimum sentence of 5-years.

The Administration's proposal is part of the most comprehensive anti-drug strategy in American history. This effort involves stopping drugs at the border, aggressively prosecuting drug offenders, and teaching youngsters to say no to drugs. The proposed cocaine penalty structure strengthens the Administration's anti-drug efforts in several ways.

The New Penalty Structure Assures that Federal Resources Target the Worst Cocaine Traffickers and National and International Drug Rings

- The federal government has powerful enforcement tools, such as RICO and drug kingpin statutes, wiretapping capabilities, and a witness protection program, that are best used to target and dismantle major drug trafficking organizations. The federal government should focus these narcotics enforcement resources primarily on mid-level and high-level drug traffickers.
- State and local law enforcement are better able to prosecute street dealers. State and local law enforcement officers know who are the drug dealers on their streets and can most effectively prosecute these lower-level dealers.
- The current sentencing structure for cocaine undermines the effective division of responsibility between federal, state and local authorities. Under federal law today, a defendant who traffics in 5 grams of crack faces a five-year mandatory minimum sentence. Five grams of crack is worth at most a few hundred dollars, and its sale is characteristic of a lower-level street dealer. A mid-level crack dealer typically deals ounce or multi-ounce quantities—about 28 grams of crack and up. When federal law enforcement resources are directed against lower-level street dealers, federal agents and prosecutors from larger-scale drug trafficking operations.
- Imprisoning scores of lower-level crack dealers for long periods of time also consumes costly and limited federal prison resources. Taxpayers pay over \$100,000 to send someone to prison for a 5-year mandatory minimum sentence.

The New Penalty Structure Addresses Perceptions of Unfairness in our Federal Criminal Justice System

- America's crack and powder cocaine problems are not black or white, Hispanic or Asian. They are as multi-racial as the face of America.
- A sentencing scheme that punishes crack offenses much more severely than powder offenses has fostered a perception of racial injustice in our criminal justice system. This perception arises from the fact that African-Americans make up a large majority of those convicted of federal crack cocaine trafficking charges. We cannot turn a blind eye to the corrosive effect this has on respect for law enforcement in certain communities. When communities lose confidence in the fairness of the law, our ability to enforce the law suffers.
- By reducing the disparity in sentences between crack and powder cocaine, we will reduce the perception that our laws unfairly target a single racial group.

The Administration's Proposed Penalty Structure for Crack and Powder Cocaine Maintains Tough Penalties in the Federal System

- The Administration's proposed penalty structure toughens powder cocaine sentencing. Under the proposed penalties, in conjunction with the changes in crack penalties, the triggering amount for the 5-year mandatory minimum sentence for powder cocaine is lowered from 500 grams to 250 grams.
- The revised penalty system would continue to provide tough mandatory sentences for mid-level crack dealers who, if they cooperate, could provide information critical to the prosecution of major drug dealers.
- The revised penalty system would continue to punish crack dealers more severely than powder cocaine dealers. This reflects the additional dangers associated with crack.
- Federal law enforcement would continue to prosecute lower-level crack cases that involves organized drug dealing, use of weapons, use of minors, trafficking near schools, or other aggravating factors. The presence of aggravating factors in these cases will continue to guarantee severe penalties regardless of the amount of crack involved.

Crime-crack sentencing

8-8-97 Crack Cocaine Mtg

ONDOP: Reauth hearing - Abraham + Kyl registered oppos.

ONDOP shat sent to DOJ

Internal brainstorming

Between now + December -

targeted/focused

directed at leg.

looking for support from law enf.

S-part shat

low-profile/highly targeted / small window strategy

a) dev gr shat / define msg / don't shy away from race issue - respectful of I.L., but keep distance

b) close tie to WH - needs to be high on radar screen

c) identify key players - red center - need to find mod Repubs

d) vehicle? ONDOP reauth phg? - prob not Approps as vehicle??

Director / AG / Constantine / Holder - all would make indiv visits.

e) mobilize public support - including law enf.

media support

Talking points ready.

Repubs not do their proposal - and do it on ONDOP reauthorization! Maybe free-standing.

Tom - Need a defensive strategy

Tom - What about having sen. com'n make a rec that has to be disapproved?

- so very unlikely to do

- also encourages up/down vote

Ramstad?
Poss some who have int in race side

→
→

Mistake to try to do a vehicle - let them

Pub support - highly targeted - (e.g. radio) -

not big press cuts/events

PS: Open piece

DOT: No - not so big splashy -

raises volume of debate too much.

Build local quiet support

PS: Admin doesn't have piece out

There yet.

DOT: should give out our memo -

revisit this issue.

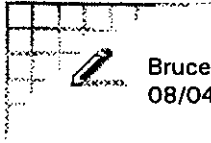
Hausman - pro-law enforcement use

WR-FLYB and
Crime-crack sentencing

Don/Leanne -

FYI on crack.

Elena



Bruce N. Reed
08/04/97 06:31:46 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Diana F6rtuna/OPD/EOP

cc:

Subject: Rematch

Gingrich: More Welfare
Reform On GOP Agenda

ALPHARETTA,
Georgia
(AllPolitics, August
2) -- House
Speaker Newt
Gingrich says
Republicans plan to
make a major push
this fall to
implement
welfare-reform measures that President Bill Clinton
refused to accept as part of the recently completed
balanced-budget deal.

In interviews given Saturday while Gingrich was
attending an American Legion parade in his suburban
Atlanta district, the speaker also said he favors
equalizing penalties for people caught selling crack
and powder cocaine -- but not by reducing crack
penalties as the Clinton administration has proposed.

Rather, he indicated he might support increasing the
penalties for powder cocaine offenders.

"I favor equalizing them, but I'm not sure I'm not for
equalizing them up," Gingrich said. "A person who
commits the same relative threat to society -- the
same number of doses -- should face the same
consequences."

Critics say current
sentencing laws are
unfair to those who
handle crack, which
is cheaper than
powder and more
likely to be used by

members of racial
minorities.

Attorney General Janet Reno and President Clinton's drug-policy adviser, Barry McCaffrey, have proposed reducing the sentencing disparity for the two forms of cocaine to a 10-1 ratio.

Their plan would impose mandatory five-year penalties for selling 25 grams of crack or 10 times as much powdered cocaine, 250 grams. Current law requires five-year sentences for the sale of 5 grams of crack or 500 grams of cocaine, a 100-1 ratio.

Exemption for those in welfare-to-work
programs

Gingrich said that when Republicans return in the fall, they will take up a proposal to exempt individuals in welfare-to-work programs from the \$5.15-an-hour minimum wage.

That exemption is a major priority of Republican and even some Democratic governors. But GOP negotiators dropped the idea from the recent budget bill because of opposition from Clinton, promoting complaints from GOP governors.

"There will be a very big push on welfare reform," Gingrich said. "We did not fight it out on the budget agreement, but we are going to really ask all the governors in the country to work with us to pass a welfare-reform implementation act which we think the president has to sign."

"The bureaucrats and the unions are trying to destroy welfare reform. We cannot allow that to happen."

'We are moving in the right direction'

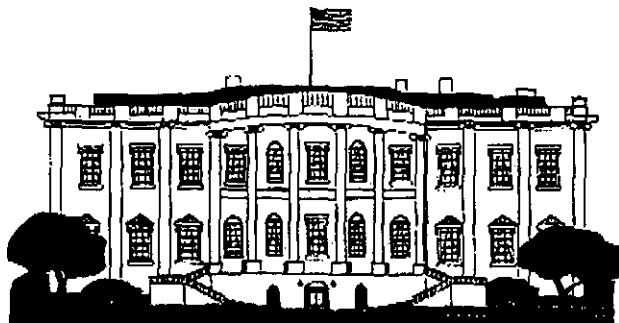
Also, Gingrich said he would prefer that President Clinton not use the line-item veto on any provisions of the balanced-budget agreement. He said the Clinton team did not raise that prospect during negotiations, so "I think it would be helpful for them not to exercise it."

"But I am not going to get into a fight about it. This is his right. We gave it to him deliberately."

Just two weeks after a small group of restless Republicans tried to topple him, Gingrich said House Republicans are now unified.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Washington, DC 20503 *Crime-Crack sentencing*

OFFICE OF NATIONAL DRUG CONTROL POLICY

FACSIMILE MESSAGE**TO: Charles Ruff****FAX: 202-456-6279****DATE: 7/22/97 TIME: 13:12:24 PAGES: 5 + Cover**

FROM: PATRICIA A. SEITZ, DIRECTOR, OFFICE OF LEGAL COUNSEL**FAX NUMBER: 202-395-5543****OFFICE NO: 202-395-6621**

COMMENTS:**Re: Crack/Powder Cocaine**

Chuck: Attached is a copy of the letter Attorney General Reno and Director McCaffrey sent to the President with their recommendation, per his request. Understand from our press people the President announced this morning that he accepted the recommendation. Anticipating press calls for copies of the letter need your guidance on the Presidential document. Understand that some member of the press already has a copy of the letter (which lead to a story etc.). We plan to defer any requests for the letter to you, unless you advise us otherwise.

Recommendations on Crack Cocaine Sentencing

July 22, 1997

Announcement

- Today, the President stated that he had accepted a recommendation from the Attorney General and Drug Director to reduce the disparity between crack and powder cocaine sentences from a ratio of 100 to 1, to a ratio of 10 to 1. Specifically, the recommendation calls for increasing the trigger for 5-year mandatory drug penalties from 5 grams to 25 grams for crack cocaine -- and dropping the trigger from 500 to 250 grams for powder cocaine. The President has asked the Attorney General and Drug Director to consult and work with Members of Congress on this matter.

Background

- Current federal law requires a 5-year mandatory sentence for trafficking in 500 grams of powder cocaine, but imposes the same sentence for only 5 grams of crack cocaine.
- On May 1, 1995 the U.S. Sentencing Commission proposed equalizing penalties for crack and powder cocaine at 500 grams -- substantially reducing the penalties for crack. President Clinton proposed and signed legislation which rejected these recommendations and directed the Sentencing Commission to submit new recommendations that retained tougher sentences for crack..
- On April 29th, the Sentencing Commission issued a revised report that proposed reducing the triggering amount for 5-year mandatory drug penalties for crack from the current 5 grams to between 25 and 75 grams -- and decreasing this trigger for powder from the current 500 grams to between 125 and 375 grams.
- In response, the President asked the Attorney General and Drug Director to review the Sentencing Commission's recommendations and report back to him in 60 days. He also reiterated the Administration's position that -- while some adjustment to cocaine penalties is warranted -- our sentencing laws should continue to reflect that crack is a more dangerous form of cocaine and that tougher sentences are appropriate. Moreover, our cocaine sentencing policy should ensure that federal law enforcement resources target mid- and high-level drug traffickers.
- On July 3rd, the Attorney General and Drug Director recommended that the President support reducing the disparity between crack and powder cocaine sentences by: (1) increasing the trigger for 5-year mandatory drug penalties from 5 to 25 grams for crack; and (2) dropping the trigger from 500 to 250 grams for powder. This revised structure maintains tough sentences for serious drug offenders; properly focuses federal law enforcement efforts on mid- and high-level drug traffickers; addresses perceptions of unfairness with the current disparity; and continues to reflect that crack -- because it is more likely to be associated with violence -- is more a dangerous form of cocaine.

CRACK COCAINE SENTENCING
JULY 16, 1997

Q: Mr. President, your Administration has supported a sentencing policy that punishes blacks users of crack cocaine a hundred times more harshly than white users of powder cocaine. How can you defend this policy?

A: The current disparity in our sentencing laws for cocaine -- the so-called 100 to 1 ratio -- is unjustified and should be reduced. In addition to leading to a perception of unfairness and inconsistency in the criminal justice system, the current penalty scheme distorts law enforcement incentives and gets in the way of our efforts to bring mid-level and high-level drug dealers to justice. But the ratio should not be 1 to 1 because crack is a more dangerous form of cocaine than powder. In particular, crack cocaine defendants continue to be associated with much more violence than powder cocaine and other drug users.

I will work hard with Members of Congress to reduce the sentencing disparity between crack and powder cocaine to an appropriate level. The Sentencing Commission recently recommended a range of sensible options for doing this. I believe they suggested that penalties for powder and crack cocaine should be "pinched" -- that is to say, that the trigger for powder should be dropped and that the trigger for crack should be increased. I have asked the Attorney General and Drug Director to review this proposal, work with Members of Congress, and make an adjustment within the ranges suggested by the Sentencing Commission.

Crime-~~use~~
sentencing

STATEMENT BY THE PRESIDENT

I commend the Sentencing Commission for moving forward with recommendations to Congress to reduce the disparity between crack and powder cocaine penalties. My Administration will give them very serious consideration. I have asked Director McCaffrey and Attorney General Reno to review the recommendations and to report back to me in 60 days. I look forward to working with the Congress on this issue.

In October 1995, I signed legislation disapproving the Sentencing Commission's recommendation to equalize penalties for crack and powder cocaine distribution by dramatically reducing the penalties for crack. I believe that was the wrong approach then, and would be the wrong approach now.

Current law creates a substantial disparity between sentences for crack and powder cocaine. This disparity has led to a perception of unfairness and inconsistency in the federal criminal justice system.

The sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine. The Sentencing Commission's new recommendations do so. Trafficking in crack, and the violence it fosters, has a devastating impact on communities across America, especially inner-city communities. Any change in penalties must ensure that more dangerous offenders receive tougher sentences.

As I have stated before, however, some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy. Federal prosecutors should target mid- and high-level drug traffickers, rather than low-level drug offenders. An adjustment to the penalty scheme will help ensure this allocation of resources and make our federal efforts in fighting drugs more effective. That is why the legislation I signed directed the Sentencing Commission to undertake additional review of these issues and to report back with new recommendations.

I am also pleased that the Sentencing Commission has increased penalties for methamphetamine offenses pursuant to the legislation which I signed into law last year. This law asked the Commission to toughen penalties on this emerging drug to prevent the kind of epidemic we saw in the 1980's with cocaine use. We will carefully study these new penalties.

My Administration has fought to stop drug abuse and its destructive consequences. Overall, drug use in the United States has fallen dramatically -- by half in 15 years. And cocaine use has dramatically decreased since the high point in 1985 -- the number of current cocaine users is down by 74% over the last decade. While these are encouraging figures, I am fully committed to doing more to keep bringing drug use down - - particularly among our children.

Crime-crack sentencing

**U.S. Sentencing Commission Report on Crack Cocaine
June 30, 1997**

Questions and Answers

- Q. Weren't the Attorney General and ONDCP Director scheduled to make recommendations to the President today on the U.S. Sentencing Commission's recommendations on crack cocaine penalties?**
- A.** When the Commission's report was released (April 29th), the President directed the Attorney General and ONDCP Director to take a comprehensive review of the Sentencing Commission's recommendations and report back to him within 60 days -- or by yesterday. My understanding is that the Justice Department and ONDCP are finalizing their recommendations, and that we expect to receive them within the next couple of days.
- Q. What did the U.S. Sentencing Commission's report recommend?**
- A.** The U.S. Sentencing Commission transmitted a report to Congress and the Administration on April 29th that recommended legislation to reduce the disparity between sentences for crack cocaine and powder cocaine.

Specifically, the Sentencing Commission recommended that the triggering amount for the 5-year mandatory minimum sentence for cocaine be changed from 5 grams to somewhere between 25 and 75 grams for crack violations and from 500 grams to between 125 and 375 grams for powder cocaine. In other words, they recommend a "pinch" - - reduce crack cocaine penalties a little and increase powder cocaine penalties a little to narrow the sentencing disparity. This is only a recommendation to amend federal law, and Congress is not required to act on it.

THE PRESIDENT HAS SEEN
7-7-97

THE WHITE HOUSE
WASHINGTON

Copied
Reed
Kagan
COS

July 4, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN *PHC*

SUBJECT: Crack/powder cocaine sentencing recommendations

The attached Bruce Reed/Elena Kagan memo recommends that you accept a recommendation from the Attorney General and Director McCaffery and authorize them to work with Congress on legislation to change the threshold for a 5-year mandatory sentence for crack cocaine from 5 grams to 25 grams and from 500 grams to 250 grams for powder cocaine -- a ratio of 10:1 rather than the current 100:1. **You should act upon this before your trip if possible.**

Background. In May 1995, the U.S. Sentencing Commission voted to make the ratio 1:1 at 500 grams for both substances. The Administration opposed these changes and, in October 1995, you signed legislation rejecting them and directing the Sentencing Commission to submit new recommendations to Congress. On April 29, the Commission submitted the new report that suggested a range of 25-75 grams for crack and 125-375 grams for powder. You asked the AG and McCaffery to review the recommendations.

Recommendations. The AG's and McCaffery's recommendations stand upon a three-pronged rationale. First, the revised sentencing structure would help federal prosecutors and law enforcement officials better allocate resources by enabling them to focus on mid- to high-level dealers and permitting state and local prosecutors to focus on lower level dealers. Second, the current 100:1 ratio is outdated because the rates and danger of crack and powder use have narrowed over the years. Third, the current ratio is a symbol of racial bias and that our proposal would reduce the perception of injustice and inconsistency.

Congress. Next week, Senators Hatch and Abraham may offer an amendment to the juvenile justice bill lowering the minimum for powder to 100 grams while leaving crack at 5 grams -- a 20:1 ratio. Other Members have proposed lowering powder to as low as 5 grams for a 1:1 ratio. Bruce/Elena note that addressing the disparity in this manner will increase the federal government's role in low-level drug cases, overwhelm the courts and add billions to the federal prison budget.

Views. Bruce/Elena believe that the recommended changes represent the middle ground and the best hope of achieving progress on the issue. They advocate getting into the debate now and pushing for sensible legislation, but note that the Congressional Black Caucus will criticize 10:1 and advocate for further reducing the ratio. Ben Johnson notes that 10:1 will not sit well with the African-American and Hispanic communities, but that agrees that we need to enter the debate so as to push for sensible legislation. Rahm notes that our communications strategy will need

Handwritten notes:
Cox
Cox's
Mead
A. & B. B. B.
N. G. B. B.
Johnson
Rahm

refining from the current Reno/McCaffery approach, but agrees with the underlying decision to accept 10:1 and move ahead. *Ann Lewis concurs. John Podesta would like to get a sense of where you stand on the issue before you depart, and then meet about the communications strategy on Monday before making any further moves as several relevant senior staffers are out of town for the holiday. Once our strategy is set, he would like to confirm with you on the road.*

Recommendation. Enter the debate based on the Reno/McCaffery recommendation, but move forward only after a communications strategy is set:

Agree

Disagree

Discuss

Though I would favor further reduction - unless there is a criminal justice or biological research justification of Hawaii's current cap - cannot see any other way - ceiling - contain must be lower

THE WHITE HOUSE
WASHINGTON

July 3, 1997

'97 JUL 3 PM7:30

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN

SUBJECT: CRACK SENTENCING RECOMMENDATIONS

On April 29, the U.S. Sentencing Commission submitted a report to Congress with new recommendations on sentencing policy for trafficking in crack and powder cocaine. In response, you directed the Attorney General and ONDCP Director to review the report and make recommendations to you within 60 days. Today, they submitted a joint recommendation, attached to this memo, that you support changing the threshold for a 5-year mandatory sentence from 5 grams to 25 grams for crack cocaine and from 500 grams to 250 grams for powder cocaine. This change would reduce the current disparity between crack and powder cocaine sentences from a ratio of 100:1 to a ratio of 10:1. The DPC believes that you should accept this recommendation and instruct your advisers to begin working with Congress immediately to enact legislation making these changes in crack and powder cocaine sentencing.

I. Background

Under current law, the same 5-year mandatory minimum sentence applies to a person selling 5 grams of crack cocaine (worth about \$300) and a person selling 500 grams of powder cocaine (worth about \$30,000). This disparity is often referred to as the "100-to-1" ratio between crack and powder cocaine sentences.

In May 1995, the Sentencing Commission, by a 4-3 vote, issued changes to the sentencing guidelines to reduce crack cocaine penalties to the same level as powder sentences -- a 1:1 ratio at 500 grams. The Administration opposed these changes on the ground that crack is more harmful than powder cocaine. In October 1995, you signed legislation rejecting the changes and directing the Commission to submit new recommendations to Congress.

The Sentencing Commission's revised recommendations, submitted this April, suggested appropriate ranges for the amount of crack or powder cocaine that should trigger a mandatory minimum sentence: between 25 and 75 grams for crack cocaine and between 125 and 375 grams for powder cocaine. In asking the Attorney General and ONDCP Director to review these recommendations, you stated that "the sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine," but that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy."

II. Department of Justice and ONDCP Recommendation

After reviewing the Sentencing Commission's report, the Attorney General and ONDCP Director have recommended that the Administration support and work with Congress to enact legislation changing the mandatory minimum thresholds from 5 grams of crack and 500 grams of powder to 25 grams of crack and 250 grams of powder cocaine. These changes would reduce the current ratio between crack and powder sentencing from 100:1 to 10:1.

The Attorney General and ONDCP Director believe that this revised sentencing structure would help to ensure that federal prosecutors focus on the prosecution of mid- and high-level cocaine traffickers, rather than on lower-level traffickers whom state and local authorities can easily prosecute. A mid-level crack dealer typically deals in ounce (28 grams) or multi-ounce quantities. By raising the mandatory minimum to this level, Congress would remove incentives for federal prosecutors to prosecute lower-level dealers and increase the likelihood of their bringing only high-priority cases involving mid- and high-level traffickers.

The Attorney General and ONDCP Director also state that the current 100:1 ratio is outdated because the rates of crack and powder cocaine use, as well as the dangers associated with such use, have narrowed over the years. Finally, they note that the current ratio has become a symbol of racial bias in the criminal justice system and has had a corrosive effect on "respect for the law in certain communities and on the effective administration of justice."

III. Suggested Course of Action

We suggest that you endorse the recommendation submitted by the Attorney General and the ONDCP Director. The proposed 10:1 ratio, with mandatory minimum triggers at 25 grams of crack cocaine and 250 grams of powder cocaine, is fundamentally sound. This recommendation reduces the disparity between crack and powder cocaine sentencing, as well as the perception of injustice and inconsistency that goes with it. At the same time, the recommendation makes sense from a law enforcement perspective by linking the crack threshold to an amount (25 grams) that corresponds with the practice of mid-level crack dealers to traffick in ounce (28 grams) or multi-ounce quantities.

The one downside of this recommendation is that the proposed approach risks placing the Administration in the center of a debate that has no center -- with Members of Congress attacking from both directions. On the one hand, Republicans will accuse the Administration of coddling drug users by raising the mandatory minimum threshold for crack cocaine. Senators Hatch and Abraham support a proposal to drop the threshold for powder cocaine from 500 grams to 100 grams while leaving intact the threshold for crack cocaine (resulting in a 20:1 ratio). Other Republican Members have proposed dropping the powder cocaine threshold to as low as 5 grams, which would reduce the ratio to 1:1, but only at the cost of overprosecuting other low-level drug dealers and adding billions of dollars to the federal prison budget. On the other hand, the Congressional Black Caucus and others in the African-American community will attack the

Administration for failing to go far enough to remove a racial injustice. As you know, many CBC Members favor removing the disparity between crack and powder cocaine entirely -- or at least reducing it far more sharply than the Attorney General and ONDCP Director recommend.

But precisely because it takes a middle position -- and because, as noted above, it can be hooked to law enforcement objectives -- this recommendation offers the best hope of achieving progress on this issue. The CBC approach to this issue will go nowhere in Congress, even with our support. The Republican approach stands a scarily high chance of success, unless we counter it with a credible alternative. We are not particularly optimistic that the recommended approach (assuming you accept it) will prevail, but it stands a better than any alternative approach of leading to a decent outcome.

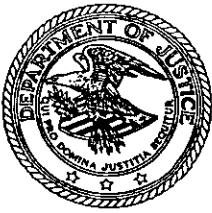
We also suggest, if you accept the recommendation, that you authorize the Attorney General and ONDCP Director to begin immediate discussions with Members of Congress on this issue. Senators Hatch and Abraham may offer their alternative proposal as early as next week at the Senate Judiciary Committee's markup of the Juvenile Justice bill. We should engage with an alternative proposal as quickly as possible.

_____ Agree

_____ Disagree

_____ Discuss

'97 JUL 3 PM4:05



Office of the Attorney General
Washington, D. C. 20530

July 3, 1997

The President
The White House
Washington, DC 20500

Re: Crack and Powder Cocaine Sentencing
Policy in the Federal Criminal Justice System

Dear Mr. President:

On April 29, 1997, the United States Sentencing Commission ("Commission") submitted to Congress a report containing recommendations regarding crack and powder cocaine sentencing policy in the federal criminal justice system. The Commission recommended that the triggering amount for a five-year mandatory minimum sentence for crack be changed from the current 5 grams to somewhere between 25 and 75 grams, and that the triggering amount for a five-year mandatory minimum sentence for powder cocaine be changed from the current 500 grams to somewhere between 125 and 375 grams.

In a statement issued on the day the report was submitted to Congress, you commended the Commission for its report, agreeing that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy [because] federal prosecutors should target mid- and high-level drug traffickers, rather than low-level drug offenders." You recognized that "[t]he disparity between sentences for powder and crack cocaine has led to a perception of unfairness and inconsistency in the federal criminal justice system." You further stated, however, that crack has had a particularly devastating impact on communities across America, and thus "[t]he sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine." You directed us to study the Commission's report and to make our recommendations on cocaine sentencing in the federal system.

Recommendation

The Office of National Drug Control Policy (ONDCP) and the Department of Justice (DOJ) have carefully studied the Commission's report, engaged in a comprehensive review of recent literature on this subject, and examined information from the

Commission, DOJ, ONDCP, and the Department of Health and Human Services. Consistent with the Commission's report, we recommend that the threshold for the five-year mandatory minimum sentence for crack be set at 25 grams and the corresponding threshold for powder be set at 250 grams and urge that the Administration work with Congress to adopt implementing legislation.

Rationale

When Congress enacted the current mandatory minimum sentences for a wide range of illegal drugs, it stated that these sentences should be reserved for significant drug traffickers. Accordingly, the federal government should primarily focus its narcotics enforcement resources on mid-level and high-level drug traffickers, generally leaving lower-level traffickers and users for prosecution by state and local law enforcement. Indeed, the overwhelming majority of drug prosecutions in this country are brought by state and local prosecutors.

This division of responsibility makes sense. With its powerful enforcement tools, such as the RICO statute, wiretapping capabilities, and the witness protection program, and with its national and international enforcement programs, the federal government is better situated to target and dismantle major drug trafficking organizations, whether the organizations deal in heroin, LSD, methamphetamine, cocaine, or other dangerous narcotics. Because successful narcotics prosecutions often involve "working up the chain," there is also a federal interest in prosecuting individuals who, if they were to cooperate, could provide information that would lead to the prosecution of these organizations and major drug dealers.

The current sentencing structure for cocaine, however, has undermined this division of responsibility. Today, a defendant who traffics in 500 grams of powder cocaine faces a five-year mandatory minimum sentence. According to the Drug Enforcement Administration (DEA), 500 grams -- a half-kilogram -- of powder cocaine has a street value of approximately \$30,000. An individual who deals in \$30,000 (or more) of powder cocaine is a serious drug dealer who should, at the minimum, have information relevant to prosecuting even larger individual dealers or organizations.

In contrast, serious mandatory minimum sentences are not reserved for mid-level and high-level dealers when it comes to crack cocaine. Under the current system, a defendant need only traffic in 5 grams of crack in order to face a five-year mandatory minimum sentence. According to the DEA, 5 grams of crack is worth a few hundred dollars at most, and its sale is

characteristic of a low-level street dealer. A mid-level crack dealer typically deals ounce or multi-ounce quantities. (A single ounce equals 28 grams.) Thus, setting the five-year mandatory minimum threshold at 25 grams would ensure that even the very bottom of the mid-level range would be covered; setting the threshold any lower than 25 grams would undermine positive change and would continue, inappropriately, to target low-level street dealers.

Several negative consequences have resulted from the current cocaine sentencing scheme:

- Agents and prosecutors have the incentive to concentrate on cases where less effort can nonetheless result in long sentences. Thus, the current sentencing scheme may lead federal agents and prosecutors to focus on low-level street dealers of crack, who could as easily and appropriately be prosecuted by our state and local law enforcement partners.

- To the extent that law enforcement resources are directed against low-level street dealers, scarce federal law enforcement agents and prosecutors are diverted away from other higher priorities including larger-scale and more serious drug traffickers. Moreover, imprisoning scores of lower-level crack dealers for long periods of time has consumed considerable resources of the Bureau of Prisons.

- The large disparity in the sentencing scheme is outdated insofar as current data show that crack use has stabilized over the past few years; that the violence associated with crack dealing has dropped over the past few years, contributing to the overall crime drop across America; that of all the cocaine consumed in the United States, there is nearly an even split between crack users and powder users; and that treatment programs for crack and powder addicts are similar and have similar success rates.

- A sentencing scheme that treats crack 100 times more harshly than powder undoubtedly has become an important symbol of racial injustice in our criminal justice system. We cannot turn a blind eye to the corrosive effect this has had on respect for the law in certain communities and on the effective administration of justice. When communities lose faith in the fairness of the legal process, our ability to enforce the law suffers.

These problems cannot be solved by increasing powder penalties, while leaving current crack penalties unchanged. Such a change would merely replicate for powder cocaine the major

problem with current law enforcement efforts against crack cocaine -- the diversion of scarce federal resources to the prosecution and incarceration of low-level drug dealers who are more properly the focus of state and local officials. Moreover, simply increasing powder cocaine penalties would do little to address the perception that crack penalties inappropriately target racial minorities for harsh punishment. We support, in conjunction with a change in crack penalties, a change in the triggering amount for powder cocaine from 500 grams to 250 grams recognizing that all crack is brought into this country as powder and the ease by which that powder is converted to crack.

None of this is to say that the federal government should retreat from its vigorous prosecution of crack cocaine offenses. Under our recommended penalty structure, federal law enforcement would continue to prosecute crack cases in the federal system, particularly when there is organized drug dealing, the use of weapons, the use of minors in drug trafficking, drug trafficking near schools and other places, or other aggravating factors. Moreover, crack dealers would continue to be punished more harshly than powder dealers, which appropriately reflects the additional dangers associated with crack cocaine.

Conclusion

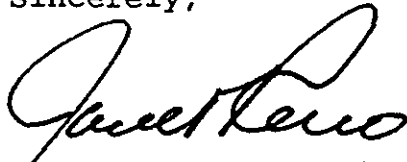
In short, we support a revised penalty structure with the five-year mandatory minimum threshold for crack set at 25 grams and the corresponding threshold for powder set at 250 grams because it would:

- Maintain tough federal sentences for serious drug offenders.
- Properly focus federal law enforcement efforts on mid-level and high-level drug traffickers.
- Improve the allocation of scarce federal law enforcement resources.
- Address perceptions of serious unfairness and inconsistency in the current sentencing scheme.
- Continue to reflect an appropriate distinction between crack and powder cocaine.

The President
Page 5

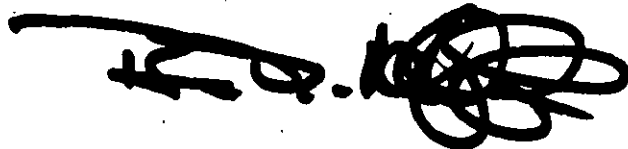
With your concurrence, we will work with Congress to adopt legislation that will improve federal law enforcement's response to the scourge of powder and crack cocaine trafficking in this country.

Sincerely,

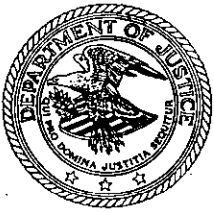


Janet Reno
Attorney General

Sincerely,



Barry R. McCaffrey
Director, Office of
National Drug Control Policy



Office of the Attorney General
Washington, D. C. 20530

July 3, 1997

The President
The White House
Washington, DC 20500

Re: Crack and Powder Cocaine Sentencing
Policy in the Federal Criminal Justice System

Dear Mr. President:

On April 29, 1997, the United States Sentencing Commission ("Commission") submitted to Congress a report containing recommendations regarding crack and powder cocaine sentencing policy in the federal criminal justice system. The Commission recommended that the triggering amount for a five-year mandatory minimum sentence for crack be changed from the current 5 grams to somewhere between 25 and 75 grams, and that the triggering amount for a five-year mandatory minimum sentence for powder cocaine be changed from the current 500 grams to somewhere between 125 and 375 grams.

In a statement issued on the day the report was submitted to Congress, you commended the Commission for its report, agreeing that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy [because] federal prosecutors should target mid- and high-level drug traffickers, rather than low-level drug offenders." You recognized that "[t]he disparity between sentences for powder and crack cocaine has led to a perception of unfairness and inconsistency in the federal criminal justice system." You further stated, however, that crack has had a particularly devastating impact on communities across America, and thus "[t]he sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine." You directed us to study the Commission's report and to make our recommendations on cocaine sentencing in the federal system.

Recommendation

The Office of National Drug Control Policy (ONDCP) and the Department of Justice (DOJ) have carefully studied the Commission's report, engaged in a comprehensive review of recent literature on this subject, and examined information from the

Commission, DOJ, ONDCP, and the Department of Health and Human Services. Consistent with the Commission's report, we recommend that the threshold for the five-year mandatory minimum sentence for crack be set at 25 grams and the corresponding threshold for powder be set at 250 grams and urge that the Administration work with Congress to adopt implementing legislation.

Rationale

When Congress enacted the current mandatory minimum sentences for a wide range of illegal drugs, it stated that these sentences should be reserved for significant drug traffickers. Accordingly, the federal government should primarily focus its narcotics enforcement resources on mid-level and high-level drug traffickers, generally leaving lower-level traffickers and users for prosecution by state and local law enforcement. Indeed, the overwhelming majority of drug prosecutions in this country are brought by state and local prosecutors.

This division of responsibility makes sense. With its powerful enforcement tools, such as the RICO statute, wiretapping capabilities, and the witness protection program, and with its national and international enforcement programs, the federal government is better situated to target and dismantle major drug trafficking organizations, whether the organizations deal in heroin, LSD, methamphetamine, cocaine, or other dangerous narcotics. Because successful narcotics prosecutions often involve "working up the chain," there is also a federal interest in prosecuting individuals who, if they were to cooperate, could provide information that would lead to the prosecution of these organizations and major drug dealers.

The current sentencing structure for cocaine, however, has undermined this division of responsibility. Today, a defendant who traffics in 500 grams of powder cocaine faces a five-year mandatory minimum sentence. According to the Drug Enforcement Administration (DEA), 500 grams -- a half-kilogram -- of powder cocaine has a street value of approximately \$30,000. An individual who deals in \$30,000 (or more) of powder cocaine is a serious drug dealer who should, at the minimum, have information relevant to prosecuting even larger individual dealers or organizations.

In contrast, serious mandatory minimum sentences are not reserved for mid-level and high-level dealers when it comes to crack cocaine. Under the current system, a defendant need only traffic in 5 grams of crack in order to face a five-year mandatory minimum sentence. According to the DEA, 5 grams of crack is worth a few hundred dollars at most, and its sale is

characteristic of a low-level street dealer. A mid-level crack dealer typically deals ounce or multi-ounce quantities. (A single ounce equals 28 grams.) Thus, setting the five-year mandatory minimum threshold at 25 grams would ensure that even the very bottom of the mid-level range would be covered; setting the threshold any lower than 25 grams would undermine positive change and would continue, inappropriately, to target low-level street dealers.

Several negative consequences have resulted from the current cocaine sentencing scheme:

- Agents and prosecutors have the incentive to concentrate on cases where less effort can nonetheless result in long sentences. Thus, the current sentencing scheme may lead federal agents and prosecutors to focus on low-level street dealers of crack, who could as easily and appropriately be prosecuted by our state and local law enforcement partners.

- To the extent that law enforcement resources are directed against low-level street dealers, scarce federal law enforcement agents and prosecutors are diverted away from other higher priorities including larger-scale and more serious drug traffickers. Moreover, imprisoning scores of lower-level crack dealers for long periods of time has consumed considerable resources of the Bureau of Prisons.

- The large disparity in the sentencing scheme is outdated insofar as current data show that crack use has stabilized over the past few years; that the violence associated with crack dealing has dropped over the past few years, contributing to the overall crime drop across America; that of all the cocaine consumed in the United States, there is nearly an even split between crack users and powder users; and that treatment programs for crack and powder addicts are similar and have similar success rates.

- A sentencing scheme that treats crack 100 times more harshly than powder undoubtedly has become an important symbol of racial injustice in our criminal justice system. We cannot turn a blind eye to the corrosive effect this has had on respect for the law in certain communities and on the effective administration of justice. When communities lose faith in the fairness of the legal process, our ability to enforce the law suffers.

These problems cannot be solved by increasing powder penalties, while leaving current crack penalties unchanged. Such a change would merely replicate for powder cocaine the major

problem with current law enforcement efforts against crack cocaine -- the diversion of scarce federal resources to the prosecution and incarceration of low-level drug dealers who are more properly the focus of state and local officials. Moreover, simply increasing powder cocaine penalties would do little to address the perception that crack penalties inappropriately target racial minorities for harsh punishment. We support, in conjunction with a change in crack penalties, a change in the triggering amount for powder cocaine from 500 grams to 250 grams recognizing that all crack is brought into this country as powder and the ease by which that powder is converted to crack.

None of this is to say that the federal government should retreat from its vigorous prosecution of crack cocaine offenses. Under our recommended penalty structure, federal law enforcement would continue to prosecute crack cases in the federal system, particularly when there is organized drug dealing, the use of weapons, the use of minors in drug trafficking, drug trafficking near schools and other places, or other aggravating factors. Moreover, crack dealers would continue to be punished more harshly than powder dealers, which appropriately reflects the additional dangers associated with crack cocaine.

Conclusion

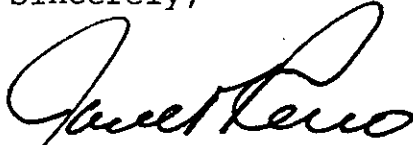
In short, we support a revised penalty structure with the five-year mandatory minimum threshold for crack set at 25 grams and the corresponding threshold for powder set at 250 grams because it would:

- Maintain tough federal sentences for serious drug offenders.
- Properly focus federal law enforcement efforts on mid-level and high-level drug traffickers.
- Improve the allocation of scarce federal law enforcement resources.
- Address perceptions of serious unfairness and inconsistency in the current sentencing scheme.
- Continue to reflect an appropriate distinction between crack and powder cocaine.

The President
Page 5

With your concurrence, we will work with Congress to adopt legislation that will improve federal law enforcement's response to the scourge of powder and crack cocaine trafficking in this country.

Sincerely,



Janet Reno
Attorney General

Sincerely,



Barry R. McCaffrey
Director, Office of
National Drug Control Policy

Crime-crack sentencing



05:35:06 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc: See the distribution list at the bottom of this message

Subject: Sentencing recommendations

I have been tracking this issue for some time and I don't think the latest recommendations are going to sit well in the base community. Most people I talk to see this as a fairness issue. they want both drugs to get equal punishment. At the very least, they want the disparity closed. *weds!* Politically it may not be possible to get it down to a one to one ratio, but we need to be move more in that direction especially now that we are engaged on the race initiative.

In view of the political realities, I recommend 50 grams of crack be the threshold for the 5 year sentence. Additionally, 100 grams of powder cocaine should be the other threshold. According to local law enforcement authorities both drugs cost about the same per gram. The only difference is one drug is in heavy use by young blacks and the other by mostly whites.

Message Copied To:

Sylvia M. Mathews/WHO/EOP
Maria Echaveste/WHO/EOP
Minyon Moore/WHO/EOP
Bob J. Nash/WHO/EOP
Elena Kagan/OPD/EOP
Charles F. Ruff/WHO/EOP
Cheryl D. Mills/WHO/EOP

Memorandum

From: ELENA KAGAN

To: Bob & LIT - Cruch

1. Release letter?

a. see unconf - privileged.
restate substance in press
release?

Tom asked KPop

b. Statistically wise? ↑ likelihood
of Abraham going forward
(press release too)

Just go behind scenes

2. What to do about Ab?

Try to get him to hold up?

Ab. wants O+~~s~~ appointed to
sent down - light of G. Kahn.

Chance to make a deal?

Or just try to beat him: very
difficult.

Early Afternoon

To: Ms. Leanne Shimaburkoru

Company: Domestic Policy Council

Fax: 202-456-7028

CSAT by Fax

July 2, 1997
Vol. 2, Issue 12

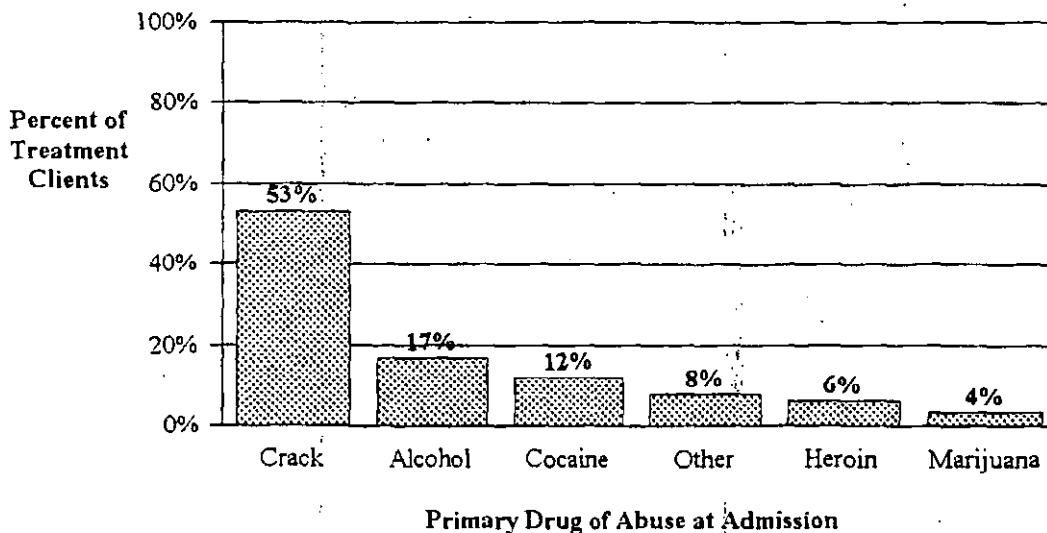
A Special Edition of **CESAR FAX** →

A Collaborative Effort of the Center for Substance Abuse Treatment (CSAT) and the Center for Substance Abuse Research (CESAR)/University of Maryland at College Park

Crack Cocaine Primary Drug of Abuse Among Women at CSAT-Funded Treatment Programs

Of more than 1,000 women admitted to CSAT-funded treatment programs between April 1995 and March 1996, 53% reported crack cocaine as their primary drug of abuse, according to data from CSAT's National Evaluation Data and Technical Assistance Center (NEDTAC). A major goal of CSAT is to increase knowledge about and improve substance abuse treatment services through innovative demonstration programs and their evaluation. Two of CSAT's knowledge development activities are the Residential Women and Children (RWC) and Pregnant and Postpartum Women (PPW) demonstration programs. Each RWC/PPW program submits a quarterly progress report as part of its grant reporting requirements, and data from these reports are tabulated and analyzed by NEDTAC. RWC/PPW data collected between April 1995 and March 1996 indicate a significant problem with crack cocaine use among women admitted to these treatment programs.

**Primary Drug of Abuse Reported by Women
at Admission to RWC or PPW Treatment Programs,
April 1995 - March 1996
(N = 1,084)**



SOURCE: Center for Substance Abuse Treatment, National Evaluation Data and Technical Assistance Center, Client and Child Data Report for the Residential Women and Children Demonstration projects, March 1997. For more information, contact Dr. Ron Smith of CSAT at 301-443-7730.

CSAT by Fax is supported by funding from CSAT, Substance Abuse and Mental Health Services Administration, and may be copied without permission with appropriate citation. For mailing list modifications contact CESAR at
 •• 301-403-8329 (voice) •• 301-403-8342 (fax) •• CESAR@cesar.umd.edu (e-mail) ••

Crime - crack sentencing

2-4-97
New letter

Draft -- 6/24/97

The President
The White House
Washington, DC 20500

Re: Crack and Powder Cocaine Sentencing
Policy in the Federal Criminal Justice System

Dear Mr. President:

Introduction

On April 29, 1997, the United States Sentencing Commission ("Commission") submitted to Congress a report containing recommendations regarding crack and powder cocaine sentencing policy in the federal criminal justice system. The Commission recommended that the triggering amount for a five-year mandatory minimum sentence for crack be changed from the current 5 grams to somewhere between 25 and 75 grams, and that the triggering amount for a five-year mandatory minimum sentence for powder cocaine be changed from the current 500 grams to somewhere between 125 and 375 grams.

In a statement issued on the day the report was submitted to Congress, you commended the Commission for its report, recognizing that "[t]he disparity between sentences for powder and crack cocaine has led to a perception of unfairness and inconsistency in the federal criminal justice system." You further stated, however, that crack has had a particularly devastating impact on communities across America, and thus "[t]he sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine." You directed us to study the Commission's report and make recommendations by the end of this month.

Recommendation

The Department of Justice ("DOJ") and the Office of National Drug Control Policy ("ONDCP") have carefully studied the Commission's report, engaged in a comprehensive review of recent literature on this subject, and examined information from the Commission, DOJ, ONDCP, and the Department of Health and Human Services. Based on this review, we fully support the Commission's recommendations and urge that the Administration work with Congress to adopt implementing legislation.

#?

to modify
particular

Rationale

When Congress enacted the current mandatory minimum sentences for a wide range of illegal drugs, it stated that these sentences should be reserved for significant drug traffickers. Accordingly, the federal government should primarily focus its narcotics enforcement resources on mid-level and high-level drug traffickers, generally leaving lower-level traffickers and users for prosecution by state and local law enforcement. Indeed, the overwhelming majority of drug prosecutions in this country are brought by state and local prosecutors.

This division of responsibility makes sense. With its powerful enforcement tools, such as the RICO statute, wiretapping capabilities, and the witness protection program, and with its national and international enforcement programs, the federal government is better situated to target and dismantle major drug trafficking organizations, whether the organizations deal in heroin, LSD, methamphetamine, cocaine, or other dangerous narcotics. Because successful narcotics prosecutions often involve "working up the chain," there is also a federal interest in prosecuting individuals who, if they were to cooperate, could provide information that would lead to the prosecution of these organizations and major drug dealers.

The current sentencing structure for cocaine, however, has undermined this division of responsibility. Today, a defendant who traffics in 500 grams of powder cocaine faces a 5-year mandatory minimum sentence. According to the DEA, 500 grams -- a half-kilogram -- of powder cocaine has a street value of approximately \$30,000. An individual who deals in \$30,000 (or more) of powder cocaine is a serious drug dealer who should, at the minimum, have information relevant to prosecuting even larger individual dealers or organizations.

In contrast, serious mandatory minimum sentences are not reserved for mid-level and high-level dealers when it comes to crack cocaine. Under the current system, a defendant need only traffic in 5 grams of crack in order to face a 5-year mandatory minimum sentence. According to the DEA, 5 grams of crack is worth a few hundred dollars at most, and its sale is characteristic of a low-level street dealer. A mid-level crack dealer typically deals ounce (28 grams) or multi-ounce quantities.] ✓

Several negative consequences have resulted from the current cocaine sentencing scheme:

- Agents and prosecutors have the incentive to concentrate on cases where less effort can nonetheless result in long sentences. Thus, the current sentencing scheme may lead federal agents and prosecutors to focus on low-level street

dealers of crack, who could as easily and appropriately be prosecuted by our state and local law enforcement partners.

● By directing resources against these low-level street dealers, scarce federal law enforcement agents and prosecutors are diverted away from other higher priorities including larger-scale and more serious drug traffickers. Moreover, imprisoning scores of low-level crack dealers for long periods of time has unquestionably stretched the resources and space limitations of the Bureau of Prisons.

● The current sentencing scheme is outdated to the extent that current data shows that crack use has stabilized over the past few years; that the violence associated with crack dealing has dropped over the past few years, contributing to the overall crime drop across America; that of all the cocaine consumed in the United States, there is nearly an even split between crack users and powder users; and that treatment programs for crack and powder addicts are similar and have similar success rates.

7 ● A sentencing scheme that treats crack 100 times more harshly than powder undoubtedly has become an important symbol of racial injustice in our criminal justice system. We cannot turn a blind eye to the corrosive effect this has had on respect for the law in certain communities and on the effective administration of justice. When communities lose faith in the fairness of the legal process, our ability to enforce the law suffers.

✓ These problems cannot be solved by increasing powder penalties, while leaving current crack penalties unchanged. Such a change would merely replicate for powder cocaine the major problem with current law enforcement efforts against crack cocaine -- the diversion of scarce federal resources to the prosecution of low-level drug dealers who are more properly prosecuted by state and local officials. Moreover, such a change would do little to address the widespread perception that the current crack penalties inappropriately target a single racial group for harsh punishment. ~~perception~~ delite

None of this is to say that the federal government should retreat from its vigorous prosecution of crack cocaine offenses. Under the Commission's penalty structure, federal law enforcement would continue to prosecute crack cases in the federal system, particularly when there is organized drug dealing, the use of weapons, the use of minors in drug trafficking, drug trafficking near schools and other places, or other aggravating factors. Moreover, crack dealers would continue to be punished more harshly than powder dealers, which appropriately reflects the serious differences between the drugs.

Conclusion

In short, we support a revised penalty structure along the lines recommended by the Commission because it would:

- Maintain tough federal sentences for serious drug offenders.
- Properly focus federal law enforcement efforts on mid-level and high-level drug traffickers.
- Improve the allocation of scarce federal law enforcement resources.
- Address perceptions of serious unfairness in the current sentencing scheme.
- Continue to reflect an appropriate distinction between crack and powder cocaine.

With your concurrence, we will work with Congress to adopt legislation that will improve federal law enforcement's response to the scourge of powder and crack cocaine trafficking in this country.

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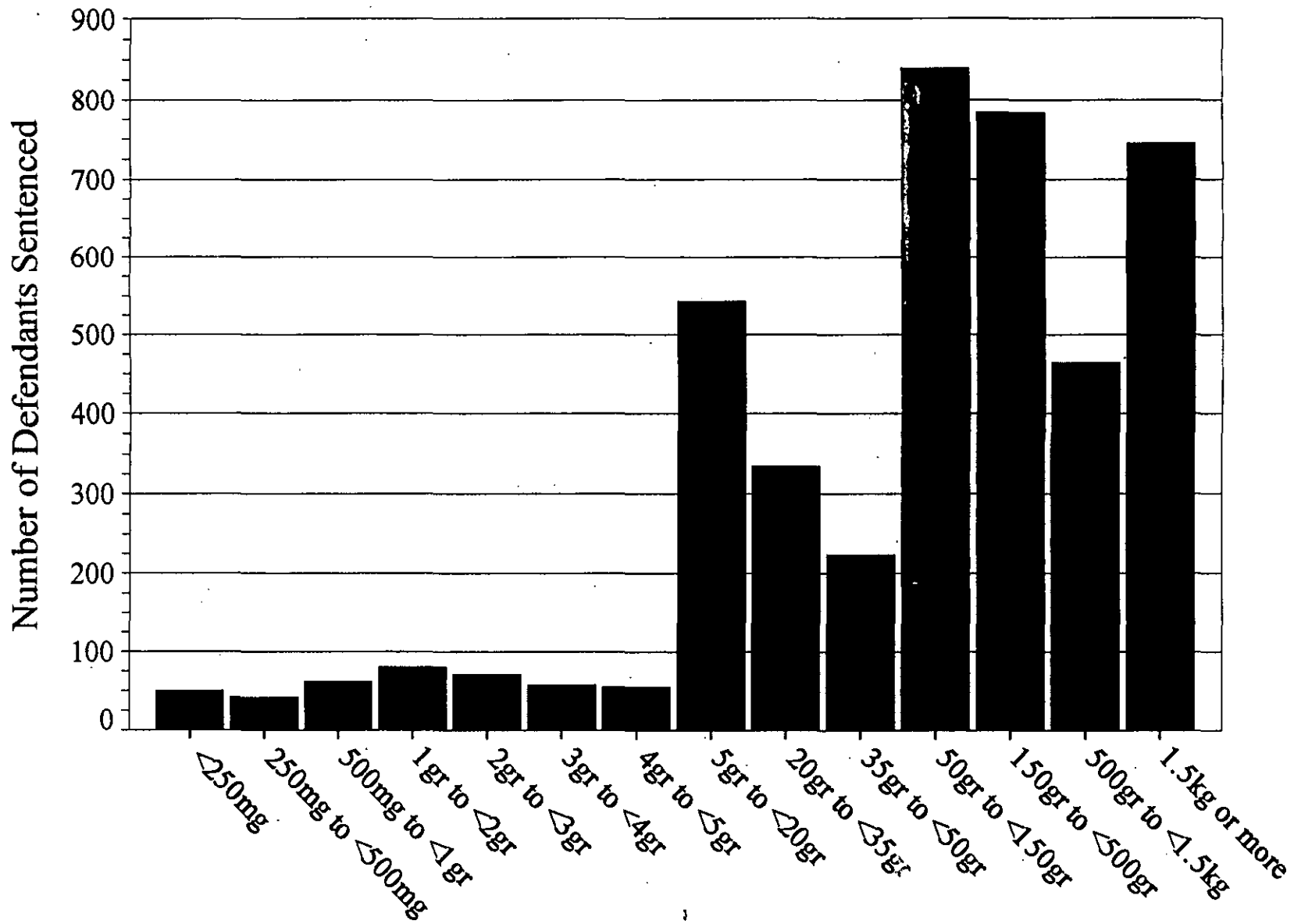
Janet Reno
Attorney General

Barry R. McCaffrey
Director, Office of
National Drug Control Policy

CURRENT STRUCTURE DIVERTS RESOURCES FROM HIGHER LEVEL DEFENDANTS

- ✓ ● Although the 5-year mandatory minimum for crack was supposed to be set at the mid-level dealer, DEA defines a mid-level dealer as one who deals in ounce quantities, well above the current 5 gram threshold.
- Mandatory minimum penalties influence the allocation of investigative and prosecutive resources, wherever they are set. See attached charts for distribution of crack and powder cases by amount.

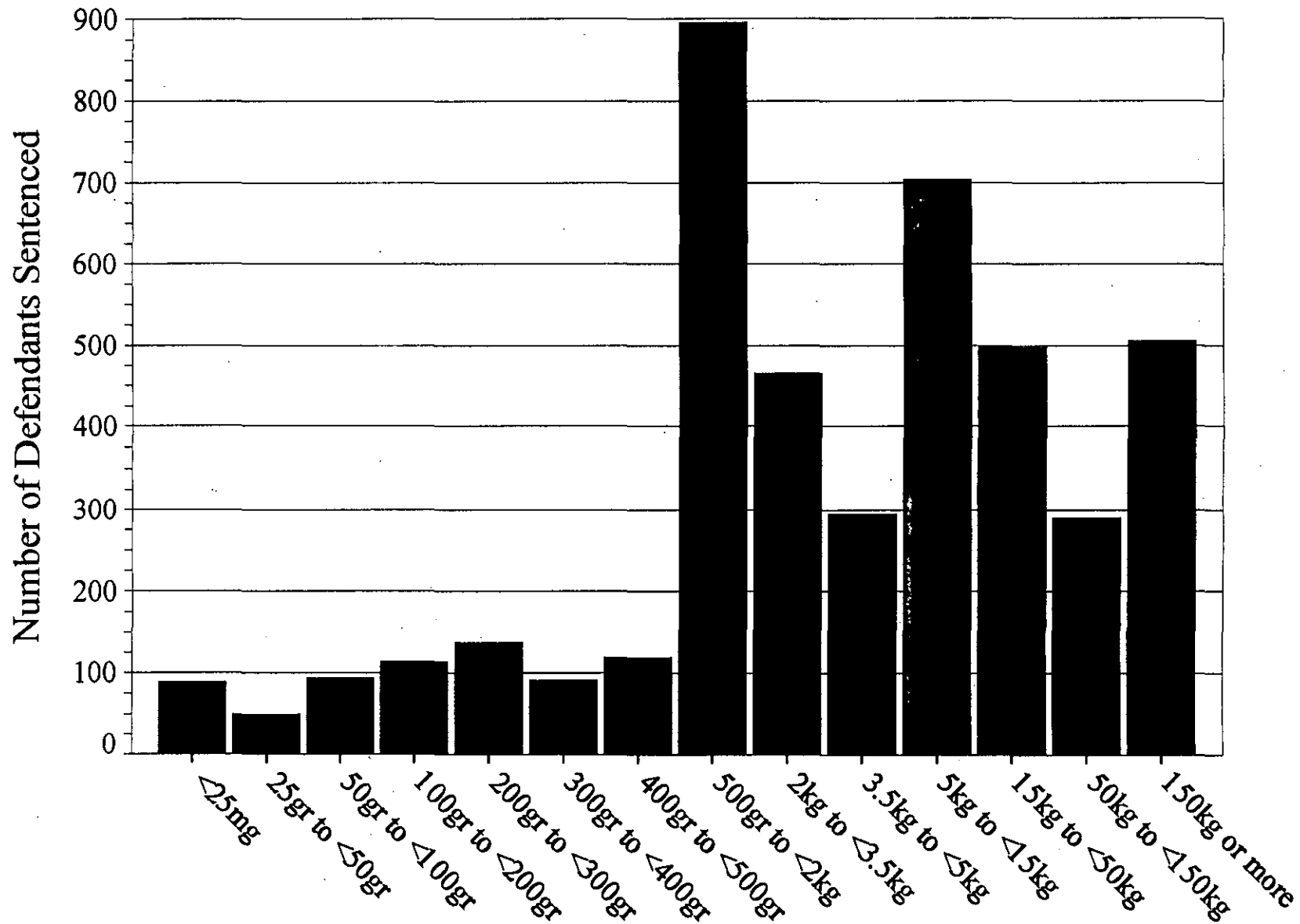
Crack Trafficking Defendants by Drug Amount - FY 1996



N = 4,355

Source: U.S. Sentencing Commission, 1996 Datafile, MONFY1996.

Cocaine Powder Trafficking Defendants by Drug Amount - FY 1996



N = 4,350

Source: U.S. Sentencing Commission, 1996 Datafile, MONFY 1996.



Keelson

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF NATIONAL DRUG CONTROL POLICY

Washington, D.C. 20503

June 20, 1997

The Honorable Janet Reno
The Attorney General
Department of Justice
Washington, D.C. 20530

Joint -

Dear Madam ~~Attorney~~ General:

Appreciate our discussion last Friday. On further reflection, believe the analysis shared with you justifies parity in the treatment of crack and powder cocaine.

ONDCP's findings include:

(1) *Prevalence*. Crack use has stabilized in both regular/current (past month) use and in the number of new initiates. The greater use of cocaine continues to be outside inner cities.

(2) *Similarities of Crack and Powder Cocaine*. Crack users consume about 54% of the total U.S. cocaine consumption. Cocaine in both the smokeable form and in the intravenous powder form show the same abuse liability. The two forms of the drug are substantially similar in rate of consumption, in their physiological and psychoactive effects and in their treatment outcomes.

(3) *Trafficking*. Practically all cocaine enters the U.S. in powdered form. One gram of powder cocaine converts into .89 grams of crack. Drug Enforcement Administration (DEA) characterizes a mid-level crack dealer as one who deals in multiple ounces. The majority of federal crack defendants traffic in more than 80 grams of crack. Crack users and dealers have a greater cumulative exposure to law enforcement activities because they engage in multiple, anonymous, open air markets in the urban core.

(4) *Violence*. Multiple, anonymous, open air drug sales contribute to the systemic violence in crack markets. Federal crack defendants are more involved with weapons violations than powder defendants (approximately 31% to 14%); however, the existing sentencing guidelines address the use of weapons.

(5) *Budgetary Impact of Federal Cocaine Policy*. Given the need to balance the federal budget, limited federal resources (7,000 DEA agents) and the distinction between the drug control responsibilities of federal and state/local authorities (interstate and foreign versus local communities), federal policy should reflect a focus on international dealers and domestic drug wholesalers. The DEA characterizes such dealers as dealing in quantities of a kilogram or more. Mid-level dealers, who can provide information on drug distribution organizations, deal in quantities of less than a kilogram. Our recommendation would also realize a net savings of approximately 2,000 prison beds.

Hope we can agree on a common recommendation to the President. Look forward to hearing your views.

Respectfully,

Barry R. McCaffrey
Director

Crime - Crack sentencing

Personal



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY

Washington, D.C. 20503

June 12, 1997

Sonet

Dear Madam Attorney General:

Enclosed is ONDCP's latest take on crack cocaine and the sentencing issues associated with crack cocaine. It recommends that the Federal Government rationalize the sentencing ratio between powder and crack cocaine and raise the minimum "trigger" to 100 grams.

The reasons for this are manifold. ONDCP - along with the Federal Sentencing Commission - has concluded that the current sentencing standard serves no useful purpose and may indeed be counterproductive. The current sentencing ratio is not based upon any standard of logic or analysis. The standards have in practice led to the incarceration of numerous low-level crack dealers but have not had a drastic effect upon wholesalers and suppliers, who tend to deal in powder. The effects of the current sentencing ratio have been felt disproportionately among the African-American community. This disproportionate impact has had the effect of undermining public support for the entire legal system.

Consider the following "pyramid" of African-Americans and drugs:

- African Americans form:*
 - 12% of the U.S. population
 - 15% of the current drug-using population
 - 17% of cocaine users
 - 33% of drug trafficking defendants
 - 38% of those charged with powder cocaine violations
 - 48% of those imprisoned in local jail for drug offenses
 - 54% of federal prisoners serving time for drug offenses
 - 60% of state-level prisoners serving time for drug offenses
 - 88% of those convicted on crack cocaine charges

In light of the above, it seems that the public perception as well as the facts on the ground support the sentencing commission's recommendations. This is one of those rare instances where we truly can do good while appearing to do good. To let the status quo stand would be to perpetuate both a flawed policy and a serious injustice. Hope to work with you in implementing reform.

V/R

Best wishes,

Barry R. McGinley
Director

The Honorable Janet Reno
Attorney General of the United States
Par Main

Post-It* Fax Note	7671	Date	# of pages 13
To	LETUNG S.	From	
Co./Dept.		Co.	
Phone #		Phone #	
Fax #	456-7028	Fax #	

DRAFT

June 12, 1997

The President
The White House
Washington, D.C. 20500

Re: Joint Recommendation on Crack/Powder Cocaine Sentencing Disparity

Dear Mr. President:

On April 29, 1997 you asked us to give you our recommendations regarding the U.S. Sentencing Commission's recently proposed range of minimum quantities of crack and powder cocaine which would trigger mandatory federal sentences.

Recommendation

Based on an analysis of the empirical data noted below, we recommend that the Administration propose legislation which

- provides parity for crack and powder cocaine at 100 grams thus targeting mid-level dealers, and
- repeals the disparity for simple possession of crack under 21 U.S.C. §844.

The empirical data we examined compared crack and powder cocaine. The data sources include the Department of Justice, National Institute of Justice, the U.S. Sentencing Commission, National Institute on Drug Abuse, Substance Abuse and Mental Health Services Administration, Office of National Drug Control Policy and a review of recent literature. The data supports sentencing parity because the sole notable distinction between the two, namely the systemic violence associated with multiple and anonymous drug sales of crack markets, is already adequately taken into account by existing U.S. Sentencing Commission guidelines.

Summary of Analysis

Your charge to us is to determine the appropriate sentencing policy for trafficking in powder and crack cocaine. In considering this issue, we examined the prevalence of crack and powder use, the similarities between the two forms of cocaine, the danger such use and trafficking presents to the community, the role of federal authorities in targeting mid- to high-level dealers and the financial impact of federal enforcement activities. Our findings include:

(1) *Prevalence.* Crack use has stabilized in both regular/current (past month) use and in the number of new initiates. The greater use of cocaine continues to be outside inner cities (Tab A).

DRAFT

DRAFT

(2) *Similarities of Crack and Powder Cocaine.* Crack users consume about 54% of the total U.S. cocaine consumption. Cocaine in both the smokeable form and in the intravenous powder form show the same abuse liability. The two forms of the drug are substantially similar in rate of consumption, in their physiological and psychoactive effects and in their treatment outcomes (Tab B).

(3) *Trafficking.* Practically all cocaine enters the U.S. in powdered form. One gram of powder cocaine converts into .89 grams of crack. Drug Enforcement Administration (DEA) characterizes a mid-level crack dealer as one who deals in multiple ounces. The majority of federal crack defendants traffic in more than 80 grams of crack. Crack users and dealers have a greater cumulative exposure to law enforcement activities because they engage in multiple, anonymous, open air markets in the urban core (Tab C).

(4) *Violence.* Multiple, anonymous, open air drug sales contribute to the systemic violence in crack markets. Federal crack defendants are more involved with weapons violations than powder defendants (approximately 31% to 14%); however, the existing sentencing guidelines address the use of weapons (Tab D).

(5) *Budgetary Impact of Federal Cocaine Policy.* Given the need to balance the federal budget, limited federal resources (7,000 DEA agents) and the distinction between the drug control responsibilities of federal and state/local authorities (interstate and foreign versus local communities), federal policy should reflect a focus on international dealers and domestic drug wholesalers. The DEA characterizes such dealers as dealing in quantities of a kilogram or more. Mid-level dealers, who can provide information on drug distribution organizations, deal in quantities of less than a kilogram. Our recommendation would also realize a net savings of approximately 2,000 prison beds.

In light of this analysis, we urge your adoption of our joint recommendation.

Respectfully,

Janet Reno
Attorney General

Barry R. McCaffrey
Director, Office of National
Drug Control Policy

cc: Vice President
Chief of Staff

Attachments (4)

DRAFT

PREVALENCE

Crack use is holding stable.

According to the 1995 National Household Survey on Drug Abuse (NHSDA), the estimated number of current (i.e. past month) crack users was about 400,000 in 1995, and there have been no significant changes since 1988. This survey, however, is for the general population and does not accurately represent hardcore use.

There are an estimated 2.1 million chronic, hard core cocaine users. However, there does not exist an accurate estimation of the prevalence of crack cocaine use among the hardcore drug user population. According to the forthcoming edition of ONDCP's Pulse Check, which provides an informal nonrepresentative indication of drug markets, drug use (particularly the hardcore population and drug treatment in several major American cities), the market for cocaine is generally stable. There are reports that the popularity of both crack and cocaine powder is down, particularly among young users who disdain crack as a "ghetto drug" or find its use unmanageable. A review of DUF data by the National Institute of Justice shows that older age arrestees typically test positive for cocaine at higher rates than other age brackets. One recent study by Golub, Johnson, and Hakeem (1996) found that crack use is currently dominated by an aging cohort of heavy users.

The annual number of new cocaine initiates remained stable from 1990 to 1994, but at a lower level than during the early 1980s. According to SAMHSA, in 1994 there was an estimated 530,000 new users, while during 1980-84 there had been about 1.3 million cocaine initiates per year. For crack cocaine, the estimated annual number of new users has remained stable in recent years.

Far More Whites Use Cocaine and Crack than Blacks

According to the 1995 NHSDA, white past month use of powder and crack cocaine was substantially higher than black use. Among all age groups, except for those over 35, the use of crack by whites was greater than that of blacks.

DRAFT

Office of National Drug Control Policy
12 June 1997

Powder Cocaine use by demographics:

Past month use of powder cocaine by age group and gender for whites, blacks, and Hispanics, 1995

Age	Whites		Blacks		Hispanics	
	n	%	n	%	n	%
12-17	97,000	(12)	4,000	(4)	19,000	(19)
18-25	231,000	(29)	17,000	(15)	20,000	(20)
26-34	222,000	(28)	43,000	(38)	60,000	(61)
≥35	251,000	(31)	50,000	(44)	*	(-)
Sex						
male	542,000	(68)	81,000	(71)	80,000	(81)
female	260,000	(32)	33,000	(29)	19,000	(19)
Total	802,000	(100)	114,000	(100)	99,000	(100)

Crack cocaine use by demographics:

Past month use of crack cocaine by age group and gender for whites, blacks, and Hispanics, 1995

Age	Whites		Blacks		Hispanics	
	n	%	n	%	n	%
12-17	40,000	(19)	*	(-)	15,000	(15)
18-25	53,000	(36)	10,000	(8)	41,000	(41)
26-34	40,000	(28)	36,000	(36)	32,000	(32)
≥35	92,000	(17)	95,000	(55)	11,000	(11)
Sex						
male	137,000	(54)	109,000	(64)	71,000	(71)
female	88,000	(46)	31,000	(36)	28,000	(28)
Total	225,000	(100)	140,000	(100)	99,000	(100)

*Low precision; no estimate reported.

SIMILARITIES

Treatment Outcome for Crack and Cocaine are Substantially Similar; Treatment Admissions for both Cocaine and Crack are Decreasing.

The National Treatment Improvement Evaluation Study (NTIES) is a five-year study of the effectiveness of drug and alcohol treatment for 5,388 clients treated in substance abuse treatment programs funded by the Department of Health and Human Services, Substance Abuse and Mental Health Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT). The results demonstrate a decrease in the use of illicit substances of about 50 percent after treatment in comparison to the year before treatment. The percentage of respondents reporting cocaine use decreased from 39.5 percent to 17.8 percent, crack use from 50.4 percent to 24.8 percent.

According to SAMHSA's *Treatment Episode Data Set: 1992 to 1995 (TEDS)*, while cocaine is the most frequent primary illicit drug problem reported at admission to a treatment facility, cocaine admissions are decreasing, while marijuana admissions are rising. The TEDS report is based on treatment admission trends from 37 states. TEDS covers 76 percent of admissions to all known substance abuse treatment providers, including some privately funded providers. TEDS found that treatment admissions for smoked cocaine fell from 46.5 percent of treatment admissions in 1992 to 35.5 percent of all treatment admissions in 1995. Admissions for non-smoked cocaine similarly fell from 33.1 percent of all treatment admissions in 1992 to 27.4 percent in 1995. The TEDS data identified a high percentage of crack admissions for blacks.

The Physiological and Psychoactive Effects of Cocaine are Similar Regardless of Form; Cocaine Smoked or Used Intravenously Show the Same Abuse Liability.

According to a November 20, 1996, article in the Journal of the American Medical Association, *Crack Cocaine and Cocaine Hydrochloride Are the Difference Myth or Reality?*, the physiological and psychoactive effects of cocaine are similar regardless of whether it is in the form of cocaine hydrochloride or crack cocaine. Regardless of the route of administration, both its rate of elimination and its metabolite profile are similar. The behavioral activity of cocaine resides in its parent compound; cocaine in any form produces the same physiological and subjective effects.

However, evidence exists showing a greater abuse liability, greater propensity for dependence, and more severe consequences when cocaine is smoked or injected intravenously

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compared with intranasal use. The crucial variables appear to be the immediacy, duration, and magnitude of cocaine's effect, as well as the frequency, amount, and method of ingestion used.

Crack Users Consume About 54 Percent of Total U.S. Cocaine Consumption.

Jeremy Travis, Director of the National Institute of Justice (NIJ), prepared a paper on the portion of cocaine consumed as crack for Deputy Attorney General Gorelick on July 21, 1995. This report concluded that crack represents between 38 percent and 72 percent of cocaine consumption, but most likely is somewhere around 54 percent. These conclusions are based on the general population data contained in the 1993 NHSDA and the estimates are consistent with the methods used by researchers in the 1994 Rand Corporation study, *Modeling the Demand for Cocaine*. Crack use estimates are based on NHSDA questions regarding vials of crack consumed in the last 30 days and crack use over the last 30 days. Proportions for crack use in homeless and incarcerated populations were based on the assumption that heavy use is more common with crack than powder, and supplemented by Drug Use Forecasting (DUF) self-report data on heavy crack use.

Based on its review of the data and available modeling, NIJ researchers found that actual crack use is somewhere near the medium estimate of 54 percent, although how close is subject to much speculation. The medium scenario assumes significant, but not extreme, amounts of heavy crack use in all population categories (households, incarcerated, homeless).

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TRAFFICKING

Nearly All of the Cocaine Enters the U.S. in Powder Form; Crack Users and Dealers Have a Greater Cumulative Exposure to Law Enforcement Activity; the Majority of Federal Crack Defendants are Charged with Trafficking more than 80 Grams of Crack.

According to the Bureau of Justice Statistics, U.S. Department of Justice, nearly all of the cocaine that enters the United States is already in powder form. The majority of cocaine powder is processed in Colombia from cocaine base produced in Bolivia, Peru, and Colombia. According to the National Narcotics Intelligence Consumers Committee a small amount of cocaine base is smuggled into the United States for conversion into powder. The conversion of powder cocaine into crack occurs in the United States at the wholesale and retail levels. One gram of cocaine converts into .89 grams of crack. DEA defines a mid-level crack dealer as one dealing in multiple ounces (one ounce equals 28 grams).

NIJ has shared a draft paper with ONDCP that studied drug markets and drug procurement based on six DUF sites (Manhattan, Washington, Portland, Chicago, San Diego and San Antonio). Nearly 2500 (2470) arrestees participated in the process during the summer of 1996. Of these, 993 were self-reported crack users and 592 were powder users. More than 8800 arrestees participated in the DUF survey during the same period. Thus, approximately 29 percent of DUF arrestees were included in this study.

The NIJ researchers found:

- More than 45 percent of powder users report purchasing their cocaine from a main source, compared to 36 percent of crack users.
- About 75 percent of crack purchases are made outdoors, compared to about 55 percent of powder purchases.
- More than 70 percent of crack users report making most purchases in their own neighborhoods, compared to 55 percent of powder users.
- Crack users report knowing an average 50 percent more dealers from whom they could buy than powder users know.
- Powder users were most likely to report they could not buy because of dealer unavailability, while crack users were more likely to report that the dealer was out of the drug or police activity prevented the purchase.

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- Powder users report carrying a gun to purchase drugs in the 30 days prior to arrest (13 percent) double the rate of crack users. (This self-report data is inconsistent with Sentencing Commission data of weapons possessed by crack and cocaine defendants in Federal Court).

- Crack users are described as more desperate individuals.

The NIJ researchers have concluded that crack has the greatest cumulative exposure to law enforcement activity. Not only are there many more crack transactions in a given calendar period than powder, but crack transactions are more likely to take place under conditions that expose its users and sellers to greater law enforcement intervention. For example, crack transactions are more likely to occur outdoors. Crack users have a far larger number of dealers from whom to buy.

Drug Possession at Conviction

Sentencing Commission data for FY 1995 shows that for 3564 crack defendants sentenced in Federal court, 64 percent were charged with possessing 50 grams or more. For FY 1996, 65 percent were charged with 50 grams or more. 58 percent of defendants were charged with 80 grams or more of crack -- this is almost 3 ounces. DEA characterizes a mid-level dealer as someone who deals in multiple ounces.

VIOLENCE

The Violence Associated with Crack Dealing is not Due to any Pharmacological Effect, but Rather to the Systemic Violence Associated with Multiple Drug Sales; in Federal Court, Crack Defendants have Higher Criminal History Profiles. Federal Crack Defendants Are More Involved with Weapons than Powder Defendants.

Literature Review

Much research has examined the relationship between crack and violence. This relationship is put forward as one of the major justifications for a disparity in sentencing for crack offenses.

The February 1995 report of the U.S. Sentencing Commission, "Cocaine and Federal Sentencing Policy" did an exhaustive review of the available research on cocaine and crime. The Commission made a broad conclusion that "little reliable research is available on specific drugs and their relationships to criminal activity. Moreover, there is even less research available on differences in varying forms of single drugs, such as crack and powder cocaine" (page 94).

The Commission, drawing on the work by Professor Paul Goldstein of the University of Illinois School of Public Health, sets out three principal types of drug-related crime: systemic crime, psychopharmacologically driven crime, and economic compulsive crime.

- Systemic crime

Systemic crime is crime that is related to the criminal activity involved in the trafficking and dealing in illegal drugs. The Commission concluded that many retail powder cocaine distributors also distribute crack, thus pulling apart the systemic crime associated with crack versus powder is difficult (page 95). Citing a 1990 study by Fagan and Chin, *Violence as Regulation and Social Control in the Distribution of Crack*, the Commission concluded: "it is the frequency of selling cocaine products, not just selling it in its smokeable form, that seems to explain violence in cocaine selling." Fagan and Chin also found that any increased violence in the crack market was due to the fact that neighborhoods in which crack selling are concentrated are weakened by social and economic dislocations, and the rapid development of the crack market brought with it violent competition. Crack distribution attracted participants at a time when economic and social counterweights were seriously diminishing.

The early crack market appeared to be quite violent. Goldstein, in a study of 400 New York City homicides in 1988, found that 53 percent were drug-related and of these 60 percent

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were related to crack. A 1991 study by James Inciardi of seriously delinquent adolescent in Miami from 1985 to 1988 found that these juvenile offenders used both crack and cocaine regularly at roughly the same rates. It also reported that those involved in crack dealing committed significantly more robberies than those who were not so involved.

Inciardi compares the early crack market to the vast systemic crime experienced in Miami in the cocaine powder market in the late '70s and early '80s. In Miami the murder rate rose to an all time high of 621 murders (58.8 per 100,000 people) in 1981. After the market stabilized, the murder rate dropped by a third to a low of 33.2 per 100,000 in 1987. As crack distribution increased, the murder rate in Miami rose to 42.5 per 100,000 in 1988 and 40.5 in 1989. (We are checking to see if the murder rate in Miami continued to decline after 1989.)

In a July 1995 Crime and Delinquency article, *Careers in Crack, Drug Use, Drug Distribution and Non-drug Criminality*, Fagan, Johnson, and Golub examined the lifestyles of 1,003 crack addicts in New York in 1988-1989. They found that subjects who reported never having committed robbery, assault, or both before they began crack use rarely reported initiating such behaviors after they became regular crack addicts. However, persons with violent histories before their involvement in crack tended to continue such behaviors and were more likely to be involved with crack sales and distribution. Among sellers two key factors systemically associated with high rates of violence were high frequency of sales and association with a group of sellers.

The NIJ review of DUF data for ONDCP found that in both Detroit and Washington, D.C., majority black cities, changes in the rate of black arrestees testing positive for cocaine closely mirrored changes in homicide rates. In contrast, the percentage of white males testing positive for cocaine increased in the face of declining homicide trends in both cities. This data suggest that the falling rate of violent crime in major U.S. cities in recent years is in part because the crack market has become stabilized.

The NIJ researchers also concluded that crack users participate in drug markets differently from other drug users and that this participation paves the way for more violent situations. For example, there are many more marijuana transactions in the United States, but there is stability in the marijuana buyer-seller relationship that has not been historically present in crack markets. While there is less stability in heroin markets, there are many fewer transactions. Lastly, NIJ found that the pattern of methamphetamine expansion is potentially similar to the development and institutionalization of crack markets - trends that will warrant careful examination.

- Psychopharmacologically Driven Crime

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The limited evidence to date suggests that psychopharmacologically driven crime may be least important in explaining the association between crime and crack and powder cocaine. A 1990 study by Fagan, "Intoxication and Aggression," found that "to date, there has been no systemic research linking crack cocaine with increased (psychopharmacologically driven) violence."

- **Economic Compulsive Crime**

Most researchers who have studied the issue found that many retail crack dealers are users who deal primarily to finance their consumption of crack. They also engage in other petty crimes and, for women, prostitution.

Domestic Violence and Drug Abuse

The NIJ DUF data analysis found that crack was far from the only substance mentioned in connection with domestic violence. Alcohol, powder cocaine, marijuana and a variety of other substances were mentioned as factors in the context of domestic violence.

A review of the 1991 National Household Survey done for ONDCP found that sociodemographic factors were equally an important factor in explaining violent behavior as well as drug use. For example, in analyzing fighting, alcohol, marijuana, hallucinogen, psychedelic, and selling drugs were all associated with violence. The use of cocaine, crack, and inhalants was not associated with domestic violence. The study found evidence supporting the substantial body of literature that alcohol use is a prime risk factor for violence.

Sentencing Commission Data

The February 1995 Sentencing Report examined FY 1993 data. 42,107 defendants were sentenced in Federal Court in FY 1993. 46 percent or 19,369 defendants were drug offenses. Of this group 34.5 percent were powder cocaine offenses. The remaining drug offenses were marijuana (26.7%), crack (19.4%), heroin (10%), metamphetamine (4.9%) and other drugs (4.5%). Powder and crack offenses combined for a total of 53.0 offenses, or a total of 9,925 offenders.

For defendants involved with 50 to 150 grams of cocaine, crack defendants have median sentences of 120 months, while powder defendants have a median sentences of 18 months.

The FY 1993 data examined by the Commission found that crack cocaine defendants as a group have more serious records of prior convictions than defendants convicted of other drug offenses. Crack defendants are least likely to have the lowest criminal history score (44.8%) and

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most likely to score in the career offender range (6.3%). Crack defendants also are more likely to have a recent criminal history, with 33.7 percent under a pre-existing criminal justice sentence at the time of their most recent Federal offense. Also, 14.5 percent of crack defendants -- compared to 6.6% of powder defendants -- are both under a pre-existing sentence when they commit offenses and commit the new offense within two years of a release for a prior offense.

The FY 1995 Sentencing Commission data found that crack defendants were generally in higher criminal history categories than powder defendants. 37 percent of crack defendants were in criminal history category I (the lowest category), 63 percent of crack defendants were in categories II-VI, while 64 percent of powder defendants were in category I.

Weapons

The Sentencing Commission's FY 93 data found weapons were involved with 27.9 percent of crack defendants, as compared to 15.1 percent of powder defendants. FY 1995 data found that weapons were involved in 31 percent of crack defendants, as compared to 14 percent of powder defendants who had a weapon.