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Crack Cocaine Sentences

Stack:	Row:	Section:	Shelf:	Position:
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Date: 02/28/95 Time: 15:44

Sentencing Commission: Federal Crack Cocaine Sentences Too Severe

WASHINGTON (AP) Crack cocaine offenses should be punished more severely than powder cocaine offenses, but current federal policy goes too far, the U.S. Sentencing Commission said Tuesday.

The panel recommended that Congress change rules requiring a first-time offender to serve five years in prison for selling more than five grams of crack cocaine. A first-time offender would have to sell 100 times more powder cocaine to get the same sentence.

``While some aspects of drug use and distribution may justify a higher penalty for crack than for powder cocaine, the present 100-to-1 quantity ratio is too great,'' the commission said in a report. ``The factors that suggest a difference between the two forms of cocaine do not approach the level of a 100-to-1 quantity ratio.''

To: Liz
FR: José

``That's a very dramatic difference when it's basically the same drug.'' commission spokesman Kent Larsen said. ``When it's fairly easy to convert powder cocaine to crack cocaine, it doesn't make much sense to have that wide a disparity.''

Larsen also said attitudes about how dangerous crack cocaine is have changed: ``There was a perception it was much more dramatically harmful, and that hasn't been borne out as much as they might have expected it to be.''

The commission also recommended that Congress solve the problem by refining federal sentencing guidelines rather than rewriting laws that establish mandatory minimum sentences for various drug crimes.

``The sentencing guidelines, as compared to mandatory minimum penalty statutes, provide a more precise mechanism for tailoring the appropriate sentences to individual offenses and offenders,'' the report said.

Sentences for federal cocaine offenses are based on mandatory minimum penalties Congress passed in 1986. In writing the law, Congress drew a distinction between two forms of cocaine crack and powder and decided that offenses involving crack deserved longer punishment.

Two years later, Congress created a five-year mandatory minimum sentence for simple possession of more than five grams of crack cocaine. Simple possession of any amount of any other drug including powder cocaine by a first-time offender is a misdemeanor that carries a maximum penalty of one year in prison.

The 100-to-1 policy for sentences on drug distribution went into effect just after crack captured public attention as a new and dangerous substance quickly sweeping across the nation, the commission's report said.

``In reacting to a very serious problem, the Congress had to make policy without the benefit of the data analysis and research we have today,'' said Judge Richard P. Conaboy, commission chairman.

The mandatory minimums created unintended results, punishing lower-level retail crack cocaine dealers far more severely than upper-level powder cocaine suppliers, the report said.

When judges impose cocaine sentences, quantity and form are just two factors they should consider, the report said. Other circumstances in individual cases may be equally or more important, commissioners said.

The report also expressed concern about claims that the law punishes blacks more severely and in greater numbers than whites. Blacks accounted for 88.3 percent of federal crack cocaine distribution convictions in 1993. More than 7 percent were Hispanic, and 4.1 percent were white.

``This does not mean, however, that the penalties are racially motivated,'' the report said. ``Nevertheless, the high percentage of blacks convicted of crack cocaine offenses is a matter of concern to the sentencing commission. Penalties clearly must be racially neutral on their face and by design.''

Congress created the seven-member sentencing commission in 1984 as part of a wide-ranging reform to reduce sentencing disparities. It began its study after passage of the 1994 crime bill, with directed the commission to take a look at cocaine sentences.

APNP-02-28-95 1546EST

U.S. Department of Justice

Criminal Division

cc: Litt

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL | # of pages ▶

To Jose Cerda	From Grace
Dept./Agency	Phone Mastalli
Fax #	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Assistant Attorney General

February 1, 1995

MEMORANDUM

TO: Chairman Conaboy
All Commissioners

FROM: Jo Ann Harris

SUBJECT: Department of Justice Position Statement
COCAINE AND FEDERAL SENTENCING POLICY

I am attaching the Department of Justice Position Statement regarding Cocaine and Federal Sentencing Policy to be included in the Commission's report on the subject.

The Department eagerly awaits the revised draft of the report.

Department of Justice Position Statement

COCAINE AND FEDERAL SENTENCING POLICY

Although cocaine base (crack) and cocaine hydrochloride (cocaine powder) are chemically similar, there are significant differences in the predominant manner the two substances are ingested and marketed. Based on these differences and the resulting harms to society, the Department of Justice rejects any proposal to equate crack with cocaine powder and believes that traffickers of crack cocaine should be subject to higher penalties than traffickers of like amounts of cocaine powder.

Current research shows that crack is a more dangerous and harmful substance for many reasons. The most common routes of administration of the two drugs cause crack to be the more psychologically addictive of the substances. The quicker, more intense, and shorter-acting effects of crack contribute to its greater abuse and dependency potential as compared to snorted cocaine powder. Moreover, identifiable social and behavioral changes occur much more quickly with crack use than with the use of cocaine powder.

Crack can easily be broken down and packaged into very small and inexpensive quantities for distribution -- sometimes as little as single dose quantities. Crack is thereby marketed to the most vulnerable members of society, including those of lower socioeconomic status and youth. Additionally, the open-air street markets and crack houses used for the distribution of crack cocaine contribute heavily to the deterioration of neighborhoods and communities. Both the scale of marketing and its open and notorious nature enable many, who would not previously have had access to cocaine powder, to purchase, use, and become addicted to crack cocaine. Moreover, the present crack market is associated with violent crime to a greater extent than that of cocaine powder. Crack cocaine has thus had a severe, negative impact on many families and communities, and in particular, on minority communities.

The seller of crack is well aware of its addictive qualities and the familial and community devastation it engenders. Thus, we believe that crack cocaine traffickers should be sentenced more heavily than cocaine powder traffickers. Although we recognize, as a policy matter, that an adjustment in the current penalty structure may be appropriate, any such adjustment must reflect the greater dangers associated with crack as opposed to cocaine powder.

Furthermore, we do not believe that specific offender characteristics in the Sentencing Guidelines will be able to account for all of the differences in harms caused by the substances, both because of the systemic nature of some of those harms and because of problems of proof in individual cases. Before making any final recommendations, the Sentencing

Commission should consider and report to Congress about the impact any suggested changes would have on law enforcement's efforts against crack and cocaine powder trafficking and any impact these changes may portend for the level of use of the substances.

Department of Justice

FOR IMMEDIATE RELEASE
FRIDAY, APRIL 14, 1995

CRM
(202) 616-2771
TDD (202) 514-1888

JUSTICE DEPARTMENT URGES CONGRESS TO RETAIN HEAVIER PENALTIES FOR CRACK COCAINE OFFENSES

WASHINGTON, D.C. -- The Justice Department will urge Congress to reject a recommendation by the United States Sentencing Commission that would dramatically reduce the punishment for trafficking in crack cocaine.

Attorney General Janet Reno said, "I strongly oppose measures that fail to reflect the harsh and terrible impact of crack on communities across America."

Opposition was also voiced by the United States Attorneys, who met this week in San Antonio, Texas, and by Jo Ann Harris, Assistant Attorney General in charge of the Criminal Division, who represents the Justice Department on a non-voting basis at meetings of the Sentencing Commission.

On Monday, the Commission voted 4-3 to make the penalties for crack cocaine offenses equal to those for powder cocaine, despite evidence that crack does greater harm to vulnerable communities. Although the Justice Department has recognized as a policy matter that an adjustment in the current penalty structure might be appropriate, it has maintained that any such adjustment must reflect the greater dangers associated with crack as opposed to cocaine powder.

"The U.S. Attorneys believe the Sentencing Commission made a serious mistake in recommending equivalent treatment of crack and powder cocaine offenses," said Michael Stiles, United States Attorney for the Eastern District of Pennsylvania and Chairperson of the Attorney General's Advisory Committee. Stiles, who chaired the semi-annual meeting of U.S. Attorneys in San Antonio, said "the overwhelming reaction of federal prosecutors is that the recommendation was inappropriate."

The Attorney General and the U.S. Attorneys also expressed their opposition to the Commission's decision to significantly reduce sentences in money laundering cases -- an important weapon in combatting narcotics violations, health care fraud and financial institution fraud.

Said Jo Ann Harris, "The decision to treat crack and powder cocaine equally does not reflect the harmful impact of crack trafficking and the responsibility of law enforcement to protect the poorest and most threatened communities from narcotics predators. The Commission itself, in its recent report to Congress on crack, identified a number of ways in which crack is devastating our poor neighborhoods."

The Commission's recommendation would become law November 1 if no action is taken by Congress to reject it. Current sentencing guidelines which impose, in some instances, the same penalty for one hundred times as much powder as crack, have been criticized as unfair.

Said Harris, "Sound sentencing policy should reflect the different manner in which the drugs are marketed and the real-life impact on the affected communities, while insuring that punishment does not unfairly impact on any particular group."

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95-209

222

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 1167
FILE NO: 798

5/2/95

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 14

TO: Legislative Liaison Officer - See Distribution below:
FROM: James JUKES (for)
Assistant Director for Legislative Reference
OMB CONTACT: Ronald JONES 395-3386
Legislative Assistant's line (for simple responses): 395-3454

SUBJECT: JUSTICE Proposed Draft Bill: Sentencing Guideline Amendments Relating to Cocaine Base and Money Laundering

DEADLINE: 3pm Thursday, May 04,1995

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS:

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RESPONSE TO
LEGISLATIVE REFERRAL MEMORANDUM

LRM NO: 1167
FILE NO: 798

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

TO: Ronald JONES 395-3386
Office of Management and Budget
Fax Number: 395-3109
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: JUSTICE Proposed Draft Bill: Sentencing Guideline Amendments Relating to Cocaine Base and Money Laundering

The following is the response of our agency to your request for views on the above-captioned subject:

______ Concur

______ No Objection

______ No Comment

______ See proposed edits on pages ________

______ Other: ______________________

______ FAX RETURN of ____ pages, attached to this response sheet

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General | *Washington, D.C. 20530*

May 2, 1995

Honorable Alice M. Rivlin
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Ms. Rivlin:

Enclosed for clearance pursuant to OMB Circular No. A-19 is a draft legislative proposal, "[t]o disapprove sentencing guideline amendments relating to cocaine base and money laundering." We have also enclosed an analysis of the legislation, as well as draft transmittal letters to the Speaker of the House of Representatives and the President of the Senate.

We request your advice on the relationship of this proposal to the program of the President. As noted in our draft letter of transmittal, our draft bill would, if enacted, disapprove two sentencing guidelines recently adopted and submitted to Congress by the United States Sentencing Commission. Unless overturned by Congress, these new sentencing guidelines will go into effect on November 1, 1995. Early action on our draft bill is therefore imperative. Consequently, we request clearance of the enclosed legislative proposal no later than the close of business on Wednesday, May 3, 1995.

Thank you for your assistance and cooperation in this important matter.

Sincerely,

Kent Markus
Acting Assistant Attorney General

Enclosure

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Newt Gingrich
Speaker
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed is a legislative proposal to disapprove certain sentencing guideline amendments recently submitted to Congress by the United States Sentencing Commission for a 180-day review period. The amendments proposed for Congressional disapproval relate to two areas -- (1) equalization of cocaine base (crack) and cocaine powder quantities for drug trafficking penalties, and (2) revision of the guidelines applicable to money laundering and transactions in property derived from unlawful activity. These sentencing guideline amendments will take effect November 1, 1995, unless an Act of Congress provides otherwise.

The legislative proposal would disapprove and prevent the taking effect of the two sentencing guideline amendments described above. The guideline amendments relating to crack, which were adopted by a divided Sentencing Commission, would drastically reduce crack guideline penalties without recognizing the significant differences between crack and cocaine powder. Crack is a more dangerous and harmful substance than cocaine powder for a number of reasons. It is the more psychologically addictive of the two substances through the most common routes of administration. Additionally, the open-air street markets and crack houses used for the distribution of crack, which can be broken down and packaged into very small and inexpensive quantities for distribution to the most vulnerable members of society, contribute heavily to the deterioration of neighborhoods and communities. Finally, the guideline amendments relating to crack are inconsistent with current mandatory minimum penalties.

The Sentencing Commission's amendments to the money laundering guidelines are sweeping in nature and would substantially lower the penalties for many serious money laundering offenses despite the fact that Congress has treated money laundering as a significant offense subject to 10- or 20-year maximum penalties. The amendments would produce reductions in sentence with respect to the laundering of proceeds of both financial and drug offenses.

We urge early consideration of this important legislative proposal to prevent these unsatisfactory sentencing guideline amendments from taking effect. The Office of Management and Budget has advised that the submission of this legislative proposal is consistent with the program of the President.

Sincerely,

Kent R. Markus
Acting Assistant Attorney General

Enclosure

A BILL

To disapprove sentencing guideline amendments relating to cocaine base and money laundering.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. DISAPPROVAL OF AMENDMENTS RELATING TO EQUALIZATION OF CRACK AND COCAINE POWDER QUANTITIES.

In accordance with section 994(p) of title 28, United States Code, Amendment number 5 of the "Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary," submitted by the United States Sentencing Commission to Congress on May 1, 1995, is hereby disapproved and shall not take effect to the extent it--

(1) amends §2D1.1(c)(1) through (14) of the sentencing guidelines;

(2) inserts the following sentence in §2D1.1(c) of the sentencing guidelines: "'Cocaine,' for the purposes of this guideline, includes cocaine hydrochloride, cocaine base, and crack cocaine.";

(3) deletes "1 gm of Cocaine Base ('Crack') = 20 kg of marihuana" from the Commentary to §2D1.1 of the sentencing guidelines captioned "Application Notes" in Note 10 in the subdivision captioned "Cocaine and Other Schedule I and II Stimulants"; and

(4) provides reasons for the amendment, except the reasons set forth in the seventh paragraph of the discussion entitled "Reason for Amendment".

SEC. 2. DISAPPROVAL OF AMENDMENTS RELATING TO MONEY LAUNDERING AND TRANSACTIONS IN PROPERTY DERIVED FORM UNLAWFUL ACTIVITY.

In accordance with section 994(p) of title 28, United States Code, Amendment number 18 of the "Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary," submitted by the United States Sentencing Commission to Congress on May 1, 1995, is hereby disapproved and shall not take effect.

ANALYSIS

On May 1, 1995, the United States Sentencing Commission submitted to Congress amendments to the sentencing guidelines, policy statements, and official commentary in a number of areas. Such amendments will take effect November 1, 1995, unless an Act of Congress provides otherwise. The bill would overturn amendments relating to two of the areas -- (1) equalization of cocaine base and cocaine powder quantities for drug trafficking penalties, and (2) revision of the guidelines applicable to money laundering and transactions in property derived from unlawful activity.

By way of background, the United States Sentencing Commission has the power to promulgate amendments to the sentencing guidelines. However, the Commission must submit such amendments to Congress for at least a 180-day review period. Sentencing Guideline amendments take effect no later than November 1 of the calendar year in which submitted, "except to the extent that . . . the amendment is otherwise modified or disapproved by Act of Congress." 28 U.S.C. §994(p). The bill would implement this provision by disapproving the Sentencing Commission's amendments with respect to cocaine base and money laundering.

The sentencing guideline amendments relating to cocaine base (usually known as "crack"), which were adopted by a 4-3 vote of the Commission, would drastically reduce crack penalties without recognizing the significant differences between crack and cocaine hydrochloride (cocaine powder). Crack is a more dangerous and harmful substance than cocaine powder for a number of reasons. The most common routes of administration of the two drugs cause crack to be the more psychologically addictive of the substances, particularly because smoking crack produces quicker, more intense, and shorter-lasting effects than snorting cocaine powder. Identifiable social and behavioral changes occur much more quickly with the use of crack than with the use of cocaine powder. Crack can also be broken down and packaged into very small and inexpensive quantities for distribution and is thereby marketed to the most vulnerable members of society, including those of lower socioeconomic status and youth. Additionally, the open-air street markets and crack houses used for the distribution of crack contribute heavily to the deterioration of neighborhoods and communities. Finally, the present crack market is associated with violent crime to a greater extent than that of cocaine powder.

Despite these realities, the Sentencing Commission has taken two steps to lower crack penalties to precariously low levels. First, the Commission has recommended that Congress eliminate the differential treatment of crack and cocaine powder in the mandatory minimum penalties currently provided by statute. In addition, the Commission has submitted an amendment of the sentencing guidelines to treat crack and cocaine powder alike under the guidelines, regardless of whether Congress first revises the statutory minimum penalties. As a result, an offender convicted of distributing 50 grams of crack (about 500 doses), for whom the relevant statute imposes a mandatory minimum 10-year term of imprisonment, would face a guideline sentence of just 21-27 months of imprisonment. If such an offender accepted responsibility for his or her offense, the sentencing guideline range would be 12-18 months of imprisonment. If the court found that such an offender had also played a minimal role in the offense, the sentencing guideline range would be just 4-10 months of imprisonment, which could be satisfied by probation with conditions of confinement, such as home detention. Offenses now subject to a 5-year mandatory minimum prison term (involving at least 5 grams of crack) would potentially be subject to a sentencing guideline range of just 0-6 months of imprisonment if the defendant accepted responsibility for the offense and were a minor player.

From the above it can be seen that if Congress adopts the Commission's recommendation to treat crack and cocaine powder alike for purposes of the mandatory minimum penalties, some offenses now subject to a 5- or 10-year mandatory minimum prison term will potentially result in a sentence involving no required prison term at all.

Even if Congress does not adopt the Commission's recommendation as to mandatory minimum penalties for crack, the sentencing guideline amendments the Commission has submitted create serious problems. The low guideline sentences bring about inconsistency between the guidelines and the current statutory scheme, with the result that mandatory minimum sentences will override many guideline sentences and produce sharp cliffs in sentencing, as well as resentment among those subject to the statutory penalties. The sentencing guidelines should work in concert with, rather than in opposition to, mandatory minimum sentences. Moreover, the low guideline sentences will prevail in the case of crack offenders subject to the "safety-valve" exemption from mandatory minimum sentences, 18 U.S.C. §3553(f). The implementation of these low sentences for "safety-valve" defendants may also violate the statutory requirement that guidelines implementing the "safety-valve" must provide a guideline range in which the lowest term of imprisonment is at least 24 months for defendants who would have been subject to a mandatory minimum 5-year sentence. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §80001(b)(1)(B). The drastic reduction in guideline sentences for crack will result in safety-valve sentences under §5C1.2 of the sentencing guidelines lower than 24 months in certain cases, as described above.

For the reasons set forth, Congress should disapprove the equalization of crack and cocaine powder sentences in the sentencing guidelines, as provided in section 1 of the proposed legislation. While Section 1 would result in the disapproval of those portions of sentencing guideline amendment number 5 that would equalize crack and cocaine powder trafficking penalties, it would not affect other portions of the amendment. For example, the legislative proposal would not affect the portions of the amendment that provide enhanced sentences for the use or possession of a weapon in the case of any drug trafficking offense or that delete the definition of "cocaine base." Nor would the legislative proposal affect the amended guidelines' treatment of simple possession of crack in the same manner as simple possession of cocaine powder. (Of course, current mandatory minimum penalties pertaining to the simple possession of certain quantities of crack would continue to apply unless repealed by Congress.)

Without Congressional action disapproving the guidelines, the amendments will go into effect November 1, 1995. While the Department of Justice recognizes that some adjustment of the current penalty structure may be appropriate, any such adjustment must reflect the greater dangers associated with crack than cocaine powder.

Section 2 of the proposed legislation addresses sentencing guideline amendments submitted by the Sentencing Commission to Congress relating to money laundering and transactions in property derived form unlawful activity. The amendments were the product of intense lobbying by the white-collar defense bar to lower penalties for money laundering and related activity. The guideline amendments are sweeping in nature and would substantially lower the penalties for many serious money laundering offenses even though Congress has determined money laundering to be a significant offense subject to 10- or 20-year maximum penalties (depending upon the offender's intent).

The amendments would produce reductions in sentence with respect to the laundering of proceeds of both financial offenses and drug offenses. For example, under the current guidelines an offender who launders $110,000 worth of proceeds of a fraud by engaging in a financial transaction knowing that the transaction is designed to conceal the source of the illegal funds (and is convicted of violating 18 U.S.C. §1956(a)(1)(B)(i)) would face a current guideline sentence of 37-46 months of imprisonment under §2S1.1 of the sentencing guidelines. Under the amended guideline submitted to Congress, the guideline range would be just 21-27 months of imprisonment. An offender who commits a similar offense involving $110,000 worth of illegal drug proceeds would face a current guideline sentence of 51-63 months of imprisonment. Under the recently submitted guideline amendments the guideline sentence would be just 33-41 months of imprisonment.

The Commission's guideline changes appear to respond in part to the class of money laundering cases in which the money laundering activity is not extensive, including "receipt and deposit" cases -- those in which the money laundering conduct is limited to depositing the proceeds of unlawful activity in a financial institution account identifiable to the person who committed the underlying offense. While the application of the current guidelines to receipt-and-deposit cases, as well as to certain other cases that do not involve aggravated money laundering activity, may be problematic -- and the Department of Justice proposed to the Sentencing Commission a sentencing guideline amendment that would have addressed this problem while preserving appropriately tough sentences for serious money laundering activities -- past sentencing anomalies arising from relatively few cases do not justify a sweeping downward adjustment in the money laundering guidelines.

The broad changes in money laundering sentences reflected in the Commission's guideline amendments, if allowed to stand, will send a dangerous message that money laundering associated with drug and other serious crimes is not viewed as the grave offense it once was.

Office of Policy Development
United States Department of Justice

10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Date: ____________

TO: Jose Cerda FAX: ____________

VOICE: ____________

FROM: Grace Mastalli VOICE: (202) ___-___

FAX: (202) 514-8639

Total Pages (excluding this cover): ___

Additional Message:

COCAINE BASE VS. COCAINE HYDROCHLORIDE

Federal law criminalizes the possession with intent to distribute the controlled substance, cocaine base (crack), see 21 U.S.C. §§841(a)(1), 812. A violation involving in excess of five grams of a mixture or substance containing crack is punishable by a minimum mandatory sentence of imprisonment for 5 years, see 21 U.S.C. §841(b)(1)(B).[1] A violation involving in excess of fifty grams of a mixture or substance containing crack is punishable by a minimum mandatory sentence of imprisonment for 10 years, see 21 U.S.C. §841(b)(1)(A).[2] Statutory minima for cocaine hydrochloride (powder) are triggered at 500 grams and 5 kilograms respectively, Id. This sentencing scheme results in a 100 to 1 ratio for crack to powder cocaine.[3]

A defendant's actual sentence is determined by the Drug Quantity Table, U.S.S.G. §2D1.1. The Table incorporates the Section 841(b)(1)(A-B) statutory minima by operation of law.

There is pending a proposed amendment to the Crime Bill which would eliminate the special provisions in Section 841(b)(1)(A-B) for crack. If enacted, crack offenses would be punished the same as powder offenses.

Applying both the statutes and the Sentencing Guidelines to some examples, the following results are achieved:

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1 The statutory maximum sentence is imprisonment for 40 years.

2 The statutory maximum is imprisonment for life.

3 As noted below, this does not translate into sentences which are 100 times as great.

A defendant who distributes 5 grams of powder cocaine would be charged under 21 U.S.C. §§841(a)(1) and would face a statutory penalty of between 0 and 20 years, 21 U.S.C. §841(b)(1)(C). Presuming that the defendant has no criminal history or other aggravating circumstances and that the defendant accepts responsibility, see U.S.S.G. §3E1.1, the defendant's likely Guidelines Range would be imprisonment for 10-16 months. Cases such as this are rarely prosecuted by the Department of Justice as they fall well below standard declination levels in most districts.

A defendant who distributes 5 grams of crack cocaine would be charged under the same statute, 21 U.S.C. §841(a)(1), but would face a statutory penalty of between 5 and 40 years, 21 U.S.C. §841(b)(1)(B). Even as a first offender who accepts responsibility, the defendant would face a minimum sentence of imprisonment for 60 months, although the likely Guideline Range for the offense might be as low as 30-37 months, U.S.S.G. §2D1.1, Table. In order for a powder cocaine distributor to reach the same offense level, s/he would have to be found responsible for 500 grams or more of cocaine.

Although the ratio of crack to powder cocaine is 100:1 by weight, the Sentencing Guidelines ameliorate this ratio and result in a roughly 3:1 ratio. The statutory minima double this ratio to 6:1. Put another way, a defendant will receive a sentence roughly six times greater for crack than for powder cocaine.

Because the Crime Bill contains amendments to Section 841(b)(1)(A-B) which would permit certain less culpable offenders to be sentenced below the mandatory minimum - a "safety valve" -

less culpable offenders could be sentenced to the guideline range rather than the statutory minimum and the sentencing ratio would drop from 6:1 to 3:1.

The question then is not whether a ratio of 100:1 can be justified but whether crack cocaine defendants should be sentenced three times more harshly than powder cocaine defendants. In this regard, the following justifications are offered:

1. Crack provides a more intense and quicker effect (high) than powder cocaine;
2. Crack may be instantly addictive whereas powder cocaine, although highly addictive, is not addictive in small and isolated instances.
3. Violence is routinely associated with crack cocaine distribution networks.[4]
4. Crack distribution has had a disproportionately higher impact on particularly vulnerable communities, those containing the poor and the young.
5. Crack cocaine simply represents a further processing of powder cocaine. Thus a crack distributor has undertaken further work on the product for the ultimate consumer. This represents the use of additional chemicals, laboratory equipment, time and effort. In effect, the crack distributor has spent more time and effort committing his/her crime than the powder cocaine

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[4] Although the use of violence could be punished separately, it is the widespread association with violence which is of concern. Thus, even when a defendant does not resort to violence, the risk of violence is so great that the punishment is appropriately higher.

distributor and this more deliberate action is appropriately punished more harshly.

6. A 500 gram powder cocaine distributor is not a significant distributor on a national scale. A 50 gram crack cocaine distributor would, however, be nationally significant. The Guidelines routinely recognize role in the offense and "kingpin" status in determining sentencing ranges.

6. The Sentencing Guidelines scheme reflects certain practical realities. If the ratio were eliminated, 5 gram crack cocaine distributors, who are generally significant enough to warrant federal criminal prosecution, would face 10-16 month sentences. Because significantly more severe results would generally be achieved in state courts, federal prosecutions for crack distribution would drop to almost nil.

Date: 05/13/94 Time: 20:35

Crack cocaine laws not discriminatory

SAN FRANCISCO, May 13 (May 13) UPI - A federal appeals court ruled unanimously Friday that drug laws punishing possession of crack cocaine more severely than powdered cocaine do not discriminate against black offenders.

The U.S. 9th Circuit Court of Appeals upheld the conviction and 18- year prison sentence of a black Southern California drug dealer who claimed he was convicted under an unconstitutional statute.

Oscar Lidell Coleman argued that his sentence for possessing nine ounces of crack cocaine violated the Equal Protection Clause of the U.S. Constitution because it was aimed at blacks.

He cited a Department of Justice publication characterizing crack cocaine as a predominantly inner-city phenomenon ''mainly confined to minority sections'' and referring to interstate trafficking networks controlled by blacks, Haitians and Jamaicans.

But the appeals court said Coleman presented no statistical evidence demonstrating that the laws had more impact on blacks than on whites or other groups, and also concluded there was no evidence that Congress intended to discriminate against blacks when it adopted the legal scheme.

Date: 04/14/95 Time: 18:32

Reno Opposes Plan to Reduce Crack Cocaine Sentences

WASHINGTON (AP) Attorney General Janet Reno will ask Congress to reject a plan that would reduce sentences for criminals convicted of selling crack cocaine, the Justice Department said Friday.

Reno said she disagreed with a U.S. Sentencing Commission report that said crack sentences are too harsh when compared to similar crimes involving powder cocaine.

``I strongly oppose measures that fail to reflect the harsh and terrible impact of crack on communities across the America,'' Reno said in a statement.

On Monday, the independent commission voted 4-3 to make crack cocaine sentences equal to those for powder cocaine. The proposal will become law Nov. 1 if Congress takes no action on it.

In a report in March, the commission said that crack cocaine crimes should be punished more severely than powder cocaine offenses, but that current federal policy goes too far.

It recommended that Congress change rules requiring a first-time offender to serve five years in prison for selling more than five grams of crack cocaine. A first-time offender would have to sell 100 times as much powder cocaine to get the same sentence.

``While some aspects of drug use and distribution may justify a higher penalty for crack than for powder cocaine, the present 100-to-1 quantity ratio is too great,'' the report said. ``The factors that suggest a difference between the two forms of cocaine do not approach the level of a 100-to-1 quantity ratio.''

The Justice Department recognizes that the penalty structure may need changing, but ``it has maintained that any such adjustment must reflect the greater dangers associated with crack as opposed to cocaine powder,'' Reno's statement said.

U.S. attorneys who met in San Antonio, Texas, this week voted to oppose the proposal.

``The overwhelming reaction of federal prosecutors is that the recommendation was inappropriate,'' said Michael Stiles, U.S. attorney for the Eastern District of Pennsylvania.

Reno also opposes a commission decision to reduce sentences in money-laundering cases.

Sentences for federal cocaine offenses are based on mandatory minimum penalties Congress passed in 1986. In writing the law, Congress drew a distinction between two forms of cocaine crack and powder and decided that offenses involving crack deserved longer punishment.

Two years later, Congress created a five-year mandatory minimum sentence for simple possession of more than five grams of crack cocaine.

According to the report, the mandatory minimums created unintended results, punishing lower-level retail crack cocaine dealers far more severely than upper-level powder cocaine suppliers.

Congress created the seven-member sentencing commission in 1984 as part of a wide-ranging reform to reduce sentencing disparities. It began its study after passage of the 1994 crime bill, which directed the commission to take a look at cocaine sentences.

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Los Angeles Times
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U.S. Defends Handling of Crack Cases

■ Drugs: Prosecutors deny targeting minorities. But activists demand to know why no whites have been convicted.

By DAN WEIKEL
TIMES STAFF WRITER

Federal prosecutors in Los Angeles defended their handling of crack cocaine cases in a 500-page court filing released Thursday, while leaders in the black community pressed the U.S. attorney's office to explain why the federal war on crack here has exclusively targeted minority neighborhoods.

Hundreds of blacks and Latinos in Southern California have been locked up for five- and 10-year mandatory federal prison terms, records show. Virtually all whites arrested for crack offenses have been prosecuted in state court, where the penalties are less severe.

Not a single white has been convicted federally of a crack offense in Los Angeles or six other Southland counties since 1986, when Congress enacted stiff new penalties to quell an epidemic of the drug, The Times reported Sunday. One white was indicted in February and is now awaiting trial.

"We want to see about those numbers and why they are that way. They raise more questions than they answer," said Kerman Maddox, chairman of the political outreach committee at the Rev. Cecil Murray's First AME Church in Los Angeles.

Maddox said he has requested that U.S. Atty. Nora M. Manella meet with a group of prominent African American leaders to discuss federal crack prosecutions. The statistics, he added, indicate that federal policies "might not be colorblind."

While U.S. Justice Department officials declined to comment, Rep. Maxine Waters (D-Los Angeles) sent a letter to U.S. Atty. Gen. Janet Reno on Thursday asking for an explanation of why 96% to 97% of federal crack defendants nationwide are minorities.

"We need a justice system where all Americans can be treated equally before the law," Waters wrote. "We have a long way to go to reach that ideal, if this disparity in crack cocaine prosecutions is any indication."

Federal prosecutors have steadfastly denied that race has anything to do with whom they investigate and charge. Manella has said that federal law enforcement, with its limited resources, must focus on dealers in minority communities, where the crack trade has been the most violent and destructive to neighborhoods.

The dearth of whites, however, has elicited numerous court challenges from defense attorneys who have accused the federal government of unfairly targeting minorities, particularly blacks.

In response to allegations raised in a pending crack case, federal prosecutors filed lengthy pleadings in court late Wednesday night. They included a statistical analysis of federal crack prosecutions during the last three years as well as 10 declarations by federal agents, researchers, prosecutors and local police.

In their pleadings, federal authorities said that under their "race-neutral" guidelines, they target gang members, repeat offenders and large-quantity dealers—those selling two ounces or more. They said they focus on neighborhoods with high crime rates, violence and street gang activity.

"At no time is race or ethnicity ever a factor in any decision by the FBI or the Los Angeles Metropolitan Task Force on Violent Crime regarding whether to seek charges against a subject," said Ronald L. Iden, assistant special agent in charge of the FBI's Los Angeles office.

After undertaking "a painstaking" review of all crack cases filed from January, 1992, to March, 1995, the U.S. attorney's office concluded that race was never a factor in the decisions to prosecute. The exhaustive search found one indictment of a white out of 144 crack defendants. A previous study by defense attorneys revealed that no whites were indicted on federal charges for crack offenses from 1988 to 1992.

"That there has been only one federal white cocaine base [crack] defendant is not itself an indication of racial discrimination," stated Assistant U.S. Atty. Steven G. Madison, who helped write the lengthy brief.

To bolster their position, prosecutors cited an analysis by Peter Reuter, an economist at the University of Maryland who specializes in drug policy. Reuter concluded that frequent crack use and its resulting problems are far more concentrated in poor, inner city areas, which accounts for the overwhelming number of crack defendants who are black or Latino.

"It is the poorer sections of large cities, with high percentages of young African American males, that the problems of disorder and violence surrounding drug distribution are most acute," Reuter said. "Those are the communities that have the greatest need for active drug enforcement."

Although crack use is more concentrated in minority communities, studies and surveys have shown that far more whites use crack cocaine than members of any other racial group. A high percentage of those who use crack are believed to also sell it.

Law enforcement data shows that hundreds of white crack traffickers have been arrested and prosecuted in state courts in Southern California in the last five years.

Federal authorities say whites do not sell large enough amounts of crack to qualify for federal prosecution. But defense attorneys counter that white traffickers are not subjected to repeated undercover buys—a common tactic used by federal undercover agents against minority dealers.

While acknowledging that crack is a major problem in the inner city, minority leaders have questioned the pattern of federal prosecutions.

"It's obvious there is some real racial skewing going on. We may need some equity in the system," said Kevin Reed, an attorney for the NAACP Legal Defense Fund.

"Certainly, the drug is more accessible in the black community and arrests are easier to make," the Rev. Murray said. "In larger white society, it is more difficult for police to get at the problem. But I think they need to do more on both fronts—in the ghetto and in white areas."

Los Angeles City Councilman Nate Holden, who represents central Los Angeles, said he does not want law enforcement to back off from investigating dealers in his community. "I get plenty of complaints from my constituents about crack problems," he said. But Holden added that "selective prosecution is not acceptable. If that is the case with crack, then it is not fair."

Councilman Mark Ridley-Thomas, who also represents the inner city, said drug laws have been selectively enforced against blacks in a way that is "indicative of contemporary institutional racism."

The Washington Times

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PAGE: A-8

American scene

Reno establishes kidnap task force

A federal task force will coordinate government services to find missing children, giving new hope to parents such as Janice McKinney, whose daughter disappeared a decade ago.

"Every year my hope dwindles, then something happens like this to give me hope again," Mrs. McKinney said yesterday after the task force was announced. "They say it gets easier. But it doesn't."

Attorney General Janet Reno used the occasion of the 12th annual Missing Children's Day to announce the task force on missing and exploited children. The goal is to combine the forces of several federal agencies, she said, ranging from the Juvenile Justice and Delinquency Prevention Office and the Federal Bureau of Investigation to the Customs Service.

About 440,000 children are reported missing each year, including those taken by strangers and family members in custody battles, according to Justice Department figures.

The Washington Post DATE: 4-16-95 PAGE: A17

Reno Assails Parity in Drug Crime Penalties

Punishment Depends On Form of Cocaine

By Toni Locy
Washington Post Staff Writer

Prosecutors, led by Attorney General Janet Reno, are urging Congress to reject proposed changes in federal sentencing guidelines that would treat defendants convicted of crack cocaine and powder cocaine offenses equally.

Reno, in a statement issued Friday, said the Justice Department recognizes that there should be some reduction in the difference in severity of punishment, in which a first-time offender must sell 100 times more powder cocaine to get the same sentence as a person selling crack cocaine.

But Reno said any adjustments to penalties must reflect the dangers of crack, which has been blamed for much of the violence in inner-city neighborhoods. "I strongly oppose measures that fail to reflect the harsh and terrible impact of crack on communities across America," Reno said.

Critics say the disparate sentences are racially motivated. The vast majority of crack cocaine offenders are black.

On Thursday, the U.S. Sentencing Commission voted 4 to 3 to recommend the changes to sentencing guidelines that are used by judges to determine punishment. While approving equal sentencing for offenses involving the two drugs, the commission attempted to address violence concerns by proposing increased penalties when weapons are used or injuries occur during drug crimes.

The recommendations are far more definitive than those contained in a 220-page report submitted to the House and Senate Judiciary committees last month. Then the commission said it could not support tougher penalties on crack dealers, but did not offer remedies to the disparity in the sentences.

The American Civil Liberties Union and other groups that wanted equal sentences for powder and crack cocaine offenses criticized the report. The commission also received several thousand letters some of them charging that harsher sentences for crack offenses are racially motivated.

In its report, the commission, however, found no evidence of intentional racial bias in the crack mandatory minimum sentence laws passed in 1988. But it said it is concerned that 88 percent of crack defendants are black, while powder cocaine defendants are about 30 percent black. Whites and Latinos make up 32 percent and 39 percent, respectively, of defendants in powder cocaine cases.

Under current sentencing guidelines, a dealer caught selling 50 grams of crack faces a mandatory minimum sentence of 10 years in prison. A dealer in powder cocaine must be caught selling 100 times as much to get the same sentence.

The commission plans to have guideline amendments ready for consideration by May 1. Congress has 180 days to act. If it doesn't, the amendments go into effect.

While Michael Stiles, chairman of an advisory committee of U.S. attorneys, called the decision "a serious mistake," it was hailed by defendants' rights advocates.

"I'm thrilled that the commission has ended this irrational disparity in its sentencing guidelines," said Nkechi Taifa, legislative counsel for the Washington chapter of the American Civil Liberties Union. She said Congress should accept the commission's decision "to remedy what is . . . a national drug policy that is, without a doubt, racist."

Jo Ann Harris, head of the Justice Department's criminal division and a non-voting member, said the commission failed to consider the "harmful impact" of drugs like crack on poor neighborhoods in its quest to ensure that one group is not unfairly punished.

What makes Mr. Faircloth's investigation into any wrongdoing at the CFTC so potentially explosive are the implications of the conclusions that Ms. Baum and Mr. Niederhoffer reach. Not only do they give Mrs. Clinton a score of 98 out of 100 on their scale of suspicion of illegitimacy, suggesting a pattern of intentional duplicity and nearly unquenchable greed. But their investigation purports to uncover precisely the sort of information the director of enforcement at the CFTC would find if he were to initiate a probe. They conclude:

"After extensive research, we have satisfied ourselves that Mrs. Clinton was neither naive nor lucky nor particularly talented as a trader. Even individuals who have never visited a futures exchange or traded one futures contract will, upon examination of the evidence, be convinced that Mrs. Clinton's representation of the events 15 years later is highly improbable."

For the moment, however, as you take pen in hand to write that check for taxes owed to the government headed by Mr. Clinton, why not contemplate these remarks by Hillary Clinton at the 1993 University of Michigan commencement: "Throughout the 1980s, we heard too much about individual gain, about the ethos of selfishness and greed."

To protect your assets for next year's taxes, remember: Nine years ago then-Gov. Clinton claimed deductions of \$2 per pair for used underwear, \$1.50 for used socks (not the cat!) and \$100 for a "brown sportscoat." Before signing that check, you better put your dirty laundry in the walk-in safe.

Speaking of dirty laundry, how much do you think then-Gov. Bill Clinton valued his copy of Bob Woodward's "Final Days," which he donated to Central High and for which he claimed an indeterminate tax deduction in 1987?

THE NATION'S NEWSPAPER
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AP
RENO: Opposes reducing sentences

SENTENCING FLAP: Attorney General Janet Reno said she opposes a plan to reduce federal crack cocaine trafficking sentences so they would equal penalties for selling powder cocaine. The U.S. Sentencing Commission on April 10 said crack sentences were too harsh — sometimes 100 times harsher than for powder. Civil rights activists also say the penalties are racially disproportionate because most crack offenders are black. Reno said the plan doesn't reflect crack's effect. Federal prosecutors last week also opposed the proposal, which takes effect Nov. 1 if Congress takes no action.

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THE WALL STREET JOURNAL.

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Justice Agency Urges Congress to Reject Cocaine-Penalty Plan

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON – Justice Department officials urged Congress to reject a Sentencing Commission recommendation to reduce the penalty for the possession of crack cocaine to that for powder cocaine.

The commission voted 4-3 last week to call on Congress to end sentencing practices that treat crack possession 100 times more severely than powder-cocaine possession.

Commission Chairman Richard Conaboy, a senior U.S. District Court judge from Scranton, Pa., said the panel believed it is unfair to apply different sanctions to users of the two substances, which are essentially the same chemically. Studies show that crack-possession defendants are much more likely to be African-American than white.

But it's the demographics of the substances that make tougher crack sentences important, argued Jo Ann Harris, assistant attorney general for the Justice Department's criminal division. Treating crack and powder equally "does not reflect the harmful impact of crack trafficking and the responsibility of law enforcement to protect the poorest and most threatened communities from narcotics predators," she said.

While opposing parity in sentencing, the department did indicate that "an adjustment in the current penalty structure might be appropriate."

Judge Conaboy said commissioners know that violence accompanies crack use more than powder-cocaine use.

The Washington Post

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Cocaine: Two Forms, Two Views

THE U.S. Sentencing Commission has taken steps to remove an inequity in the criminal justice system, but the Justice Department has refused to give unqualified support to the move. Last week, the commission took up the question of sentences for offenses involving crack cocaine and powder cocaine. A zealous Congress had, in the mid-'80s, amended the drug laws to penalize severely the sale or possession of the former substance, while leaving the penalty for cocaine in its powder form at a much lower level. Thus, a person convicted of the simple possession of crack, with no intent to sell, receives a mandatory minimum sentence of five years in prison. Simple possession of powder cocaine carries a maximum sentence of one year. Similarly, the sale of five grams of crack carries a mandatory sentence of five years, while an offender would have to sell 500 grams of powder cocaine to receive the same punishment.

After much study and debate, the Sentencing Commission has proposed that equal penalties be imposed for similar offenses involving these substances. Not only are the crack sentences very high, they fall primarily on African American offenders, who commit 88 percent of the crimes involving this form of the drug. Powder cocaine offenders, on the other hand, are more likely to be white or Hispanic. Because the two substances are virtually the same drug in different forms, the enormous sentence disparity has racial impact that, though unintentional, is obvious.

Attorney General Janet Reno agrees that there should be some reduction in disparity but argues that there are good reasons to punish crack crimes more severely because that substance has been the cause of so much violence and family disruption in the inner city. The department draws a parallel with weapons offenses: A pistol and an Uzi are both guns, but since one causes so much more harm than the other, its use is penalized more heavily.

This tougher approach to crack is supported by prosecutors and will undoubtedly be more attractive politically than a recommendation that penalties be equalized. But one of the reasons for creating an independent sentencing commission was to separate the setting of penalties from the political forces that invariably demand more severity.

The differences between the commission and the department will be sorted out in Congress. Comparable sentences are, as the commission has suggested, the right idea and should prevail. The disparity is wrong and unfair.

THE NEW YORK
DAILY NEWS

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4 facing the slam for scam

By ROBERT GEARTY
Daily News Staff Writer

Four securities executives have been convicted of bilking 300 New Yorkers out of $10 million in an elaborate Ponzi scheme — wiping out many victims' life savings.

"It couldn't happen to nicer people," snapped Transit Authority worker Florence Rosser, 62, who has had to delay her retirement and give up buying a home. "They should suffer."

Samuel Forson, 34; his wife, Yvonne Thomas, 33; Heyward Mitchell, 33, and James Sehn, 33, showed no emotion as a Manhattan Supreme Court jury found them guilty Saturday of enterprise corruption.

The jury had deliberated six days after hearing nearly eight months of testimony.

Most of the investors were, like Rosser, working-class people who had scraped for years to build their nest eggs.

"I pray to God to that I don't get sick," said retired widower Nazzarino Muscat, 70, who said he lost more than $117,000. "I can't do anything now with what I got."

But the victims also included doctors and students.

Rosser said she invested $47,000 in 1990 after being assured that her money would be invested wisely.

"I said I didn't want it to be speculative," said Rosser. "I didn't want it to be a gamble. They said it was going into companies like Disney World, amusement parks that will grow."

Instead, prosecutors said, the money Rosser and the others invested in the firm went to support a number of risky ventures — and the executives' own lavish lifestyles.

In 1990, for instance, Forson and Thomas paid for their Plaza hotel wedding reception — an elaborate affair that included trumpet fanfares and a horse-drawn carriage — with investors' money, prosecutors said.

The victims also paid for a $730,000 Manhattan condo, a Brooklyn home for Forson's parents, a $1,000-a-month lease for a Jaguar and $1,500 suits from Barneys, prosecutors said.

Some of the risky ventures included a door-to-door nail salon, a fish farm in Nigeria that was nothing more than holes in the ground, a sports agency that had signed Anthony Mason before he became a Knick and a ship full of fertilizer that was going to be sold to China.

"They showed a callous disregard to hundreds of investors who lost their life savings," said Manhattan District Attorney Robert Morgenthau.

The four face up to 25 years in prison. Judge James Yates said he will set a sentencing date on Thursday.

With Joe Nicholson