

NLWJC - Kagan

DPC - Box 010 - Folder 010

Crime - Crack Sentencing [2]

Crime: Crack sentencing

4-6-97

Crack/cocaine

Gen'l McC -

Needs sci proof

tasks to be done by Tuesday

Wants to go over w/ (AG recommendation)

Plan is to be unified ~~position~~ - but can't support DOT position

Need to pull together emp data

If we don't have it, we owe it to Pres to get more time.

Like us to be as close to parity as poss.

DOT based solely on pol anal.

Too much based on pol.

perspective rather than

on data - DOT/Sent.

Comm to help us.

Friday - AG meeting

Knows Pres has said crack more than cocaine

He said: what's the basis? where's the data?

If ev doesn't support disparate ~~position~~ treatment, then it's NOT just NOT fair - and people's lives + liberties are at stake.

Crime: crack sentencing

S-6 Mtg w/ DoF, OWD CP re Crack

substantive report
(form of recommendation)

credit 8PS
by strat

DOF

5

500

25 - 75

125 - 375



1806 Repub. report
mit-level crack
dealer.

→ 25

250

10:1

General Mac?

Other drug stuff -

OT - some raised pens -
raised mand mins.

law ent rationale -

up what memo
doubt

Crime - crack
cocaine

U.S. Sentencing Commission Report on Crack Cocaine April 29, 1997

Questions and Answers

Q. What did the Sentencing Commission recommend today?

A. The United States Sentencing Commission issued a report today to Congress that included a recommendation to amend federal law to reduce the disparity between sentences for crack cocaine and powder cocaine.

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

Q. Why did the Sentencing Commission recommend this?

In addition,
A. ~~Part of the motivation for the Sentencing Commission's proposed recommendations relates to a concern about the racial impact arising from the current policy structure.~~ disparate

As important,
In addition, the Commission contends that the current 5-gram/5-year mandatory sentence for crack does not properly target serious drug dealers who deserve such a sentence; five grams is more indicative of a retail or street dealer and not a mid-level dealer. They also contend that the information and data suggest that some decrease in powder cocaine is warranted and note the ease with which powder is converted to crack cocaine.

Q. What is the Administration's position on these recommendations?

The Commission believes this change is necessary to ensure that federal prosecutors target mid- and high-level dealers.
A. The President commends the Sentencing Commission for moving forward on this issue from their last report. However, this is a very complex issue. He wants the Attorney General and General McCaffrey to review comprehensively the Sentencing Commission's new report -- which we have just seen -- and then report back to him in 45 days.

He has stated that some reduction change in cocaine sentencing is warranted - to ensure that federal prosecutors properly target mid- and high-level dealers.

Q. Isn't this the second time that the Commission has had to report on this issue? What is the prior history on this issue with the Commission?

A. The 1994 Crime Bill directed the Sentencing Commission to issue a report and recommendations on cocaine and federal sentencing policy. On May 1, 1995, by a 4-3 vote, the Sentencing Commission sent to Congress proposed changes to the sentencing guidelines including reducing crack cocaine penalties so that there would be no disparity between crack and powder cocaine sentences -- a 1-1 ratio. ~~All 7 members agreed that the sentences should be equalized but differed over additionally recommended "sentencing enhancements" for violence and other harms disproportionately associated with crack cocaine.~~

Sentencing Commission recommendations to Congress become law unless disapproved by an Act of Congress within 180 days. In this instance, the Administration sent to Congress legislation disapproving of the Sentencing Commission recommendation, which Congress passed and the President signed on October 30, 1995.

Q. What is current law?

Current federal sentencing structure pegs mandatory minimums to specific quantities of drugs distributed. The quantities differ for various drugs and in some cases for different forms of the same drug. For example, current law treats powder cocaine differently than crack cocaine by establishing a 100-1 quantity ratio between the two forms of cocaine.

(worth about \$ _____)

Thus, a person convicted of selling 500 grams of powder cocaine is subject to the same 5-year mandatory minimum sentences as a person selling 5 grams of crack cocaine, while a person convicted of selling 5,000 grams of powder is subject to the same 10-year mandatory minimum as a person selling 50 grams of crack.

(worth about \$ _____)

(worth about \$ _____)

In addition, there is a mandatory minimum penalty for simple possession of crack cocaine, the only such federal penalty for a first offense of simple possession of a controlled substance.

The 1994 Crime Bill included an exception to the mandatory minimum drug penalties -- the "safety valve" -- for certain first-time, non-violent, low-level drug offenders. Thousands of defendants have benefitted from the safety valve exception.

(worth about \$ _____)
↑
Dennis + Leamer

Can we also put those dollar amounts in the cue paper?

But a full 88.8% of crack cocaine offenders are black.

"Blacks" or "African Americans"?

Q. Isn't current drug law discriminatory against blacks?

It is true that part of the motivation for the Sentencing Commission's proposed recommendations relates to a concern about the racial impact arising from the current policy structure.

In 1993, Whites accounted for 30.8 percent of all convicted federal drug offenders, Blacks 33.9 percent, and Hispanics 33.8 percent. Blacks constituted 88.8 percent of crack cocaine offenders, while powder cocaine cases involve sizeable proportions of Whites (32%), Blacks (27.4%), and Hispanics (39.3%). In addition, it should be noted that methamphetamine offenders are 84.2 percent White.

generally reflect this breakdown: They

(In contrast,

It should be noted, however, that

It is true that blacks comprise the largest percentage of those affected by the penalties associated with crack. This doesn't mean that the penalties themselves are racially motivated—the penalties apply equally to similar defendants, regardless of race. Many criminal statutes, when enforced, yield a pool of defendants that are not entirely representative of the racial composition of society or even of those who break criminal laws. Moreover, Congress did not act with discriminatory intent in setting different penalties for different forms of cocaine.

crack — there is no evidence that

Q. Aren't crack and powder cocaine the same drug?

A. No. Crack is more psychologically addictive than cocaine powder. In its last report to Congress on this issue, the Sentencing Commission concluded that: "[T]he higher addictive qualities associated with crack combined with its inherent ease of use can support a higher ratio for crack over powder," and that "crack dealers generally tend to have a stronger association with systemic violence and are more likely to possess weapons than powder cocaine dealers." For this reason, crack and powder cocaine penalties should not be identical.

Q. What is the United States Sentencing Commission? Is it composed of Clinton appointees?

A. The U.S. Sentencing Commission is an independent agency in the judicial branch of government. The Commission is responsible for developing and monitoring sentencing policies and practices for the federal courts. The Commission is also charged with promulgating sentencing guidelines that prescribe the appropriate form and severity of punishment for offenders convicted of federal crimes. These guidelines are then subject to Congressional review.

The Commission's seven commissioners are appointed by the President and

confirmed by the Senate. There are also two non-voting ex-officio members. At least three of the commissioners must be federal judges and no more than four can be members of the same political party.

although penalties for crack + powder cocaine should not be equal,

Q. What penalty structure does the Administration support? Does the President agree with the ranges proposed in the Commission's report?

A. The President has stated before that there is too great a disparity in the current sentencing structure. He has also stated that the penalty for trafficking in (powder) cocaine should be raised. ~~The Commission's recommendation to equalize the penalties for crack and powder cocaine by dramatically lowering the penalties for trafficking crack were the wrong approach then, and are the wrong approach today.~~

The President would like to work with Congress to address this issue in a deliberate manner. In the meantime, the President has asked Attorney General Reno and Director McCaffrey to undertake a serious review the penalty structure proposed by the Commission and report back to him with their recommendations in 45 days.

Q. If the President believes that the current sentencing structure is unfair, does he support lowering the penalties for crack cocaine? Does he only support raising penalties for trafficking in powder cocaine?

A. This is an extremely complex issue. Simply raising the penalties for powder cocaine violations will dramatically impact the costs to the federal government of increased incarceration. ~~increase in addiction,~~

but the President is open to The Commission's recommendation to "pinch" the two penalties.

For example, increasing powder penalties to a 5-year mandatory minimum for 100 grams from the current 500 grams (as the Senators Hatch and Abraham and others propose) could cost the government about \$500 million in the first five years in extra prison expenditures. This figure could increase to \$4.7 billion over 20 years and \$9.5 billion over 30 years. So, obviously, we will need to be mindful of the cost implications as we deliberate over what is the most appropriate sentencing structure.

Q. Aren't high crack penalties important for prosecuting dangerous and violent gang members? Doesn't the Sentencing Commission's new recommendations make it easier for dangerous criminals to go unpunished or under punished?

A. The report's recommendations leave substantial federal tools in place to focus on violent and dangerous drug trafficking offenders. The Commission's report does not undermine the ability to seek substantial penalties for crack cases, called "penalty enhancements," when there is organized drug dealing, if weapons are used, where minors are used in drug trafficking, or the drugs are sold near schools.

involving even smaller amounts of crack when

The mandatory minimum will continue to apply to any case involving 25-75 grams of crack which is the amount a mid-level crack dealer would earn.

UPD - Shouldn't we print this / print? are appropriate...

He believes that the sentencing structure must target mid- and high-level drug traffickers, so that the federal government's resources are not wasted in going after low-level drug offenders. If the current penalty system encourages such penny-ante prosecutions at the expense of prosecutions of

minimum amount a mid-level crack dealer would earn, it needs

In addition,

high-level drug traffickers, then there is reason to change it.

Crime-crack sentences



SHIMABUKUR_L @ A1
04/29/97 05:36:00 PM

Record Type: Record

To: Elena Kagan, Dennis Burke

cc:

Subject: CRACK, COCAINE SENTENCES SHOULD BE BALANCED, PANEL ...

Date: 04/29/97 Time: 16:29

CCrack, cocaine sentences should be balanced, panel recommends

WASHINGTON (AP) A sentencing panel recommended keeping harsher federal penalties for selling crack cocaine but said the wide disparity in current sentencing laws should be reduced.

Although research and public policy may support somewhat higher penalties for crack than for powder cocaine, a 100-to-1 quantity ratio cannot be justified," the U.S. Sentencing Commission said in a report to Congress Tuesday.

Federal law requires a five-year minimum sentence for people caught selling 5 or more grams of crack. However, someone convicted of trafficking powder cocaine would get the same sentence only if 500 grams or more were involved.

Noting that blacks make up almost 90 percent of those convicted in federal court of distributing crack, the commission said, "The current penalty structure results in a perception of unfairness and inconsistency."

In 1995, President Clinton and Congress rejected the sentencing commission's recommendation to equalize penalties for trafficking in crack and powder cocaine.

But Clinton said Tuesday his administration will give the new recommendation "very serious consideration."

"The sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine," the president said in a statement issued by the White House. "However, some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy."

Clinton said federal prosecutors should target mid- and high-level drug traffickers instead of low-level dealers. He said he has asked Attorney General Janet Reno and drug policy adviser Barry McCaffrey to review the proposal and report to him within 60 days.

The sentencing commission recommended that for crack cocaine, Congress raise the 5-gram trigger for a five-year mandatory sentence to somewhere between 25 and 75 grams. For powder cocaine, the 500-gram threshold for the same sentence should be lowered to a level between 125 and 375 grams, the panel said.

Penalties for selling other amounts of crack and powder should be similarly adjusted, the panel said.

And, it recommended reducing the penalty for simple possession of crack to the level now in effect for powder cocaine. Currently,

a five-year sentence is required for possession of 5 or more grams of crack, while possession of powder in any amount is punishable by no more than one year in prison.

“All of these drugs cause great harm to individuals and to society at large,” the commission said, but it added that violent street crime and addiction are more often associated with crack distribution.

Raising the amount of crack required for a five-year minimum sentence will focus federal prosecutions more on mid- and high-level sellers, the panel said. Sentences still can be increased for dealers who use guns or are involved in violence, it added.

The commission said federal prosecutions should target “serious dealers” while leaving other prosecutions to the states. The vast majority of drug prosecutions now occur in state courts.

Commission Chairman Richard P. Conaboy said in an interview, “We want to target those defendants that are the most culpable and the most violent with the longest sentences. We think this will do that.”

The proposal was criticized by a group called Families Against Mandatory Minimums, whose president, Julie Stewart, said the disparity between crack and powder cocaine sentences should be eliminated as the commission recommended in 1995.

APNP-04-29-97 1642EDT

**U.S. Sentencing Commission Report on Crack Cocaine
April 29, 1997**

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Q. Why did the Sentencing Commission recommend this?

A. The Commission believes this change is necessary to ensure that federal prosecutors target mid-and high-level traffickers. The Commission contends that the current 5-gram/5-year mandatory sentence for crack does not properly target serious drug dealers who deserve such a sentence; five grams is more indicative of a retail or street dealer and not a mid-level dealer. They also contend that the information and data suggest that some decrease in powder cocaine is warranted and note the ease with which powder is converted to crack cocaine.

In addition, the Sentencing Commission is concerned about the racial impact arising from the current policy structure.

Q. What is the Administration's position on these recommendations?

A. The President commends the Sentencing Commission for moving forward on this issue from their last report. He has stated that some change in cocaine sentencing is warranted. Such a change would ensure that federal resources properly target mid-and high-level drug traffickers. However, this is a very complex issue. He wants the Attorney General and General McCaffrey to review comprehensively the Sentencing Commission's new report -- which we have just seen - - and then report back to him in 60 days.

Q. Isn't this the second time that the Commission has had to report on this issue? What is the prior history on this issue with the Commission?

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Q. What is current law?

Current federal sentencing structure pegs mandatory minimums to specific quantities of drugs distributed. The quantities differ for various drugs and in some cases for different forms of the same drug. For example, current law treats powder cocaine differently than crack cocaine by establishing a 100-1 quantity ratio between the two forms of cocaine.

Thus, a person convicted of selling 500 grams of powder cocaine, worth between \$32,500 and \$50,000, is subject to the same 5-year mandatory minimum sentences as a person selling 5 grams of crack cocaine, worth about \$225 and \$750. A person convicted of selling 5,000 grams of powder worth between \$325,000 and \$500,000, is subject to the same 10-year mandatory minimum as a person selling 50 grams of crack, worth between \$2,250 and \$7,500.

In addition, there is a mandatory minimum penalty for simple possession of crack cocaine, the only such federal penalty for a first offense of simple possession of a controlled substance.

The 1994 Crime Bill included an exception to the mandatory minimum drug penalties -- the "safety valve" -- for certain first-time, non-violent, low-level drug offenders. Thousands of defendants have benefitted from the safety valve exception.

Q. Isn't current drug law discriminatory against blacks?

Part of the motivation for the Sentencing Commission's proposed recommendations relates to a concern about the racial impact arising from the current policy structure.

In 1993, Whites accounted for 30.8 percent of all convicted federal drug offenders, Blacks 33.9 percent, and Hispanics 33.8 percent. Powder cocaine cases generally reflect this breakdown: sizeable proportions of Whites (32%), Blacks (27.4%), and Hispanics (39.3%). But a full 88.8 percent of crack cocaine offenders are black. (In contrast, methamphetamine offenders are 84.2 percent White.)

It should be noted, however, that crack penalties apply equally to similar defendants, regardless of race. Many criminal statutes, when enforced, yield a pool of defendants that are not entirely representative of the racial composition of society or even of those who break criminal laws. Moreover, there is no evidence that Congress acted with discriminatory intent in setting different penalties for different forms of cocaine.

Q. Aren't crack and powder cocaine the same drug?

A. No. There are many dangers associated to a greater degree with crack than with powder. For instance, crack is more often associated with systemic crime, such as violent street crime involving gangs, guns, and death. Because crack is easy to manufacture and use, and is relatively inexpensive compared to powder cocaine, it is more available on the street and accessible to the most vulnerable in our society. Moreover, because crack is smoked instead of snorted like powder, crack users are more vulnerable to addiction. For these reasons, crack and powder cocaine penalties should not be identical.

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A. The President has stated before that there is too great a disparity in the current sentencing structure. He has also stated that the penalty for trafficking in (powder) cocaine should be raised.

The President would like to work with Congress to address this issue in a deliberate manner. In the meantime, the President has asked Attorney General Reno and Director McCaffrey to undertake a serious review of the penalty structure proposed by the Commission and report back to him with their recommendations in 45 days.

Q. If the President believes that the current sentencing structure is unfair, does he support lowering the penalties for crack cocaine? Does he only support raising penalties for trafficking in powder cocaine?

A. This is an extremely complex issue, but the President is open to the Commission's recommendation to "pinch" the two penalties. He believes that the sentencing structure must target mid- and high-level drug traffickers, where the federal government's resources should be focused. Changes to our penalty system should be examined if it currently encourages smaller prosecutions at the expense of prosecuting high-level drug traffickers.

Simply raising the penalties for powder cocaine violations will dramatically increase the costs to the federal government of incarceration. For example, increasing powder penalties to a 5-year mandatory minimum for 100 grams from the current 500 grams (as Senators Hatch and Abraham and others propose) could cost the government about \$500 million in the first five years in extra prison expenditures. This figure could increase to \$4.7 billion over 20 years and \$9.5 billion over 30 years. So, obviously, we will need to be mindful of the cost implications as we deliberate over what is the most appropriate sentencing structure.

Q. Aren't high crack penalties important for prosecuting dangerous and violent gang members? Doesn't the Sentencing Commission new recommendations make it easier for dangerous criminals to go unpunished or under punished?

A. The report's recommendations give the federal government all the tools it needs to go after violent and dangerous drug trafficking offenders. The mandatory minimum will continue to apply to any case involving at least 25-75 grams of crack, which is the amount a mid-level crack dealer would carry. The Commission's report does not undermine the ability to seek substantial penalties for crack cases involving even smaller amounts of crack when "penalty enhancements," are appropriate-- i.e., when there is organized drug dealing, if weapons are used, where minors are used in drug trafficking, or the drugs are sold near schools.

U.S. Sentencing Commission Report on Crack Cocaine

April 29, 1997

Announcement

- Today, the President released a statement commending the U.S. Sentencing Commission for moving forward with recommendations to reduce the disparity between crack and powder cocaine penalties. The President directed Director McCaffrey and Attorney General Reno to review the Sentencing Commission's specific recommendations and report back to him in 60 days.

Background

- Current federal law requires a 5-year mandatory sentence for 500 grams of powder cocaine, but imposes the same sentence for only 5 grams of crack cocaine -- a 100 to 1 ratio. The cost of 500 grams of powder ranges from \$32,500 to \$50,000, whereas the cost of 5 grams of crack cocaine ranges from \$225 to \$750.
- The 1994 Crime Bill directed the Sentencing Commission to issue a report and recommendations on cocaine and federal sentencing policy. On May 1, 1995 the Commission sent to Congress proposed sentencing changes to equalize penalties at the powder cocaine level -- substantially reducing the penalties for crack cocaine possession and distribution. The Commission also proposed reducing money laundering sentences. President Clinton signed legislation which rejected these recommendations and directed the Commission to undertake additional review and submit new recommendations.
- Today's report recommends that the triggering amount for the 5-year mandatory minimum for crack increase from the current 5 grams to between 25 and 75 grams, and decrease for powder from the current 500 grams to between 125 and 375 grams. If these recommendations become law, the ratios would range between 15 to 1 and 1.66 to 1.
- The President has stated before that some adjustment to the penalties for crack and powder cocaine is warranted. Such an adjustment would ensure that federal resources target mid- and high-level drug traffickers. However, he believes that any revision to the sentencing laws must continue to reflect that crack is a more dangerous form of cocaine and that tougher sentences are appropriate for more dangerous offenders. That is why his 1994 Crime Bill included an exception to the mandatory minimum drug penalties -- the "safety valve" -- for certain first-time, non-violent, low-level drug offenders.

Clinton Administration: Fighting Cocaine and Emerging Drugs

- President Clinton has submitted the largest anti-drug budget to Congress. Overall drug use in the United States has fallen dramatically-- by half in 15 years. Between 1985 to 1995, the number of current cocaine users dropped by 74%.
- Last year, the President signed his methamphetamine legislation into law. That law attacks this emerging drug at every level and directed the Commission to increase the penalties for methamphetamine offenses. Yesterday, the Commission strengthened

penalties for methamphetamine offenses pursuant to that law.

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.

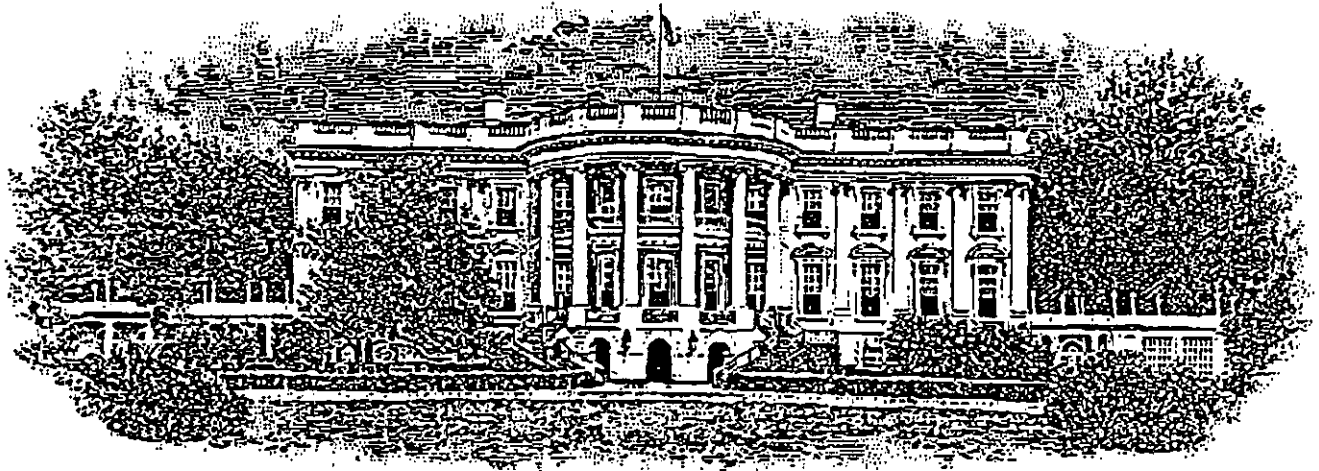
As I have stated before, however, some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy. Federal prosecutors should target mid- and high-level drug traffickers, rather than low-level drug offenders. An adjustment to the penalty scheme will help ensure 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

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Ellen

FAX NUMBER: 62878

TELEPHONE NUMBER: 65584

FROM: Leanne

TELEPHONE NUMBER: 65574

PAGES (INCLUDING COVER): 2

COMMENTS: Draft Justice/ONDOP
joint press statement

RAHM AND DENNIS
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503



DRAFT

*papers asked me Gaffney -
The Reno asked to do this jointly. We
want*

FOR IMMEDIATE RELEASE:
TUESDAY, APRIL 29, 1997

Contact: Bob Weiner
(202) 395-6618

**WHITE HOUSE DRUG CZAR AND ATTORNEY GENERAL RENO WELCOME
SENTENCING COMMISSION RECOMMENDATION TO CLOSE GAP IN PENALTIES
FOR CRACK VERSUS POWDER COCAINE; LOOK FORWARD TO DEVELOPING
RECOMMENDATIONS TO PRESIDENT**

*ISSUED
NEED
OK
ASA
BR*

(Washington, DC) -- White House National Drug Policy Director Barry McCaffrey and Attorney General Janet Reno issued the following statement today in response to the U.S. Sentencing Commission's report calling for closing the gap in penalties for crack versus powder cocaine.

"We welcome the Sentencing Commission's report issued today recommending that crack and powder cocaine sentences should be brought closer together.

We are convinced that justice is served best and respected most when sentences are made fair for all. The Sentencing Commission report moves us in the right direction.

We must work toward targeting federal enforcement resources where they can do the most good -- namely, prosecuting and sentencing high level drug trafficking organizations and mid-level dealers. We are troubled that the current penalty structure does not adequately serve that end and, as today's report indicates, appears to have a disproportionate racial impact.

We look forward to working together to develop recommendations for the President to consider for presentation to Congress."

*67430
67431
(crackpowder.429)*

**62530
67431**

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Background

- Current federal law requires a 5-year mandatory sentence for 500 grams of powder cocaine, but imposes the same sentence for only 5 grams of crack cocaine -- a 100 to 1 ratio. The cost of 500 grams of powder ranges from \$32,500 to \$50,000, whereas the cost of 5 grams of crack cocaine ranges from \$225 to \$750.
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Q. What is current law?

Current federal sentencing structure pegs mandatory minimums to specific quantities of drugs distributed. The quantities differ for various drugs and in some cases for different forms of the same drug. For example, current law treats powder cocaine differently than crack cocaine by establishing a 100-1 quantity ratio between the two forms of cocaine.

Thus, a person convicted of selling 500 grams of powder cocaine, worth between \$32,500 and \$50,000, is subject to the same 5-year mandatory minimum sentences as a person selling 5 grams of crack cocaine, worth about \$225 and \$750. A person convicted of selling 5,000 grams of powder worth between \$325,000 and \$500,000, is subject to the same 10-year mandatory minimum as a person selling 50 grams of crack, worth between \$2,250 and \$7,500.

In addition, there is a mandatory minimum penalty for simple possession of crack cocaine, the only such federal penalty for a first offense of simple possession of a controlled substance.

The 1994 Crime Bill included an exception to the mandatory minimum drug penalties -- the "safety valve" -- for certain first-time, non-violent, low-level drug offenders. Thousands of defendants have benefitted from the safety valve exception.

Q. Isn't current drug law discriminatory against blacks?

Part of the motivation for the Sentencing Commission's proposed recommendations relates to a concern about the racial impact arising from the current policy structure.

In 1993, Whites accounted for 30.8 percent of all convicted federal drug offenders, Blacks 33.9 percent, and Hispanics 33.8 percent. Powder cocaine cases generally reflect this breakdown: sizeable proportions of Whites (32%), Blacks (27.4%), and Hispanics (39.3%). But a full 88.8 percent of crack cocaine offenders are black. (In contrast, methamphetamine offenders are 84.2 percent White.)

It should be noted, however, that crack penalties apply equally to similar defendants, regardless of race. Many criminal statutes, when enforced, yield a pool of defendants that are not entirely representative of the racial composition of society or even of those who break criminal laws. Moreover, there is no evidence that Congress acted with discriminatory intent in setting different penalties for different forms of cocaine.

Q. Aren't crack and powder cocaine the same drug?

A. No. There are many dangers associated to a greater degree with crack than with powder. For instance, crack is more often associated with systemic crime, such as violent street crime involving gangs, guns, and death. Because crack is easy to manufacture and use, and is relatively inexpensive compared to powder cocaine, it is more available on the street and accessible to the most vulnerable in our society. Moreover, because crack is smoked instead of snorted like powder, crack users are more vulnerable to addiction. For these reasons, crack and powder cocaine penalties should not be identical.

Q. What is the United States Sentencing Commission? Is it composed of Clinton appointees?

A. The U.S. Sentencing Commission is an independent agency in the judicial branch of government. The Commission is responsible for developing and monitoring sentencing policies and practices for the federal courts. The Commission is also charged with promulgating sentencing guidelines that prescribe the appropriate form and severity of punishment for offenders convicted of federal crimes. These guidelines are then subject to Congressional review.

The Commission's seven commissioners are appointed by the President and confirmed by the Senate. There are also two non-voting ex-officio members. At least three of the commissioners must be federal judges and no more than four can be members of the same political party.

Q. What penalty structure does the Administration support? Does the President agree with the ranges proposed in the Commission's report?

A. The President has stated before that there is too great a disparity in the current sentencing structure. He has also stated that the penalty for trafficking in (powder) cocaine should be raised.

The President would like to work with Congress to address this issue in a deliberate manner. In the meantime, the President has asked Attorney General Reno and Director McCaffrey to undertake a serious review of the penalty structure proposed by the Commission and report back to him with their recommendations in 45 days.

Q. If the President believes that the current sentencing structure is unfair, does he support lowering the penalties for crack cocaine? Does he only support raising penalties for trafficking in powder cocaine?

A. This is an extremely complex issue, but the President is open to the Commission's recommendation to "pinch" the two penalties. He believes that the sentencing structure must target mid- and high-level drug traffickers, where the federal government's resources should be focused. Changes to our penalty system should be examined if it currently encourages smaller prosecutions at the expense of prosecuting high-level drug traffickers.

Simply raising the penalties for powder cocaine violations will dramatically increase the costs to the federal government of incarceration. For example, increasing powder penalties to a 5-year mandatory minimum for 100 grams from the current 500 grams (as Senators Hatch and Abraham and others propose) could cost the government about \$500 million in the first five years in extra prison expenditures. This figure could increase to \$4.7 billion over 20 years and \$9.5 billion over 30 years. So, obviously, we will need to be mindful of the cost implications as we deliberate over what is the most appropriate sentencing structure.

Q. Aren't high crack penalties important for prosecuting dangerous and violent gang members? Doesn't the Sentencing Commission new recommendations make it easier for dangerous criminals to go unpunished or under punished?

A. The report's recommendations give the federal government all the tools it needs to go after violent and dangerous drug trafficking offenders. The mandatory minimum will continue to apply to any case involving at least 25-75 grams of crack, which is the amount a mid-level crack dealer would carry. The Commission's report does not undermine the ability to seek substantial penalties for crack cases involving even smaller amounts of crack when "penalty enhancements," are appropriate-- i.e., when there is organized drug dealing, if weapons are used, where minors are used in drug trafficking, or the drugs are sold near schools.

MEMORANDUM TO THE PRESIDENT

**FROM: RAHM EMANUEL
BRUCE REED
CHARLES RUFF**

RE: CRACK COCAINE SENTENCING GUIDELINES

On April 29, 1997, the United States Sentencing Commission is scheduled to announce that they are unanimously recommending to Congress to amend federal law to reduce the disparity between sentences for crack cocaine and powder cocaine.

This will be a very contentious issue. We wanted to remind you of the background on this issue and provide you with some options to consider.

Background

Current Law

Current Federal sentencing structure pegs mandatory minimums to specific quantities of drugs distributed. The quantities differ for various drugs and in some cases for different forms of the same drug. For example, current law treats powder cocaine differently than crack cocaine by establishing a 100-1 quantity ratio between the two forms of cocaine.

Thus, a person convicted of selling 500 grams of powder cocaine is subject to the same 5 year mandatory minimum sentences as a person selling 5 grams of crack cocaine, while a person convicted of selling 5000 grams of powder is subject to the same 10 year mandatory minimum as a person selling 50 grams of crack.

In addition, there is a mandatory minimum penalty for simple possession of crack cocaine, the only such federal penalty for a first offense of simple possession of a controlled substance.

Your 1994 Crime Bill included an exception to the mandatory minimum drug penalties -- the "safety valve" -- for certain (first-time, non-violent, low-level drug offenders.) -- defendants have benefitted from the safety valve exception.

Sentencing Impact

African-American leaders contend that the disparity in sentencing is discriminatory -- their argument is that crack defendants are predominately black and powder cocaine defendants

are white.

In 1993, Whites accounted for 30.8 percent of all convicted federal drug offenders, Blacks 33.9 percent, and Hispanics 33.8 percent. Blacks constituted 88.8 percent of crack cocaine offenders, while powder cocaine cases involve sizeable proportions of Whites (32%), Blacks (27.4%), and Hispanics (39.3%). In addition, it should be noted that methamphetamine offenders are 84.2 percent White.

Prior Sentencing Commission Recommendation

The 1994 Crime Bill directed the Sentencing Commission to issue a report and recommendations on cocaine and federal sentencing policy. On May 1, 1995, by a 4-3 vote, the Sentencing Commission sent to Congress proposed changes to the sentencing guidelines including reducing crack cocaine penalties so that there would be no disparity between crack and powder cocaine sentences -- a 1-1 ratio. All 7 members agreed that the sentences should be equalized but differed over additionally recommended "sentencing enhancements" for violence and other harms disproportionately associated with crack cocaine.

Sentencing Commission recommendations to Congress become law unless disapproved by an Act of Congress within 180 days. In this instance, the Administration sent to Congress legislation disapproving of the Sentencing Commission recommendation, which Congress passed and you signed on October 30, 1995. This bill was adamantly opposed by the Congressional Black Caucus and numerous African-American leaders.

Signing Statement

In your signing statement, you acknowledged that current law does have a substantial disparity between sentences for crack as compared to equal amounts of powder cocaine and noted that "some adjustment is warranted." The bill you signed directed the Sentencing Commission to undertake additional review of these issues and to report back with new recommendations.

On November 1, 1995, during a roundtable with the Trotter Group, you stated that you "didn't believe we should lower the penalties for trafficking in crack," that there is "no question that the disparity is entirely too great in the sentencing," and that you thought they "should raise the penalty for trafficking in cocaine." You also mentioned that you rejected the Sentencing Commission's recommendations because they also reduced money laundering penalties and noted that the safety valve was working to keep sentences lower for younger first-time non-violent offenders.

Current Proposals

Sentencing Commission

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

They will contend that the current 5-gram/5-year mandatory does not properly target serious drug dealers who deserve such a sentence; five grams is more indicative of a retail or street dealer and not a mid-level dealer. They will also contend that the information and data suggest that some decrease in powder cocaine is warranted and note the ease with which powder is converted to crack cocaine.

Justice Department

The Criminal Division is recommending to the Attorney General that the powder level be 250 grams for a 5-year mandatory and a 25-50 range for crack.

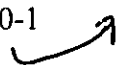
Senate Republicans

Senators Hatch and Abraham have a bill that would have a 5-year mandatory for 100 grams of powder and keep current law for crack - - 5 grams/ 5 years. In other words, Hatch just increases the penalties for powder cocaine so the that disparity is 20-1 instead of the current 100-1.]]

In summation: An offender will receive a 5-year mandatory minimum for the following amount of grams:

	<u>Current Law</u>	<u>Sentencing Com.</u>	<u>Justice Dept.</u>	<u>Hatch</u>
<u>Powder</u>	500	125-375	250	100
<u>Crack</u>	5	25-75	25-50	5
<u>Ratio</u>	100-1	5-1 to 15-1	5-1 to 10-1	20-1

(7)
Breaux



4-24 Crack mtg

Syr m.m

500 powder \$30,000

5 crack \$450

↓ 89% ~~crack~~ volume retained

Schem. - Tues:

125-375 powder

25-75 crack

Hatch

150 powder

5 crack

2 probs

1. 90% of crack As are AA (45% keep - rest split - on powder)

Ch ruled: no racial bias in how we pursue these cases.
(sent g)

unfair - ~~rest~~ determines credit of law court system.
symbol of bias.

2. Point of scheme: subit greater emph than these ought
to be on st level crack dealers -

not buying a mid-level

DB - don't have to change law to do that - They
have discretion.

A - agents' incentives - to get man's. Easier to get w/out
crack.

Why not just lower powder?

retained more harsh pens on crack; adds such pens to powder

RE - response - 20T etc
just got - reviewing
concerned about dip impact
report back 15-20 days.

GM - doesn't want to give a # at this point

RE

1. Crack pipe worked - made tremendous headway
 2. Emergency drug prob - meth
 3. Figure out how to qualify powder change.
- Then - come back w/ something -

last yr - bad product
based on his rec - they've come
back - bkr proposal
val - al - high to meth.
asked GM + AGTR to make rec

~~30-40 days~~

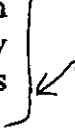

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Crime: crack sentencing

Fact Sheet

FEDERAL SENTENCING POLICY RELATING TO CRACK COCAINE

- The racial implications of the current cocaine sentencing structure are deeply troubling. The current harsh penalties for crack cocaine fall disproportionately on African-Americans and target an inappropriately low level of the drug.
 - 90% of federal crack defendants are African-American.
 - It takes only 5 grams of crack as opposed to 500 grams of powder cocaine to get a 5-year mandatory minimum sentence in the federal system.
- The federal government should be targeting those higher in the distribution chain. When Congress initially established the 5-year mandatory minimum sentences, they said they wanted it to apply to a "mid-level" or serious dealer. The current penalty structure leads to an over-emphasis in federal cases on low-level defendants. 
 - 5 grams of crack cocaine is worth as little as \$400 and is characteristic of a street level dealer. The current 5-year mandatory minimum for this \$400 worth of crack costs taxpayers over \$100,000 in incarceration costs.
 - While it is important to prosecute at this level of the distribution chain, state and local prosecutors are often in a better position to target this level of the trade and certainly can do so as effectively and possibly more cheaply than can the federal government. The vast bulk of drug prosecutions in this country are brought by local prosecutors.
 - DEA data suggest that a mid-level crack dealer deals in ounce or multi-ounce quantities (1 ounce = 28 grams).
 - The federal government's emphasis should remain on those higher in the drug trade hierarchy. In this way, we can be more effective in dismantling drug organizations and have a longer lasting impact on the trade overall. 
- The problem inherent in this penalty structure is magnified because the harsh penalties, particularly for the small dealers, have become a symbol of racial injustice in the criminal justice system. We need to recognize 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.

- The United States Sentencing Commission's Report is fundamentally sound. The Commission suggests that the federal penalties for crack, with their severe impact on a single racial group, inappropriately focus federal resources on a lower level of the drug trade than is ordinarily warranted in the federal system.
- A re-designed penalty structure would help target limited federal resources in a more efficient and effective manner -- and most importantly, in a manner that is not seen to provide inappropriately harsh punishments for a single racial group.
- The problem can not be solved by increasing powder penalties without changing crack penalties.
 - By only increasing powder sentences, the harsh crack penalties will continue to impact a group of low-level defendants, 90% of whom are African-American.
 - Additionally, we are exacerbating the problem by focusing more federal resources lower in the distribution chain for powder cocaine (for which just under 50% of the federal defendants are Hispanic).
 - We also must be mindful of the increased resources that would be spent on this one-way ratchet which targets lower level offenders:
 - Increasing powder penalties (using 100 grams as the 5 year mandatory minimum trigger as does the Hatch/Abraham Bill), could cost the government about \$500 million in the first five years in extra prison expenditures.
 - Projections suggest this could increase to \$4.7 billion in 20 years and \$9.5 billion in 30 years.
- We should bring the sentences closer together, raising the triggering amounts for the mandatory minimum for crack and lowering those for powder.
- Any revised system needs to continue to reflect that crack cocaine is the more harmful form of cocaine. Moreover, any change in penalties must not send the wrong message. The distribution of crack cocaine is a serious offense in our communities deserving criminal prosecution by the appropriate authorities.

Mere - voted in public
today.

So - out

ATT: DRUGS/NATIONAL

*Crime -
Crack sentencing*



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

FOR IMMEDIATE RELEASE:
TUESDAY, APRIL 29, 1997

Contact: Bob Weiner
(202) 395-6618

WHITE HOUSE DRUG CZAR AND ATTORNEY GENERAL RENO WELCOME SENTENCING COMMISSION RECOMMENDATION TO CLOSE GAP IN PENALTIES FOR CRACK VERSUS POWDER COCAINE; LOOK FORWARD TO DEVELOPING RECOMMENDATIONS TO PRESIDENT

(Washington, DC) -- White House National Drug Policy Director Barry McCaffrey and Attorney General Janet Reno issued the following statement today in response to the U.S. Sentencing Commission's report calling for closing the gap in penalties for crack versus powder cocaine.

"We welcome the Sentencing Commission's report issued today recommending that crack and powder cocaine sentences should be brought closer together.

We are convinced that justice is served best and respected most when sentences are made fair for all. The Sentencing Commission report moves us in the right direction.

We must work toward targeting federal enforcement resources where they can do the most good -- namely, prosecuting and sentencing high level drug trafficking organizations and mid-level dealers. We are troubled that the current penalty structure does not adequately serve that end and, as today's report indicates, appears to have a disproportionate racial impact.

We look forward to working together to develop recommendations for the President to consider for presentation to Congress."

(crackpowder.429)

*Crime-crack 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

April 29, 1997

Announcement

- Today, the President released a statement commending the U.S. Sentencing Commission for moving forward with recommendations to reduce the disparity between crack and powder cocaine penalties. The President directed Director McCaffrey and Attorney General Reno to review the Sentencing Commission's specific recommendations and report back to him in 45 days.

Background

- Current federal law requires a 5-year mandatory sentence for 500 grams of powder cocaine, but imposes the same sentence for only 5 grams of crack cocaine -- a 100 to 1 ratio.
- The 1994 Crime Bill directed the Sentencing Commission to issue a report and recommendations on cocaine and federal sentencing policy. On May 1, 1995 the Commission sent to Congress proposed sentencing changes to equalize penalties at the powder cocaine level -- substantially reducing the penalties for crack cocaine possession and distribution. The Commission also proposed reducing money laundering sentences. President Clinton signed legislation which rejected these recommendations and directed the Commission to undertake additional review and submit new recommendations.
- Today's report by the Commission recommends that the triggering amount for the 5-year mandatory minimum for crack increase from the current 5 grams to between 25 and 75 grams, and decrease for powder from the current 500 grams to between 125 and 375 grams. If these recommendations become law, the resulting ratios would range between 15 to 1 and 1.66 to 1.
- The President has stated before that some adjustment to the penalties for crack and powder cocaine is warranted. Such an adjustment would ensure that federal resources target mid- and high-level drug traffickers. However, he believes that any revision to the sentencing laws must continue to reflect that crack is a more dangerous form of cocaine and that tougher sentences are appropriate for more dangerous offenders. That is why his 1994 Crime Bill included an exception to the mandatory minimum drug penalties -- the "safety valve" -- for certain first-time, non-violent, low-level drug offenders.

Clinton Administration: Fighting Cocaine and Emerging Drugs

- President Clinton has submitted the largest anti-drug budget to Congress.

Overall drug use in the United States has fallen dramatically-- by half in 15 years. Between 1985 to 1995, the number of current cocaine users dropped by 74%.

- Last year, the President signed his methamphetamine legislation into law. That law attacks this emerging drug at every level and directed the Commission to increase the penalties for methamphetamine offenses. Yesterday, the Commission strengthened penalties for methamphetamine offenses pursuant to that law.

Crime-crack sentencing

STATEMENT BY THE PRESIDENT

I am pleased that the Sentencing Commission has moved forward with recommendations to Congress to reduce the disparity between crack and powder cocaine penalties. (My Administration will seriously review these recommendations and give them due consideration.)

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 it was the wrong approach then, and would be the wrong approach now.

Current law does require a substantial disparity between sentences for crack as compared to equal amounts of powder cocaine. I have stated before that some adjustment to these penalties is warranted to ensure that federal prosecutors target mid- and high-level drug traffickers. 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.

Any revision to the sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine, as the Sentencing Commission's new recommendations, in fact, does. 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 not send the wrong message to drug dealers or our children.

I am also looking forward to the Sentencing Commission's recommendations on my methamphetamine 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.

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.

up front [I have asked Director McCaffrey and Attorney General Reno to review the Sentencing Commission's recommendations to Congress and to report back to me in 45 days.

Jenette Rudowski Sent down.
Current law

100 grams of mix of meth

→ 5 yr

can. directed to ↑ pers

50 grams of mix of meth
(exactly btw 25 + 75
for crack)

(Admin bill - would have changed
to 50; dem'n did this
precisely)

log of pure → 5 yr

no change

admin would have changed
to 5 g.

same rationale - not mid level it
change. Same as
in crack

Crime-crack sentencing.

Crime-crack sentencing

STATEMENT BY THE PRESIDENT

I am pleased that ~~commend~~ the Sentencing Commission has moved ~~for moving~~ forward with recommendations to Congress to reduce the disparity between crack and powder cocaine penalties. ~~I support the general thrust of the report, and my~~ My Administration will seriously review these recommendations and give them due consideration.

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 it was the wrong approach then, and would be the wrong approach now.

This adjustment will

Current law does require ~~creates~~ a substantial disparity between sentences for crack as compared to equal amounts of powder cocaine. I have stated before that some adjustment to these penalties is warranted, to ensure that federal prosecutors target mid- and high-level drug traffickers. ~~Current crack penalties inappropriately target low-level dealers in the distribution chain and fall disproportionately on African-Americans.~~ 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.

[It also will reduce the disparate racial impact of the current sentencing structure.]

Any revision to the sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine, as ~~t~~ The Sentencing Commission's new recommendations, in fact, do ~~ies~~. 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 not send the wrong message to drug dealers or our children. ~~At the same time, however, the problem with cocaine penalties cannot be solved by merely increasing penalties for powder offenders.~~

I am also pleased that looking forward to the Sentencing Commission has increased penalties for methamphetamine offenses pursuant to the ~~'s~~ recommendations on my methamphetamine 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.

I have asked Director McCaffrey and Attorney General Reno to review the Sentencing Commission's recommendations to Congress and to report back to me in 45 days. ~~I look forward to working with the Congress on this issue.~~

Crime-crack sentencing

U.S. Sentencing Commission Report on Crack Cocaine

April 29, 1997

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- Today, the President released a statement commending the U.S. Sentencing Commission for moving forward with recommendations to reduce the disparity between crack and powder cocaine penalties. The President directed Director McCaffrey and Attorney General Reno to review the Sentencing Commission's specific recommendations and report back to him in 45 days.

Background

- Current federal law requires a 5-year mandatory sentence for 500 grams of powder cocaine, but imposes the same sentence for only 5 grams of crack cocaine -- a 100-1 disparity in sentencing.
- The 1994 Crime Bill directed the Sentencing Commission to issue a report and recommendations on cocaine and federal sentencing policy. On May 1, 1995 the Commission sent to Congress proposed sentencing changes to equalize penalties at the powder cocaine level -- substantially reducing the penalties for crack cocaine possession and distribution. The Commission also proposed reducing money laundering sentences. President Clinton signed legislation rejecting these recommendations and directed the Commission to undertake additional review and submit new recommendations.
- Today's report by the Commission recommends that the triggering amount for the 5-year mandatory minimum for crack increase from the current 5 grams to between 25 and 75 grams, and decrease for powder from the current 500 grams to between 125 and 375 grams. If these recommendations became law, the sentencing disparity between crack and powder cocaine would be reduced to no more than 15-1 and no less than 1.66-1.
- The President has stated before that some adjustment to the penalties for crack and powder cocaine is warranted to ensure that federal prosecutors target mid- and high-level drug traffickers. However, he believes that any revision to the sentencing laws must continue to reflect that crack is a more dangerous form of cocaine and that tougher sentences are appropriate for more dangerous offenders. That is why his 1994 Crime Bill included an exception to the mandatory minimum drug penalties -- the "safety valve" -- for certain first-time, non-violent, low-level drug offenders.

Clinton Administration: Fighting Cocaine and Emerging Drugs

- President Clinton has submitted the largest anti-drug budget to Congress. Overall drug use in the United States has fallen dramatically-- by half in 15 years. Between 1985 to 1995, the number of current cocaine users dropped by 74%.
- Last year, the President signed his methamphetamine legislation into law, which attacks this emerging drug at every level and directed the Commission to increase the penalties for its possession and distribution. The President looks forward to the Commission's sentencing recommendations on this law.

Leanne A. Shimabukuro 04/30/97 07:04:36 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: cocaine subgroup-- follow up

As we discussed, I think we need to have a higher level group comprised of "principals" to develop an outline, or framework on the report. This group would also later review the progress of a second staff level group that would draft the nuts and bolts of the report.

Proposed principal group:

- 1) DPC: Elena, Jose, Leanne
- 2) WH Counsel: Dawn Chirwa, Karen Popp
- 3) Justice: Kent Markus, Jonathan Schwartz
- 4) ONDCP: Ed Jurith (maybe one more here)

I don't think it is necessary to include Treasury, but if we do, we should invite David Medina.

Rahm should review the outline and could be invited to the final meeting to discuss draft and how we would roll it out.

Let me know what you think of this proposal. Thanks.

Crime -
Crack sentencing



Record Type: Record

To: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP
cc: Leanne A. Shimabukuro/OPD/EOP
Subject: Crack Cocaine

My understanding is that the Sentencing Commission is going to make an announcement on the 29th that they are recommending a "pinch" in the disparity between crack and powder cocaine sentences.

Unlike last time, they are not amending the guidelines, which created a situation where Congress had to affirmatively disapprove the guidelines or they became operative. They are just announcing their position (at least, that is my understanding at this point).

Under current law, a defendant in possession of 5 grams of crack cocaine receives a 5 year mandatory minimum. However, it takes 500 grams of powder cocaine for a defendant to receive a 5 year mandatory. Thus, current law has a 100-1 disparity in penalties between a crack defendant and a powder cocaine defendant.

The Sentencing Commission is supposedly going to recommend a "pinch" - - Powder penalties would be a range 125-375 grams for a 5 year mandatory and crack would be 25-75 grams.

The Criminal Division is recommending to the AG that the powder level be 250 grams for a 5 year mandatory and a 25-50 range for crack.

Senators Hatch and Abraham have a bill that would have a 5 year mandatory for 100 grams of powder and keep current law for crack - - 5 grams, 5 years. In other words, Hatch just increases the penalties for powder cocaine so the that disparity is 20-1 instead of current law, which is 100-1.

In summation:

A defendant will receive a 5 year mandatory minimum for the following amount of grams:

	Current Law	Sent. Com.	Crm Div.	Hatch
Powder	500	125-375	250	100
Crack	5	25-75	25-50	5

Current law also has what is referred to as a "safety valve." If the defendant has not priors, no gun was used, etc. then the 5 year can be waived.

Federal Sentencing Policy Relating to Crack Cocaine

TALKING POINTS

- We are troubled by the racial implications of the current cocaine sentencing structure. We recognize that the current harsh penalties for crack cocaine fall disproportionately on African-Americans and (target a lower level of the drug trade than do the penalties associated with other controlled substances.)
- This is a problem in and of itself, but the problem is magnified because the harsh penalties, particularly for the small dealers, have become a symbol of racial injustice in the criminal justice system. We need to recognize the corrosive effect this has had on respect for the law in certain communities and on the fair administration of justice.
- We believe it is time for us all to come together to address the issue in a deliberate manner.
- Yesterday, [***Assuming the Report has been submitted as planned on April 29**] The United States Sentencing Commission submitted to Congress its report and recommendations on federal cocaine sentencing policy. As you know, the Commission is an (independent and bi-partisan agency) which was created to deal with the most difficult of sentencing issues. The (Commission's unanimous report) is important because it reminds us of the enormity of this problem. Moreover, it suggests that the federal penalties for crack, with their severe impact on a single racial group, (inappropriately focus federal resources on a lower level of the drug trade than is ordinarily warranted in the federal system.)
- We are continuing to study the report. (A re-designed penalty structure could help target scarce federal resources in a more efficient and effective manner)-- and most importantly, in a manner that is not seen to provide inappropriately harsh punishments for a single racial group.
- Any revised system would, at a minimum, need to continue to reflect that crack cocaine is the more harmful form of cocaine for the reasons recognized in the Commission's report. Moreover, any change in penalties must not send the wrong message. We continue to believe that the distribution of crack cocaine is a serious offense in our communities.

BACKGROUND

The U.S. Sentencing Commission intends to submit to Congress, on April 29, 1997, a report containing recommendations regarding cocaine sentencing policy in the federal system. The Commission is likely to suggest that the triggering amount for the 5-year mandatory minimum for crack be changed from 5 grams to somewhere between 25 and 75 grams and that the triggering amount for the 5-year mandatory minimum for powder cocaine be changed from 500 grams to somewhere between 125 and 375 grams. It is also likely that there will be at least one separate concurrence suggesting that the crack penalties are unjust because of their disproportionate effect on the African-American community. Although the concurring Commissioner believes equalization would be the only just solution, the Commission's recommendation is viewed as a step in that direction, and thus the concurrence rather than dissent.

Chairman Hatch and Senator Abraham have introduced legislation to increase the penalties for powder cocaine to bring them closer into line with the current crack penalties. The Hatch/Abraham legislation would not change the 5-year mandatory minimum triggering amount from 5 grams of crack but would reduce the triggering amount for powder cocaine from 500 to 100 grams. Several Republicans on the Committee have co-sponsored this legislation. Generally, the Democrats oppose such increases in powder penalties and, if political cover were available, would support a reduction in crack penalties, particularly the mandatory minimum penalties.

Crime-crack sentencing

4-24 Crack sentencing

Rec on fines to states

100-1 not justified

some dupes men w/ work

- violence

- crime history

- gen. addictiveness

- use of garnishes

the in-1 dealer's quote

mid-level leaders of crack

deal in smaller quantities

] may cause in other enhancements

mid-level/retail traffickers only - should be early to 5-yr min.

eliminating disparity/perceptions of fairness

5 → 25-75 (range, bc of diag) if there are enhancements

"5" above - prob gets 3-4 (25% reduction or so)

within (low rate #, higher no penalty)

grams
each -
abt same.
500 grams

\$ 20,000-50,000

if go down to 100 - an additional 20,000 - 30,000

incarcerations over 20 yrs.

the in drug will not rip in -

they will be upset + vocally report

powder

crack

40% hip

90% a-a

27% a-a

5% hip

32% wh.

5% wh.

36% 50 = rates - don't distinguish b/w powder + crack.

4000 crack / 4000 coke cars in fed syst each yr.

couple of thousand - safety valve case gills

Moth In next few days, will rec. ↑


mixture 100 gram ~~trijer~~ (Hatch bill - 50)

1st pure 10 " ~~trijer~~ (Admin bill - 5)

84% white

also volypmol will come along

To: Attorney General Reno
From: Kent Markus
Subject: Crack/Cocaine Ratios
Date: April 22, 1997



MEMORANDUM

You asked me to confirm with the CRM folks exactly what ratios the Sentencing Commission report recommends. In fact, the report does not recommend either a specific ratio or a range of ratios, but instead provides recommended ranges for the amount of crack and the amount of cocaine that would trigger a mandatory minimum 5 year sentence. Here's how the numbers look:

	Status Quo	Crim. Div./AGAC	Sentencing Commission	Hatch/Abraham
Cocaine	500	250	125-375	100
Crack	5	25-50	25-75	5
Ratio	100 to 1	Btwn. 5 to 1 & 10 to 1	Btwn. 1.67 to 1 & 15 to 1	20 to 1



UNITED STATES SENTENCING COMMISSION





UNITED STATES SENTENCING COMMISSION

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NEWS RELEASE

For Immediate Release
Tuesday, April 29, 1997

Contact: Jonathan Wroblewski
(202) 273-4520

U.S. SENTENCING COMMISSION SUBMITS NEW RECOMMENDATIONS ON COCAINE SENTENCING

WASHINGTON, D.C. – Federal penalties for powder cocaine and crack cocaine should be revised and made more comparable to each other, the U.S. Sentencing Commission said today in a report to Congress. Federal law currently distinguishes between the two principal forms of cocaine by requiring much harsher sentences for trafficking in crack cocaine compared to powder cocaine (5 grams of crack and 500 grams of powder cocaine both trigger the same five-year mandatory minimum penalty, a differential known as the "100-to-1 quantity ratio").

In its unanimous recommendation, the Sentencing Commission said that "although research and public policy may support somewhat higher penalties for crack than for powder cocaine, a 100-to-1 quantity ratio cannot be justified." In the past several years, critics of the law have focused on the disproportionate impact the crack penalties have had on African American defendants, who account for approximately 90 percent of all offenders sentenced under the harsher penalties.

"Selecting the appropriate threshold for triggering the five-year mandatory minimum penalties is not a precise undertaking," the report said. "The Commission is firmly and unanimously in agreement that the current penalty differential for federal powder and crack cocaine cases should be reduced by changing the quantity levels that trigger mandatory minimum penalties for both powder and crack cocaine."

Instead of offering a single new ratio, the Commission recommended a range of possible options to adjust both powder cocaine and crack cocaine penalties. "For powder cocaine, the Commission recommends that the current 500-gram trigger for the five-year mandatory minimum sentence should be reduced to a level between 125 and 375 grams, and for crack cocaine, the current five-gram trigger should be increased to between 25 and 75 grams," the report said. The ten-year mandatory minimum penalties should be revised accordingly, the Commission said.

Judge Richard P. Conaboy, Chairman of the Sentencing Commission, said, "The ranges suggested provide Congress the flexibility to make an informed judgment about the appropriate penalties for these two forms of cocaine. We feel strongly, though, that the current policy must be changed to ensure that severe penalties are targeted at the most serious traffickers. Adopting a ratio within the ranges we recommend will more accurately accomplish this purpose," he said.

Congress directed the Commission to submit new recommendations on federal cocaine sentencing policy after rejecting proposed changes to the sentencing guidelines for powder and crack cocaine offenses developed by the Commission in 1995. Since that time, the Commission has conducted additional research, consulted with law enforcement and substance abuse experts, and analyzed a vast array of information about powder cocaine and crack cocaine and the changing markets for these drugs.

In order to act on the Commission's recommendations, Congress would need to pass and the President would need to sign a bill revising current federal mandatory minimum penalties. After Congress has evaluated the recommendations and expressed its views, the Commission would amend its sentencing guidelines to reflect congressional intent.

The U.S. Sentencing Commission, an independent agency in the Judicial Branch of the federal government, was organized in late 1985 to develop a national sentencing policy for the federal courts. The resulting sentencing guidelines, which went into effect November 1, 1987, structure the courts' sentencing discretion to ensure that similar offenders who commit similar offenses receive similar sentences. Since nationwide implementation in January 1989, federal judges have sentenced more than 300,000 defendants under the guidelines.

The report and recommendations on cocaine sentencing policy are available on the Commission's Internet Website, "www.ussc.gov". ■

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Richard P. Conaboy, Chairman
Michael S. Gelacak, Vice Chairman
Michael Goldsmith, Vice Chairman
Wayne A. Budd
Deanell R. Tacha
Michael J. Gaines (*ex officio*)
Mary Frances Harkenrider (*ex officio*)



April 29, 1997

The Honorable Albert Gore, Jr.
President of the Senate
United States Capitol, Room S-212
Washington, D.C. 20501

Dear Mr. President:

I am pleased to transmit to the Congress, on behalf of the United States Sentencing Commission, the following report and recommendations on cocaine and federal sentencing policy pursuant to section two of Public Law 104-38.

The Commission has worked diligently to produce the report and recommendations, including holding discussions with many members of Congress and other interested parties. We strongly feel that the parameters we suggest will allow Congress to establish appropriate penalties to target the most serious crack and powder cocaine traffickers.

The Commission is ready to assist you in your deliberations and will be available to respond to any request.

Sincerely,

A handwritten signature in cursive script that reads "Richard P. Conaboy".

Richard P. Conaboy
Chairman

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April 29, 1997

The Honorable Newt Gingrich
Speaker of the House of Representatives
United States Capitol, Room H-209
Washington, D.C. 20515

Dear Mr. Speaker:

I am pleased to transmit to the Congress, on behalf of the United States Sentencing Commission, the following report and recommendations on cocaine and federal sentencing policy pursuant to section two of Public Law 104-38.

The Commission has worked diligently to produce the report and recommendations, including holding discussions with many members of Congress and other interested parties. We strongly feel that the parameters we suggest will allow Congress to establish appropriate penalties to target the most serious crack and powder cocaine traffickers.

The Commission is ready to assist you in your deliberations and will be available to respond to any request.

Sincerely,

A handwritten signature in cursive script that reads "Richard P. Conaboy".

Richard P. Conaboy
Chairman

Special Report to the Congress:

Cocaine and Federal Sentencing Policy

(as directed by section two of Public Law 104-38)



UNITED STATES SENTENCING COMMISSION

April 1997

COCAINE AND FEDERAL SENTENCING POLICY (as directed by section two of Public Law 104-38)

I. Introduction

Federal sentencing policy for cocaine offenses has come under extensive criticism during the past few years. Public officials, private citizens, criminal justice practitioners, researchers, and interest groups have all challenged the fairness and efficacy of the current approach to sentencing cocaine offenses. Critics have focused on the differences in federal penalty levels between the two principal forms of cocaine — powder (cocaine hydrochloride) and crack (cocaine base) — and on the disproportionate impact the more severe crack penalties have had on African-American defendants.

In 1994, these concerns led Congress, in the Violent Crime Control and Law Enforcement Act of 1994, to direct the Sentencing Commission to issue a report and recommendations on cocaine and federal sentencing policy. On February 28, 1995, the Commission issued a comprehensive report to Congress in which it unanimously recommended that changes be made to the current cocaine sentencing scheme, including a reduction in the 100-to-1 quantity ratio between powder cocaine and crack cocaine. The report indicated that the Commission would investigate ways to account for the harms associated with cocaine offenses in the sentencing guidelines and would then recommend appropriate enhancements and adjustments in the quantity ratio.

On May 1, 1995, by a 4-3 vote, the Commission sent to Congress proposed changes to the sentencing guidelines for cocaine offenses. The changes proposed by the majority would have made the starting point for determining sentences for powder and crack offenders the same by adopting a 1-to-1 quantity ratio at the powder cocaine level and would have provided sentencing enhancements for violence and other harms disproportionately associated with crack cocaine. *See* 60 Fed. Reg. 25074. The minority dissented based on an assessment that the recommended enhancements could not sufficiently account for the added harms associated with crack cocaine and thus did not warrant the total elimination of a differential between base sentences.

Pursuant to 28 U.S.C. § 994(p), Congress passed and the President signed legislation rejecting the Commission's proposed guideline changes. *See* Pub.L. No. 104-38, 109 Stat. 334 (Oct. 30, 1995). In the legislation, Congress effectively returned the issue to the Commission for further consideration and directed the Commission to submit to Congress new recommendations regarding changes to the

statutes and sentencing guidelines for the unlawful manufacturing, importing, exporting, and trafficking of cocaine. We submit this report in compliance with the 1995 congressional directive that “the sentence imposed for trafficking in a quantity of crack cocaine should generally exceed the sentence imposed for trafficking in a like quantity of powder cocaine.”

In response to that directive, the Commission again has deliberated carefully over federal cocaine sentencing policy and has assessed the concerns raised by Congress, conducted new research, consulted with law enforcement and substance abuse experts, and reviewed all of the Commission’s prior research and analysis. The Commission has accumulated a vast array of information about both powder and crack cocaine and about the changing markets for these drugs. Based on this work, the Commission is unanimous in reiterating its original core finding, outlined in its February 1995 report to Congress that, although research and public policy may support somewhat higher penalties for crack than for powder cocaine, a 100-to-1 quantity ratio cannot be justified. The Commission is firmly and unanimously in agreement that the current penalty differential for federal powder and crack cocaine cases should be reduced by changing the quantity levels that trigger mandatory minimum penalties for both powder and crack cocaine. Therefore, for powder cocaine, the Commission recommends that Congress reduce the current 500-gram trigger for the five-year mandatory minimum sentence to a level between 125 and 375 grams, and for crack cocaine, that Congress increase the current five-gram trigger to between 25 and 75 grams.

In Part II of this report, we summarize the current federal sentencing law for cocaine offenses. In Part III, we discuss the goals of federal drug sentencing policy adopted by Congress, recent administrations, and the Commission. We then evaluate current cocaine sentencing policy against these goals. Finally, in Part IV, we set forth our conclusions and recommendations for modifying federal cocaine sentencing policy.

II. The Current Law

The current sentencing structure for cocaine offenses is primarily the result of the Anti-Drug Abuse Act of 1986. The Act established mandatory minimum penalties for persons convicted of trafficking in a variety of controlled substances. The 1986 Act pegged the mandatory minimums to specific quantities of drugs distributed (based on a mixture or substance containing a detectable amount of the drug). The quantities triggering the Act’s mandatory minimum penalties differed for various drugs and in some cases for different forms of the same drug. The Act treated powder cocaine differently than crack cocaine by establishing what has come to be known as the 100-to-1 quantity ratio between the two forms of cocaine. In

other words, it takes one hundred times as much powder cocaine as crack cocaine to trigger the same mandatory penalties. Thus, a person convicted of selling 500 grams of powder cocaine is subject to the same five-year mandatory minimum sentences as a person selling 5 grams of crack cocaine, while a person convicted of selling 5,000 grams (5 kilograms) of powder is subject to the same ten-year mandatory minimum sentence as a person who sells 50 grams of crack.

In 1987, the Sentencing Commission used the drug quantity levels designated by Congress — including the quantity levels for cocaine offenses based on the 100-to-1 quantity ratio — in developing sentencing guidelines for drug offenses. Using the mandatory minimum statutes, which list only the quantities corresponding to the five- and ten-year mandatory minimum sentences, the sentencing guidelines set proportionate sentences for the full range of other powder and crack cocaine quantities.

Congress also distinguished crack cocaine from both powder cocaine and other controlled substances in the Anti-Drug Abuse Act of 1988 by creating a mandatory minimum penalty for its simple possession. This is the only federal mandatory minimum for a first offense of simple possession of a controlled substance. Under this law, possession of more than five grams of crack cocaine is punishable by a minimum five years in prison. Simple possession (without the intent to distribute) of any quantity of powder cocaine by first-time offenders is a misdemeanor punishable by no more than one year in prison.

III. The Goals of Federal Drug Sentencing Policy

In response to the 1995 legislative directive, the Commission has carefully considered each factor listed in the directive and has evaluated current federal cocaine sentencing policy in relation to congressional and administration goals for drug offense sentencing generally. These goals have been articulated in debates surrounding the Anti Drug Abuse Act of 1986 and other legislation, expressed in statements by officials of several administrations, and embraced generally by the Sentencing Commission. As we discuss below, these goals suggest that those who traffic in either powder or crack cocaine should be sentenced severely, but that the current penalty differential between powder and crack cocaine should be reduced.

A. Sentences Should Be Commensurate With the Dangers Associated With A Given Drug

Regardless of the quantity of drug involved, distributing any of the primary domestic illegal drugs — heroin, cocaine (powder or crack), methamphetamine, PCP, LSD, or marijuana — is a serious crime. All of these drugs cause great harm

to individuals and to society at large, and the stern punishments meted out under federal law for drug distribution reflect congressional, executive, and Sentencing Commission judgment about the gravity of these offenses and the menace caused by these drugs.

Congress and the Commission have also concluded, however, that some of these drugs have more attendant harms than others and that those who traffic in more dangerous drugs ought to be sentenced more severely than those who traffic in less dangerous drugs. This policy is meant both to discourage the trafficking of more serious drugs and to punish those who do more harm to society by distributing these drugs. The policy is embodied, for example, in the federal schedules of controlled substances, 21 U.S.C. § 812, that differentiate the more dangerous controlled substances from those that are less dangerous, as well as in the different penalty levels associated with trafficking in the various scheduled substances, 21 U.S.C. § 841.

The Commission's research, detailed at great length in its 1995 report, found significant dangers associated with both crack and powder cocaine trafficking and use. The Commission also found, however, that many of these dangers are associated to a greater degree with crack cocaine than with powder cocaine. For example, crack cocaine is more often associated with systemic crime — crime related to its marketing and distribution — particularly the type of violent street crime so often connected with gangs, guns, serious injury, and death. In addition, because it is easy to manufacture and use and relatively inexpensive, crack is more widely available on the street and is particularly appealing and accessible to the most vulnerable members of our society. Unfortunately, the purveyors of crack worked hard to design a method to distribute the drug at a cheap price, making it appealing to the most economically disadvantaged of our society. Finally, because crack is smoked rather than snorted, it produces more intense physiological and psychotropic effects than snorting powder cocaine, and so the crack user is more vulnerable to addiction than the typical powder user, though we note that injecting powder cocaine into the bloodstream produces effects similar to smoking crack and hence creates a similar vulnerability to addiction. Based upon these findings, the Commission reiterates the conclusion from its 1995 report that federal sentencing policy must reflect the greater dangers associated with crack.

B. Five- and Ten-Year Mandatory Sentences Should Be Targeted At Serious Traffickers

Since 1986, federal drug sentencing policy has been based in part on the principle that the quantity of drug involved in an offense reflects both the harm to society as well as the offender's culpability. Accordingly, Congress countenanced in the Anti-Drug Abuse Act of 1986 that any drug trafficker accountable for a quantity

of drug indicative of a “mid-level” or “serious” trafficker ought to receive, with very few exceptions, at least a five-year prison sentence. To determine the quantity of drugs indicative of mid-level or serious traffickers, Congress consulted with drug enforcement experts to gather information about drug markets at the time and set quantity triggers based on this information.

In reexamining current cocaine sentencing policy, the Commission has used this same approach based on updated market information. In 1986, the crack cocaine market was just emerging, and since that time, much more has been learned about the marketing of both powder and crack cocaine. Recently, the Commission requested and obtained information from the Drug Enforcement Administration (“DEA”), the Office of National Drug Control Policy, the National Institute on Drug Abuse, and the Substance Abuse and Mental Health Administration to reevaluate the quantity levels of drug associated with mid-level or serious traffickers. Following these consultations and based on the Commission’s own data — including data that have become available since the Commission’s 1995 report — the Commission concludes that the five-gram trigger for crack cocaine is over inclusive because it reaches below the level of mid-level or serious traffickers who deserve the five-year statutory penalty.

Five grams of crack cocaine is indicative of a retail or street-level dealer rather than a mid-level dealer. Accordingly, the Commission concludes that the five-gram trigger should be increased to better target mid-level dealers. This is not to say that all street-level cocaine dealers should receive sentences of less than five-years imprisonment. If a street-level dealer possesses a gun, is involved in violence or other aggravating conduct, uses juveniles, or is involved in unusually large quantities of drugs, a more severe sentence would be warranted. Both the guidelines and other laws provide for such enhancements. But based solely on quantity, our analysis suggests that an appropriate trigger for the five-year mandatory sentence for crack offenses should be higher than five grams.

For powder cocaine, the information and data suggest that some decrease in the quantity trigger may be warranted. Because nearly all cocaine is initially distributed in powder form until some later time in the distribution chain when some is then converted to crack, the Commission believes that it is appropriate to increase penalty levels for trafficking in powder cocaine to partially reflect the greater harms associated with crack and to reduce unwarranted sentencing disparity between powder and crack cocaine traffickers. In addition, the ease with which powder cocaine is converted to crack cocaine also suggests that some increase in powder cocaine penalties may be appropriate. For these reasons, the Commission concludes that a more appropriate quantity trigger for the five-year mandatory sentence for powder cocaine would be less than 500 grams.

It is important to note that, although changes in the quantity triggers for crack and powder cocaine would change the starting point for determining sentences under the guidelines, ultimate sentences are based on more than simply drug quantity. In contrast to a penalty structure that relies exclusively or primarily on a quantity ratio to distinguish among offenders, the guidelines approach allows for the more refined and individualized sentencing that Congress envisioned under the Sentencing Reform Act as well as the most efficient and effective use of scarce federal prison resources. The Commission reiterates its 1995 conclusion that, when applicable, guideline enhancements should be used to account for harms related to crack and powder cocaine offenses with less reliance put on drug quantity. For example, any cocaine trafficker who possesses or uses a firearm or other dangerous weapon during a drug crime ought to receive a substantially enhanced sentence. Other factors — such as the use of juveniles in a drug trafficking offense, a defendant's prior drug trafficking convictions, a defendant's role in the offense, and the other factors listed in the 1995 congressional directive — are all important in determining an appropriate drug sentence. The enhancements in the guidelines system can account for these and other important factors related to a defendant's criminal culpability and should be relied on to the greatest extent possible.

C. Cocaine Sentencing Policy Should Advance the Federal Government's Role in the National Drug Control Effort and Rationalize Priorities for the Use of State and Federal Resources in Targeting Drug Use and Trafficking

The federal government and state governments share a common interest in developing an effective drug control policy that allocates responsibility for prosecution, adjudication, sentencing, and imprisonment in such a way that these functions are carried out in the most efficient, effective, and constitutionally appropriate manner. Sentencing policy plays an important role in the allocation of resources among federal, state, and local government entities. Thus, the Commission is increasingly convinced that federal sentencing policy must be designed in coordination with a larger national effort that recognizes and takes into account the appropriate allocation of drug enforcement and drug control efforts at all levels of government.

National drug control policy over the last decade has, for appropriate reasons, relied upon extensive coordination and cooperation among federal, state, and local governmental entities. The result has been that both the federal government and state and local governments are targeting many of the same offenders and the same criminal activity in an effort to root out perpetrators of drug-related criminal activity. Stated another way, in most instances, the same offenders and the same criminal activity can jurisdictionally be prosecuted, adjudicated, sentenced, and imprisoned in either the state or federal system. The choice about whether to proceed under state

or federal law has, to some extent, been driven by comparisons of these overlapping sentencing policies.

The resources available at all levels of government are limited and will, in the foreseeable future, be increasingly stretched. This is particularly true in the area of law enforcement, judicial resources, and prison resources. Thus, in the sentencing context, as well as many other contexts inherent in the criminal justice system, we support national efforts to rationalize and target, in an efficient and effective way, the manner in which criminal justice resources are deployed to take into account the appropriate roles of the federal government as compared with state and local governments, and to focus the use of criminal justice resources in such a way that the effectiveness of the resources is maximized and the appropriate roles of each level of government are recognized. The constitutional principles of federalism are no less imperative in the criminal law context than they are in other areas of constitutional inquiry. See *United States v. Lopez*, 514 U.S. 549 (1995). Although this goal of rationalizing and allocating the respective roles of federal and state and local governments is an issue far bigger than sentencing policy, the Sentencing Commission recognizes and takes as one of its goals the effort to try to draw appropriate thresholds for federal sentencing that will take into account the regional variations and preferences of state and local governments that should be respected in the criminal law context.

To this end, it is our view that federal sentencing policy should reflect federal priorities by targeting the most serious offenders in order to curb interstate and international drug trafficking and violent crime. Consistent with general constitutional principles of interstate commerce and the appropriate roles of the federal government, it is our view that an effort to rationalize federal sentencing policy would attempt to identify those components of the criminal element in drug trafficking that are most appropriate for federal concern and reserve to the states those criminal activities and defendants that state resources could most effectively target and consider in their own sentencing schemes. Though most of the overlapping jurisdiction between the state and federal governments in national crime control policy may be authorized by the Constitution, it does not necessarily follow that such overlapping jurisdiction is either the most effective or the most efficient use of the combined resources of the federal and state governments. For example, it is clear in looking at state sentencing schemes that states have historically made a wide variety of choices about the sentencing of persons who are deemed low-level offenders or who are apprehended with street-level amounts of drugs. These choices reflect traditional state responsibility for addressing public health, safety, and welfare issues related to addicts, street-level crime, and persons low in local distribution chains. States may be able to address these issues more economically and with more locally-focused penal and social goals than can be achieved by the federal government.

Federal cocaine sentencing policy is an excellent example of a place to start rationalizing federal and state priorities with respect to drug control. It is the view of the Sentencing Commission that current federal cocaine policy inappropriately targets limited federal resources by placing the quantity triggers for the five-year mandatory minimum penalty for crack cocaine too low. The use of federal sentencing policy as the machine to drive enforcement, adjudication, and imprisonment choices does not reflect a thoughtful and considered choice about the most effective use of public resources at all levels. This debate about the proper role of the respective levels of government goes far beyond federal cocaine policy. We are convinced, however, that adjusting the powder and crack five-year quantity triggers to target serious dealers will begin the process of adjusting national drug policy in a way that effectively and efficiently directs resources at all levels.

D. Cocaine Sentencing Policy and Practice Must Be Perceived By the Public As Fair

One of the issues of greatest concern surrounding federal cocaine sentencing policy is the perception of disparate and unfair treatment for defendants convicted of either possession or distribution of crack cocaine. Critics argue that the 100-to-1 quantity ratio is not consistent with the policy, goal, and mission of federal sentencing — that is to be effective, uniform, and just. While there is no evidence of racial bias behind the promulgation of this federal sentencing law, nearly 90 percent of the offenders convicted in federal court for crack cocaine distribution are African-American while the majority of crack cocaine users is white. Thus, sentences appear to be harsher and more severe for racial minorities than others as a result of this law. The current penalty structure results in a perception of unfairness and inconsistency.

Designing sentencing policy to properly focus federal resources on the most violent and dangerous offenders will also help alleviate concerns that have been raised with the Commission about prosecutorial and investigative sentencing manipulation. For example, because powder cocaine is easily converted into crack cocaine and because the penalties for crack cocaine offenses are significantly higher than for similar quantity powder cocaine offenses, law enforcement and prosecutorial decisions to wait until powder has been converted into crack can have a dramatic impact on a defendant's final sentence. To the extent that the differential is reduced, the potential for this practice will also diminish.

IV. Conclusions and Recommendations

A. Penalties for Cocaine Trafficking

In reassessing penalties for cocaine trafficking, the Commission has moved step-by-step through an evaluative process that examined all of the factors listed by Congress in the 1995 legislation and the goals set forth above. In arriving at recommended changes to current policy, the Commission has balanced conflicting goals. The Sentencing Commission shares congressional and public concern about the harms associated with both forms of cocaine — both to users and to the society as a whole — including the violence associated with its distribution, its use by juveniles, the involvement of juveniles in its distribution, and its addictive potential. However, as the Commission reported in 1995, we again conclude unanimously that congressional objectives can be achieved more effectively without relying on the current federal sentencing scheme for cocaine offenses that includes the 100-to-1 quantity ratio.

The Sentencing Commission thereby recommends that Congress revise the federal statutory penalty scheme for both crack and powder cocaine offenses. Selecting the appropriate threshold for triggering the five-year mandatory minimum penalties is not a precise undertaking, but based on the best available research and the goals detailed above, the Commission recommends for Congress's consideration a range of alternative quantity triggers for both powder and crack cocaine offenses. For powder cocaine, the Commission concludes that the current 500-gram trigger for the five-year mandatory minimum sentence should be reduced to a level between 125 and 375 grams, and for crack cocaine, the five-gram trigger should be increased to between 25 and 75 grams.

We urge Congress to adopt a ratio within the quantity ranges we have recommended to address the problem as soon as possible, as hundreds of people will continue to be sentenced each month under the current law. After Congress has evaluated our recommendations and expressed its views, the Commission will amend the guidelines to reflect congressional intent. Consistent with the principles of the Sentencing Reform Act of 1984, the Commission believes that better sentencing policy — for cocaine as well as for other offenses — is developed through Commission research and expertise together with regular and ongoing consultation with Congress and the Executive Branch. We intend to continue to work closely with Congress and senior administration officials as pertinent legislation is developed. By doing so, we believe a fairer and more effective cocaine sentencing policy — one that better targets serious and upper-level dealers and the most violent and dangerous drug offenders — can be created.

The Commission is mindful that these and other related sentencing changes could have a substantial impact on the federal prison population, thus changing the resources available for other drug control strategies. The President, the Attorney General, the Congress, and the Office of National Drug Control Strategy have repeatedly indicated that an effective drug control strategy requires a balanced approach of domestic and international law enforcement, interdiction, prevention, and treatment. The impact of policy changes on drug control resources must be considered seriously before making any substantial increase in drug sentences. The Commission is prepared to provide impact analysis and other expertise to both Congress and the Executive Branch at any time.

B. Penalties for the Simple Possession of Crack Cocaine

The Commission has also reassessed the penalties uniquely applicable to the simple possession of crack cocaine. Much of the rationale for reexamining the 100-to-1 quantity ratio applicable to cocaine trafficking offenses similarly applies to the penalties applicable to crack simple possession offenses. The Commission reiterates its unanimous finding that the penalty for simple possession of crack cocaine should be the same as for the simple possession of powder cocaine.

Richard P. Conaboy
Chairman

Michael S. Gelacak
Vice Chairman

Michael Goldsmith
Vice Chairman

Wayne A. Budd
Commissioner

Deanell R. Tacha
Commissioner

Michael J. Gaines
Ex-officio

Mary Frances Harkenrider
Ex-officio

Concurring Opinion of

.....
VICE CHAIRMAN MICHAEL S. GELACAK

COCAINE AND FEDERAL SENTENCING POLICY
(as directed by section two of Public Law 104-38)

I concur with my colleagues in this report and the recommendations in response to Congress's request. However, the recommendations, while moving our federal sentencing system in the direction of greater fairness, fail to rectify fully an unjust sentencing system for crack cocaine. After several years of careful study, detailed examination of our sentencing system, and meetings with defendants sentenced under these penalties, I have come to the conclusion that Congress established an unfair mandatory minimum of five years for trafficking in five grams of crack cocaine. This is particularly the case when those who traffic in up to 500 grams of powder cocaine may in many instances not even be prosecuted at the federal level. The Sentencing Commission exacerbated this problem by constructing its guidelines to increase sentences proportionately for drug quantities above mandatory minimum levels. The result is extremely severe sentences for those at the lower ends of the drug distribution chain.

I support severe sentences for serious criminal conduct. I oppose a penalty structure that results in unfair sentences, and it is clear to me that the current mandatory minimum sentences for five grams of crack cocaine are unjust and that failing to correct the imbalance with powder cocaine does not serve justice. I am also troubled by the economics of this penalty structure. Incarceration is expensive. Whether lengthy federal prison sentences for street-level crime is the wisest use of scarce resources deserves far more consideration. I believe the country would be better served by our dealing more directly with these issues. Political compromise is a function better left to the Legislature.

Congress and the Sentencing Commission have a responsibility to establish fair sentencing standards that protect the public, enhance the public's confidence in our criminal justice system, and ensure that similarly situated offenders are treated similarly. For the majority of crimes, we have accomplished these goals by establishing a "truth in sentencing" system and fair sentencing standards. We have jointly failed in our approach toward crack cocaine sentences, and the result is seriously disparate sentences. We should not lose sight of that overriding reality.

President Kennedy in a speech to the Massachusetts State Legislature said:

For of those to whom much is given, much is required.
And when at some future date the high court of history
sits in judgment on each of us, recording whether in our
brief span of service we fulfilled our responsibilities to

the state, our success or failure, in whatever office we hold, will be measured by the answers to four questions: First, were we truly men of courage.... Second, were we truly men of judgment.... Third, were we truly men of integrity.... Finally, were we truly men of dedication?

Does any Commission preserve its integrity by persevering in that which it is unable to accomplish even though it believes it to be right? The answer seems apparent. In its original recommendation to the Congress, the Commission proposed changes to the sentencing guidelines for cocaine offenses that would have equated base sentences for powder and crack offenders by adopting a 1:1 quantity ratio at the powder cocaine level with sentencing enhancements for violence and other harms disproportionately associated with crack cocaine.

Congress and the Administration chose not to accept that recommendation. The Congress specifically rejected the proposed amendments that would otherwise have taken effect by operation of law on November 1, 1995. That, of course, was the prerogative of both but does not necessarily lead to the conclusion that the Commission's recommendation was wrong as a matter of policy.

We can argue over the merits. We could also propose simple solutions in the hope that the problem would then go away. The Commission, for its part, could simply do nothing. Silence is clearly the simplest course. I believe that that would accomplish nothing positive. Conversely, the Congress could suggest that the ratio be eliminated by simply raising the penalties for powder cocaine to the same level as crack. That also would accomplish nothing positive. There are no easy answers.

During the year 1993, of those sentenced for crack cocaine, 88.3 percent were Black and 95.4 percent were non-White. Even though the Commission has conceded that there was no intent by the Legislature that penalties fall disproportionately on one segment of the population, the impact of these penalties nonetheless remains. If the impact of the law is discriminatory, the problem is no less real regardless of the intent. This problem is particularly acute because the disparate impact arises from a penalty structure for two different forms of the same substance. It is a little like punishing vehicular homicide while under the influence of alcohol more severely if the defendant had become intoxicated by ingesting cheap wine rather than scotch whiskey. That suggestion is absurd on its face and ought be no less so when the abused substance is cocaine rather than alcohol.

The logic of this analogy is compelling, but even if that is not so, eliminating discrimination is a principle to which this nation has committed itself. As a signator of the United Nations International Convention on the Elimination of all Forms of Racial Discrimination, the United States pledged to:

... take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

Clearly the 100:1 powder/crack cocaine ratio would qualify as such a law.

Although a discussion of the nation's drug abuse problem and the impact of penalties on African Americans and other people of color is often uncomfortable and elevates the profile of the issue as well as the political consequences, we cannot choose to ignore it or act as if it is of no concern. The perception of unfairness is a very real problem. Black Americans know that the penalties for crack cocaine fall primarily upon the youth of their communities and they do not countenance the present penalty structure. There is a vast difference between wanting to rid your neighborhoods of crack users and dealers and wanting members of your community treated more harshly than others using and trafficking in the same substance in a different form. How is what we are doing or propose to change making the lives of these people better? It seems to me it is not. Rather, I believe that those we would like to protect and help are those most affected and harmed by a law that clearly leads to a racially disparate and overly severe result. That is wrong.

There are other, and better ways to deal with drug abuse in this country. The current quantity-driven system of imposing penalties is simplistic and quite effective in filling our prisons. It begs the question of what the role of the federal government ought to be with regard to drug use, abuse, and trafficking. Should the federal government focus its enforcement efforts more on street-level dealers or on major importers and traffickers of the drug trade? Is the best use of federal manpower concentrating on street-level trade or are states and localities better able to be cost-efficient in this area? Conceding that reasonable men and women can and do differ on these questions, I submit that the federal government ought to focus resources on the major players in the drug trade and leave the street-level players to be dealt with by state courts as a local issue. If you accept that premise of different roles for the federal and state governments in dealing with drug abuse, a federal penalty scheme based upon significant punishment for minimal quantities of drugs is counterproductive. The current policy focuses law enforcement efforts on the lowest level of the distribution line - the street-level dealer. Unless we ignore all evidence to the contrary, the current policy has little or no impact upon the drug abuse problem. The jails are full. Drug abuse is a more significant problem than it was when Congress in 1986 adopted mandatory minimum penalties based on the quantity of drugs involved in the offense. There also seems to be an unending supply of willing participants in the drug trade, and it is unlikely that many citizens

would say they feel significantly safer today than they did 20 or even ten years ago. As a nation, we cannot punish our way out of this problem. Increased penalties and sentences offer no panaceas for societal ills. We need to look at other solutions and stop making false promises. We should be concerned about our current focus on long-term incarceration and where that leads us. Is it more advantageous to invest in structures or people? Does it make sense to invest upwards of \$100,000 of federal resources to incarcerate someone involved in a street-level drug transaction that at best will net a few hundred dollars illicit profit, or are there other ways to get at and deal with this problem?

It seems to me that a better way to direct the federal law enforcement effort in dealing with the drug abuse problem is to change the focus of statutory mandatory minimum penalties from quantities of drugs to consideration of the role of the perpetrator in the offense. This change would target our law enforcement efforts on middle- and high-level drug dealers. Congress, the Administration, and this Commission could probably all agree on a statute that increases penalties for serious offenders and might actually impact the flow of drugs to our communities. This approach, not inconsequentially, resolves the problem caused by the different penalty structures for powder and crack cocaine.

Although an approach that would lower sentences for a segment of low-level defendants could be labeled “soft on crime,” additional considerations indicate that the label might be inaccurate. Recognizing that whenever concerns about lowering penalties are raised the level of discourse is amplified, the Commission nonetheless would be remiss in not acknowledging that it has information (based on interviews, discussions, correspondence and commentary solicited from those involved in the criminal justice system throughout the country) that many judges, wardens, police officials, law enforcement officers, assistant United States attorneys, probation officers and Members of Congress are also concerned about the injustices caused by the present drug sentencing policies.

Additionally, public attitudes about appropriate drug penalties may be different from the view generally acknowledged. In its study, Just Punishment: Public Perceptions and the Federal Sentencing Guidelines, the Commission, as a result of a national survey found that generally respondents were more likely to give crack cocaine traffickers shorter punishments than those called for under the sentencing guidelines. That finding is startling and contrasts sharply with widely expressed views. If the public and various law enforcement officials and personnel acknowledge there is a problem, perhaps the Commission and Congress and the Administration ought to pay attention. Bad laws weaken respect of good laws. Consequences follow. Sooner or later all those people who feel alienated as a result of receiving what they believe to be unfair treatment and unjust sentences will be

released from jail. Does this country really expect them to become productive members of society or might we anticipate some retributive behavior?

I believe strongly that the disparity between penalties for the same quantities of crack and powder cocaine is wrong. The only real solution to the injustice is to eliminate it. I also believe that tenacity of purpose in a rightful cause should not be shaken by the frenzy of those clamoring for what is wrong. The congressional mandate that penalties for crack cocaine must be higher than those for a similar quantity of powder cocaine, however, makes it impossible for the Commission alone to accomplish that goal at the present time. The Commission's recommendation is better than simply choosing to ignore the problem.