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

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Theodore J. Forstmann

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Donald H. Rumsfeld
Judy Shelton
John Skeen
Ward W. Woods

Dear Senators Hatch and Leahy:

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

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

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

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

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

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

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

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

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

Sincerely,



William P. Barr



William Bennett



Edwin Meese III



John Walters

growers. All three of the pending challenges were consolidated before Judge Thomas F. Hogan. The parties in City of New York and Snake River had agreed upon a briefing schedule. The government's motion to dismiss is due November 12.

- **Canadian Extradited:** After a nearly five-year extradition effort, the former president of Neese Coated Fabrics was returned from Canada to face trial in MO. The defendant and his company were indicted in 1993 on charges of falsifying test results and abandoning hazardous wastes at the company's downtown St. Louis plant. Neese allegedly delivered more than 40,000 pieces of defective tent material to the military at a cost of \$3.2 million and supplied false supporting documentation.
- **Operation Detail:** On October 20, Irving Bowman was arrested in Long Island, NY, by Deputy U.S. Marshals from the District of NJ and the Southern District of NY. Bowman is alleged to be a major cocaine and heroin trafficker wanted on federal indictments in GA and NJ. The arrest was the result of a lengthy DEA and IRS investigation called "Operation Detail."
- **Drug Conspiracy Cases:** The Supreme Court, as DOJ urged, granted the certiorari petition in Edwards v. United States to resolve a conflict among the circuits in federal drug conspiracy cases. The Court will consider whether a jury verdict of guilty in a prosecution for a drug conspiracy involving more than one drug requires the district court to set a base offense level under the Sentencing Guidelines by considering only the drug that supplies the lowest sentence. DOJ contends that the type of drug for which a defendant is accountable is a sentencing factor for the judge, not the jury, to determine.
- **COPS Universal Hiring Program Grant Announcement:** On October 30, the COPS Office announced the awarding of over \$62.5 million to 476 jurisdictions in 47 states and Puerto Rico to fund the hiring of 969 additional officers.

DEPARTMENT OF COMMERCE

- **Transatlantic Conference:** On November 6-7, Secretary Daley will lead the U.S. delegation to the Transatlantic Business Dialogue conference in Rome, Italy. Over 40 U.S. and 50 EU CEOs will attend.
- **Gray Whales:** The IWC adopted by consensus a quota that allows the Makah Indian Tribe of WA a five-year aboriginal subsistence hunt averaging four gray whales a year, combined with an average annual harvest of 120 gray whales by natives of the Chukotka region of Russia's Pacific coast. DOC expects criticism of this decision from a number of conservation organizations. The Commission also approved a new quota for Alaska Eskimos consistent with their continuing hunt of bowhead whales in the Arctic Ocean.



National Institute of Justice

Research in Brief

Jeremy Travis, Director

July 1997

Issues and Findings

Discussed in this Research in Brief:

An analysis of 1987–1996 data on booked arrestees' recent use of cocaine/crack, as detected by urinalysis conducted through the National Institute of Justice's Drug Use Forecasting (DUF) program in 24 cities nationwide. The data confirm the researchers' model of a drug epidemic, composed of four distinct phases: incubation, expansion, plateau, and decline.

Key issues: Standard epidemiological models and observation of prior drug epidemics suggest that the crack epidemic, which began in the 1980s, has been following this natural course from incubation to decline. DUF data, which documented the rates of drug use for both juvenile and adult arrestees over the study period, offer additional insight on age, period, and cohort effects on cocaine/crack use. Local factors can affect the development and course of the crack epidemic, demonstrated by variations across cities in the same region. Being able to pinpoint the stage of the epidemic in particular cities enables local criminal justice and health officials to develop better strategies and deploy their resources more effectively to respond to the epidemic.

Key findings: The crack epidemic has been following this general pattern:

continued...

Crack's Decline: Some Surprises Across U.S. Cities

by Andrew Lang Golub and Bruce D. Johnson

Crack cocaine has been the source of much concern to local officials across the United States ever since it entered the scene in the 1980s. Cocaine sellers' turf wars and the broader health consequences of crack use have heightened the challenges to criminal justice and public health agencies. To gather useful information for local officials on the course of illicit drug use, including crack cocaine, the National Institute of Justice launched the Drug Use Forecasting (DUF) program in 1987 (see "The Drug Use Forecasting Program").

This report examines the progress of the crack epidemic at each of 24 locations served by the DUF program from as early as 1987 (for some locations) through 1996.¹ This information can be helpful for current efforts to control crack use. To the extent that future drug epidemics are similar to the crack epidemic, agencies can use the DUF data to better deploy their drug control resources. In general, the study findings suggest the following:

- **Drug epidemics tend to follow a natural course.** The popularity of a particular drug—such as crack cocaine—tends to start within a limited subpopulation. Sometimes use of a drug catches on and the rate of use increases dramatically until it is widespread. At some point the drug may go out of favor, leading to a slow but steady ebb in its use.

- **Drug epidemics tend to be local.**

Which drugs are most popular and when can vary substantially across the country. The crack epidemic started and began declining at different times in different locations. As of 1996, crack use was in decline at most DUF locations, especially those on the East and West Coasts. However, in some noncoastal cities the crack epidemic appeared as strong as ever.

- **Local data can inform efforts to control drugs.** Information about the prevalence of certain drugs, such as those monitored by the DUF program, can help identify the phase of a drug epidemic a community is experiencing, as it occurs. The effectiveness of various drug abuse control strategies might vary across phases. For example, a warning message broadcast in the early part of an epidemic may go unheeded, but the same message, introduced later, may prove effective at speeding the end of the epidemic. Additional research is clearly needed in this area.

- **Changes in use by youths indicate important transitions in a drug's popularity.** New drug epidemics tend to start among older, more established drug abusers. Use of a drug by youths first coming of age (around age 18) indicates that a drug epidemic has established a strong foothold. Similarly, a drug epidemic is about to end when substantially fewer

Issues and Findings

continued...

- A subgroup of hard-core users of other drugs are the first users of cocaine in a local area (the incubation phase), followed by a rapid expansion of use among their more numerous friends and associates (during the expansion phase).

- When the drug becomes popular, it is adopted by youths coming of age (around age 18). At this time the epidemic is well established (defining a plateau phase).

- When new young people coming of age no longer see crack as the drug of choice, the decline phase sets in. Experience in DUF cities has shown decline in juvenile crack use to be the precursor to a more general decline.

The crack epidemic appears to be in the decline phase in all the cities on both the East and West Coasts where DUF has been gathering urinalysis data. For some (but not all) sites in interior sections of the country, the epidemic is still in its plateau stage. Two sites, Omaha and San Antonio, show no signs of a crack epidemic.

Target audience: Local law enforcement, court, and correctional officials; public health officials; administrators of juvenile justice agencies and youth departments; drug-crime researchers; and local policymakers.

youths start using the drug than in preceding years. This indicator of a drug's waning popularity may precede a more general decline in use by several years.

Structure of a drug epidemic

The analysis reported here was guided by a conceptual model of the crack epidemic developed from standard epidemiological and demographic models and based on observations regarding prior drug epidemics. The model identifies four distinct phases in a drug's popularity over the course of an epidemic: incubation, expansion, plateau, and decline. With regard to the crack epidemic, each phase can be distinguished by the proportion of hard drug users (such as previous users of cocaine or heroin) at any

location who use crack. Given the strong relationship between drugs and crime, this variation should be reflected in the rate of cocaine/crack use among arrestees detected by the DUF program, now being reconfigured and expanded (see "Arrestee Drug Abuse Monitoring").

Note that the DUF program detects recent cocaine use via urinalysis but not the mode of consumption; however, self-reports suggest that most of the arrestees whose urine contained cocaine metabolites had smoked crack. In this Research in Brief, the more technically accurate but awkward term "detected cocaine/crack" is used to denote the substance detected by urinalysis, that is, cocaine in all its forms, including crack.



The Drug Use Forecasting Program

The Drug Use Forecasting (DUF) program was established in 1987 by the National Institute of Justice to measure trends in illicit drug use among booked arrestees in most large cities (or counties) with a total population of at least 1 million, as well as many smaller cities representing all regions of the United States. The program collects urine samples (along with self-reported information) from about 225–250 male and 100 female arrestees at each location, quarterly. The program expanded to include 24 locations, and at some locations a juvenile DUF program was also instituted to track trends among arrestees charged as juveniles. As of 1996, more than 250,000 arrestees had participated.

DUF samples are typically not representative of the general communities where data collection occurs. Given the drug-crime nexus, DUF data provide excellent information about drug use among many of the most serious drug abusers at each location. Hence, this report discusses the crack epidemic among arrestees.

The EMIT urinalysis screen used in the DUF program detects use of cocaine within the previous 48 to 72 hours but does not distinguish mode of use (e.g., snorting, smoking, or injecting). Hence, this report refers to detected cocaine/crack use. Many of the arrestees who tested positive for cocaine are cocaine snorters and injectors. Presumably, much of the increase in detected cocaine prevailing during the observation period reflected the increased popularity of crack.

Information about self-reported drug use suggests that most of the cocaine use detected by the DUF program resulted from use of crack. Three-quarters of the DUF arrestees aged 18 and above whose use was detected and who admitted to recent cocaine use (in any form) reported having used crack within the previous 72 hours. On the other hand, only half of the detected cocaine users admitted their use. It is possible that cocaine snorters were substantially less likely to admit recent drug use.

Ethnographic reports, particularly about New York City, provide detailed documentation of substantive changes in the use of cocaine prevailing in the 1980s.² In New York City, cocaine smoking started primarily among groups of cocaine dealers and wealthier individuals who met from 1979 to 1981 at afterhours clubs to smoke cocaine. These users typically employed the more technically challenging and dangerous method of freebasing that involves heating cocaine powder with ether over an open flame and inhaling the vapors. During this early period, referred to as the incubation phase, DUF would be expected to detect relatively few crack users, and most of these would be older arrestees.

The development and acceptance of crack cocaine, which occurred between 1982 and 1986 in New York City, allowed more individuals to engage in cocaine smoking due to its low price and ease of use, leading to the expansion phase of the epidemic. News of this innovative, easier method for consuming cocaine spread rapidly, probably by word of mouth. Most likely, the initial group of cocaine smokers told some of their associates about the practice; these then became crack smokers. Subsequently, the pioneers and first new recruits probably told other acquaintances. By this means, the number of smokers and recruiters snowballed.³ The epidemic was now in its expansion phase, and DUF would be expected to detect a rapidly increasing number of cocaine smokers, most of them older.

The dramatic growth of crack use in New York City did not last forever. It was physically limited by the number of people willing to try crack—primarily



Arrestee Drug Abuse Monitoring

This year NIJ announces the transformation of DUF into the Arrestee Drug Abuse Monitoring (ADAM) program. For more than 10 years, DUF data have played an important role in constructing the national picture of drug abuse and have been a central component in studying the drug-crime nexus. As DUF's successor, ADAM will be implemented in the 23 existing DUF sites. Moreover, increased funding for the program has been requested to eventually expand ADAM to 75 cities.

While ADAM will retain many of DUF's features, it will also incorporate new elements that will significantly strengthen the value of the data collected. New ADAM program elements will include redesign of data collection and sampling methodology that will provide policymakers and practitioners with a rigorous basis from which to assess local drug use trends and patterns and evaluate local policies.

If increased funding of ADAM is approved, NIJ is proposing:

- Development of local coordinating councils that will generate local research projects for execution at the ADAM sites and assume a prominent role in disseminating the sites' findings to policy, practitioner, and public constituencies.
- Establishment of an outreach program that will annually collect one additional quarter of data from a targeted population, such as a suburban, rural, or Native-American jurisdiction.

those who were already using other hard drugs. Once most of these had become crack users, or at least had the opportunity to try the drug, the crack epidemic entered the plateau phase. During this period, crack was the drug of choice among hard drug users. As a result, youths who came of age during the plateau phase and would become hard drug users started with the "popular" hard drug of their day, crack. During the plateau phase, DUF data would be expected to detect a relatively high and constant rate of cocaine/crack use among arrestees, including youthful arrestees.

Ethnographic evidence suggests that the crack epidemic in New York City entered a decline around 1990 when youths began to disdain crack use.⁴ They considered "crackhead" a dirty

word and even took to abusing crackheads. Such a change in attitude among youths heralded the beginning of the decline phase of the crack epidemic.

However, hard drug users tend to keep using a particular drug even after its broader popularity has slipped. This has certainly been the case in New York City with heroin injection. Injecting heroin was quite popular during the 1960s and early 1970s, but in the 1970s heroin fell out of favor and only a few individuals initiated its use, youths not among them.⁵ In the early 1990s, about 20 percent of New York City arrestees interviewed by the DUF program were detected as recent heroin users, which suggests that heroin use was still quite widespread. However, the majority of these detected users were middle aged and had been

Distinguishing Age, Period, and Cohort Effects

Three types of factors which can influence an individual's drug use—age, period, and cohort effects—can be identified from a two-way table of detected cocaine/crack use as a function of interview year and birth year. Exhibit 1 presents such an age-period-cohort analysis for detected cocaine/crack use among DUF-sampled Los Angeles arrestees.

Exhibit 1: Age-Period-Cohort Analysis of Cocaine/Crack Use Detected by DUF—Los Angeles (1987–1996)

Percentage of DUF-Sampled Arrestees Detected as Cocaine/Crack Users ^a											
Interview Year Birth Year	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	Total 18+ ^b
pre-1945	32	42	39	43	36	45	50	41	45	35	42
1945–49	48	60	58	59	57	59	65	58	59	60	59
1950–54	61	63	71	61	62	69	69	67	60	65	65
1955–59	60	67	63	63	62	67	61	63	62	68	64
1960		80	63	63	57	74	68	62	58	51	65
1961		58	57	51	58	69	56	59	58	56	58
1962		66	59	48	54	62	66	60	50	55	58
1963		61	70	50	54	65	48	54	52	47	55
1964	62	65	58	56	57	65	53	52	57	49	58
1965		68	63	41	59	55	50	55	46	55	55
1966	41	43	50	45	46	50	44	51	41	50	46
1967		57	54	43	40	53	54	47	45	51	50
1968		47	42	35	36	43	52	47	47	43	43
1969		44	45	38	36	43	45	44	35	41	41
1970			39	30	32	41	46	42	33	26	36
1971			20	19	31	28	30	34	27	42	29
1972				18	26	31	31	29	35	29	29
1973					17	19	41	39	28	17	28
1974						18	23	30	28	28	26
1975						16	25	33	33	28	31
1976						9	13	15	19	27	24
1977						9	8	8	18	25	
1978						2	11	6	13	15	
1979							6	9	11	18	
1980								3	13	11	
1981									5	11	
1982										17	
Total 18–20	47	46	37	25	26	23	30	25	28	24	29
Total 18+	55	60	56	49	49	54	52	50	46	46	51
N ^c =	387	1,759	940	1,783	1,970	2,130	1,784	1,454	1,533	1,621	15,361

^a Each entry reported is based on a subsample of at least 25 arrestees.

^b Average by birth for adults, defined for this study as 18 and above.

^c Sample size aged 18 and above.

Note: Data in white area indicate percentage of DUF-sampled arrestees aged 18, 19, and 20 years old in each interview year.

The variation across elements in a row indicates how detected cocaine/crack use varied with age for members of a birth cohort (individuals born in a given year). Only 18 percent of the sampled Los Angeles arrestees born in 1972 were detected as recent cocaine/crack users in 1990, when they were 18 years old. The rate increased to 31 percent in 1992, when the cohort reached age 20,

and hovered around that level in subsequent years. These findings suggest that many members of the 1972 birth cohort initiated regular use of crack between ages 18 and 20 and few at subsequent ages. This is an *age effect*. (Note: the identification of an age effect is based on the extent to which DUF provides a similar random sample from the 1972 cohort in each year.)

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In contrast to the increase in detected cocaine/crack use observed among the 1972 cohort in Los Angeles, detected cocaine/crack use among all arrestees aged 18 and above declined from a peak of 60 percent in 1988 down to 49 percent in 1990. Two factors could potentially account for this phenomenon—a period or a cohort effect. Informally, these could be distinguished as a passing fad or a lasting fad specific to a generation. A drug epidemic could potentially come to a dramatic end if most users were to cease at once. Indeed, many social phenomena follow such fad-like behavior: Yo-yos and bell-bottom pants were once widely popular but virtually disappeared after a few years. Demographers call such a short-lived fad a *period effect*.

A period effect would be identified in this analysis as a consistent decline in detected cocaine/crack use across the columns in Exhibit 1. However, this was generally not the case. For example, the rate of detected cocaine use among arrestees born from 1955 to 1959 remained at about 64 percent from 1988 to 1990 and beyond. These findings suggest that members of the 1955–1959 birth cohort who became cocaine/crack users tended to persist in their habits through 1996, which is a *cohort effect*.

Drugs, unlike yo-yos, are often habit forming. Much research suggests that many individuals who become involved with regular use of a hard drug tend to persist as it becomes part of their lives. In a similar manner, many baby boomers still listen to their rock-and-roll

records instead of switching to rap or grunge, musical genres that have become associated with members of a more recent birth cohort called Generation X. Demographers call such life long patterns a cohort effect. Unlike a period effect, a cohort effect lasts for years as many individuals in a generation persist in their habits.

Multivariate statistical analyses were used to test the relative importance of cohort and period effects in explaining the observed decline in detected cocaine use for those locations that experienced a decline (see Golub, Hakeem, and Johnson, 1996). These analyses confirmed that differences across birth years in the rate of detected cocaine/crack use were both substantial and statistically significant. Most important, these cohort effects could account for the full extent of the declines observed. Moreover, in every DUF location where a decline was observed, the period effect was not statistically significant, with one exception. The analyses suggested that a substantial portion of individuals in Houston had ceased their use of cocaine and crack.

Exhibit 1 indicates strong variation in detected cocaine/crack use across birth cohorts. Only 29 percent of Los Angeles arrestees born in 1972 were detected as cocaine/crack users, in strong contrast to the 58 percent detected among the 1964 cohort (right-most column). This cohort effect also resulted in the dramatic decline in detected cocaine/crack use among youthful arrestees from 47 percent in 1987 to 24 percent in 1996 (third row from bottom).

heroin injectors since the 1960s and 1970s.” By analogy, the decline in the crack epidemic should be first noticeable when fewer youths become crack users than in previous years. During the decline phase, DUF would be expected to detect a gradual decrease in the detected rate of recent cocaine/crack use among all arrestees and a dramatic decrease among youthful arrestees.

Geographic variation in the crack epidemic

The study examined the progress of the crack epidemic at each DUF location through changes in the prevalence of recent cocaine/crack use detected among arrestees, particularly changes among youthful arrestees defined as those aged 18–20 for the purpose of this analysis.⁷ The DUF data made it

possible to identify and analyze some of the factors that affect drug use (see “Distinguishing Age, Period, and Cohort Effects”).

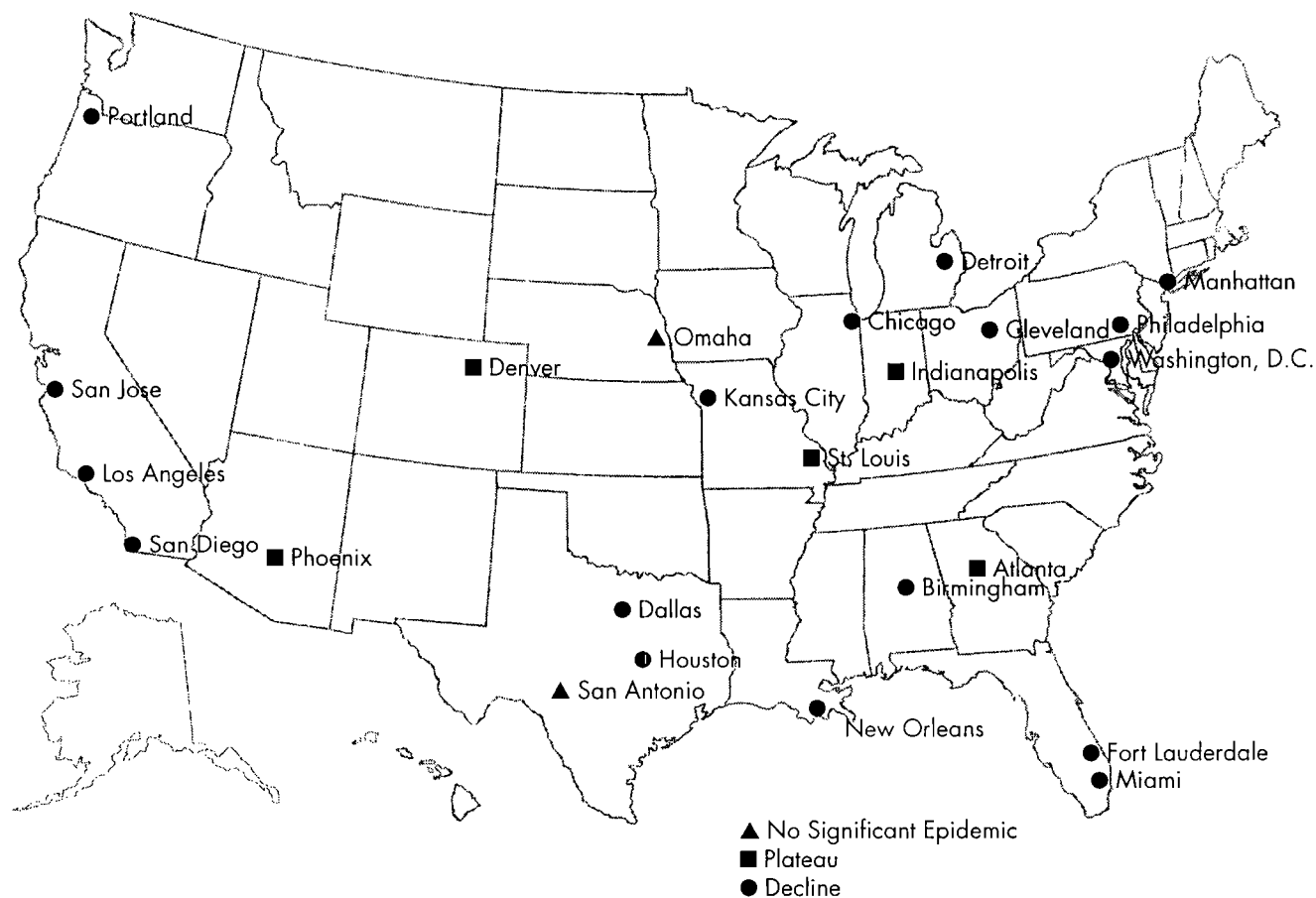
Another recent study has examined the use of crack cocaine by particular populations to aid in the development of informed, more effective criminal justice policies. It is described in “Careers in Crack: Study Findings” (see p. 11).

Subsequent sections of this Research in Brief present and analyze the time series for locations on the East Coast, West Coast, and interior sections of the country, respectively. For each location, the analysis identified the state of the epidemic by 1996, the year in which the decline phase was first discernible (if possible), and the speed of the decline (if appropriate).⁸ A rapid decline was distinguished as one for

which both the rates of detected cocaine/crack use among youthful arrestees and among all arrestees decreased substantially. A slow decline was one in which the rate among all arrestees remained relatively constant in spite of a dramatic decline among youthful arrestees.⁹

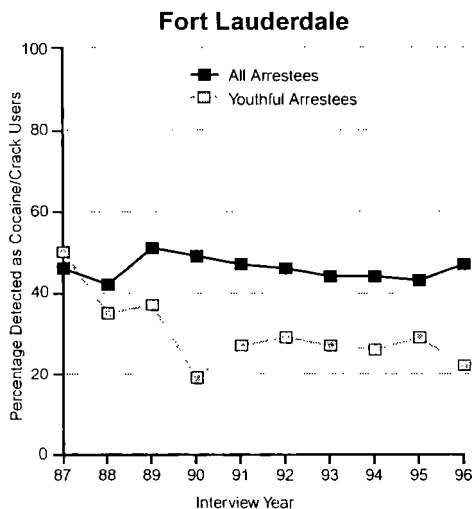
Exhibit 2 indicates the state of the crack epidemic in 1996 among arrestees at each of the DUF locations. As of 1996, the epidemic was in decline in 17 of 24 DUF locations, including all 9 locations on the East and West Coasts. However, at five locations in the interior of the country, the epidemic appeared to be continuing as strong as ever. Two locations showed no sign of any epidemic yet. Most striking, the timing of the crack epidemic differed at several DUF sites near each other.

Exhibit 2: *State of the Crack Epidemic Among Arrestees, 1996*



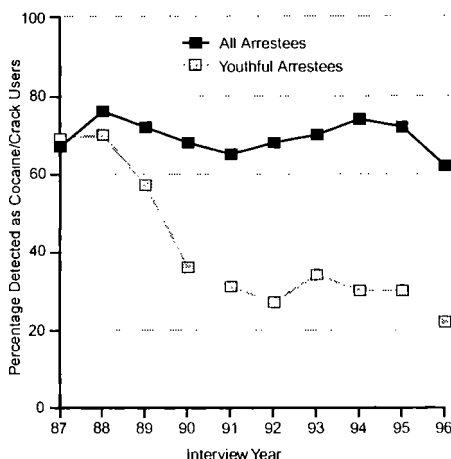
The crack epidemic from 1987 to 1996 on the East Coast

Fort Lauderdale—Slow decline starting in 1988. The crack epidemic in Fort Lauderdale exhibited a decline from 1987 to 1996. Although the rate of detected cocaine/crack use hovered around 45 percent during this period, the rate among youthful arrestees went down from 50 percent in 1987 to 19 percent by 1990. The rate returned to about 27 percent from 1991 to 1995 and dropped back to 22 percent in 1996.



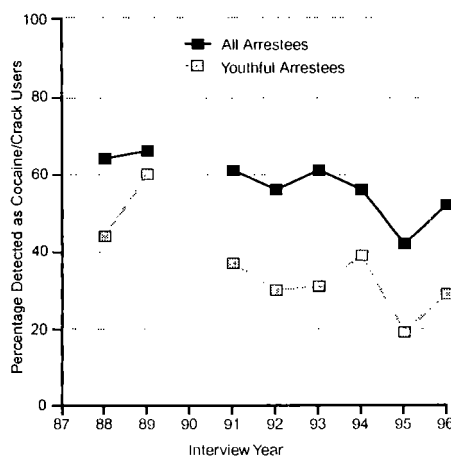
Manhattan—Slow decline starting in 1989. The epidemic showed a decline starting in 1989. From 1987 to 1995, the overall rate of detected cocaine/crack use hovered around 70 percent and then showed a moderate drop to 62 percent in 1996. The rate among youthful arrestees went from 70 percent in 1988 down to 31 percent in 1991, where it remained through 1995. It declined further to 22 percent in 1996.

Manhattan



Miami—Moderate decline starting in 1991. In Miami the epidemic started to decline in 1990 or 1991. A lack of data for 1990 prevents giving a more precise date. The rate of detected use among youthful arrestees dropped from 60 percent in 1989 to 30 percent in 1992. The overall rate fell moderately from 61 percent in 1991 to 52 percent in 1996.

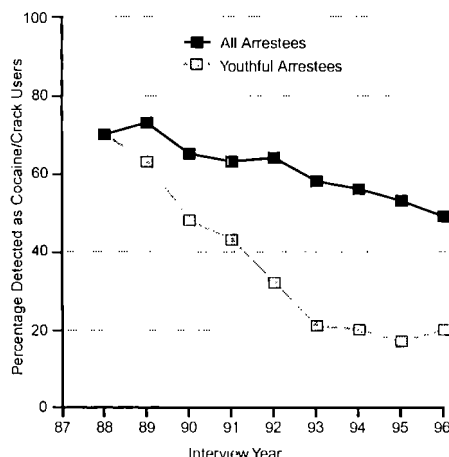
Miami



Philadelphia—Rapid decline starting in 1989. A substantial decline began in Philadelphia in 1989. The rate of detected cocaine/crack use among youthful arrestees went from 70 percent in 1988 down to only 21 percent in 1993. The overall rate of detected

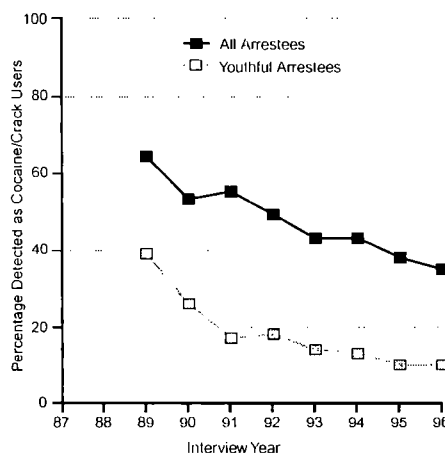
cocaine/crack use also came down from 73 percent in 1989 to 49 percent in 1996.

Philadelphia



Washington D.C.—Rapid decline starting in 1990. From 1989 to 1996 Washington, D.C., experienced a substantial decline in crack use, and the decline may have started prior to 1990. However, an earlier decline could not be detected because the DUF program started data collection in Washington only in 1989. The rate of detected cocaine/crack use among youthful arrestees decreased from 39 percent in 1989 to only 10 percent by 1995–1996. The overall rate of detected cocaine/crack use declined from 64 percent in 1989 to 35 percent in 1996.

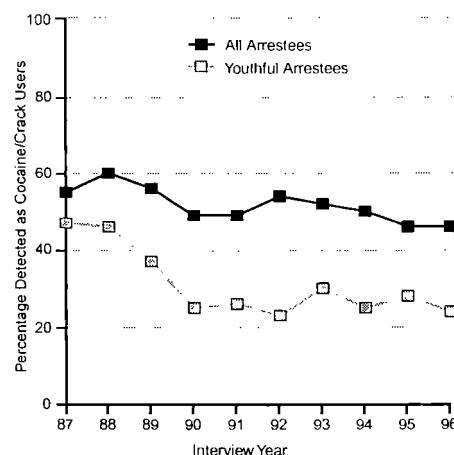
Washington D.C.



The crack epidemic from 1987 to 1996 on the West Coast

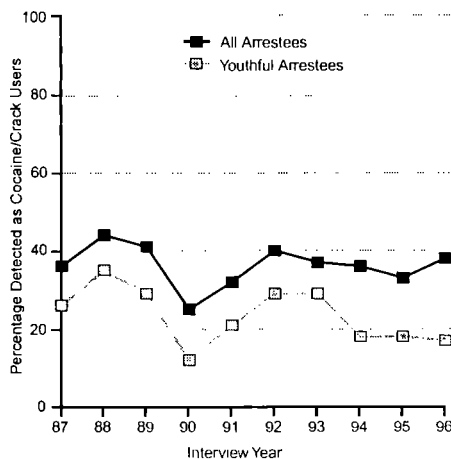
Los Angeles—Slow decline starting in 1989. The crack epidemic in Los Angeles exhibited a decline starting in 1989. The overall rate of detected cocaine/crack use decreased modestly from 60 percent in 1988 to 46 percent in 1996. In contrast, the rate among youthful arrestees declined from 46 percent in 1988 to 25 percent in 1990, where it remained through 1996.

Los Angeles



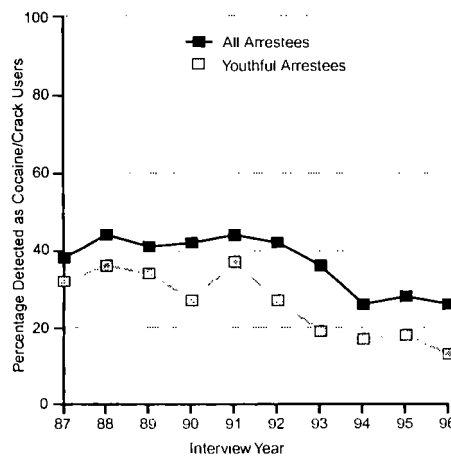
Portland (Oregon)—Slow decline starting in 1994. The epidemic in Portland showed evidence of a decline starting in 1994. The overall rate of detected use took an anomalous dip from 41 percent in 1989 down to 25 percent in 1990 but within 2 years returned to 40 percent. The rate of detected cocaine/crack use among youthful arrestees subsequently declined from 29 percent in 1993 to 18 percent in 1994, where it remained through 1996. This decline appears to be more sustained than the previous one.

Portland



San Diego—Rapid decline starting in 1992. From 1992 to 1996 San Diego experienced a sustained decline in cocaine/crack use. The rate among youthful arrestees declined continually from 37 percent in 1991 to 13 percent in 1996. Furthermore, the overall rate of use went down from 44 percent in 1991 to 26 percent by 1994.

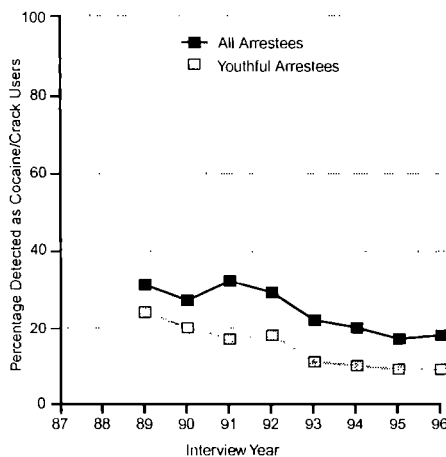
San Diego



San Jose—Rapid decline starting in 1990. In San Jose the crack epidemic showed a dramatic decline starting as early as 1990. The decline may have started prior to 1990 but would not have been detected because the DUF program did not collect data in San Jose until 1989. The rate of de-

tected cocaine/crack use among youthful arrestees descended steadily from 24 percent in 1989 to only 9 percent in 1996. Furthermore, the overall rate of detected cocaine/crack use declined from 31 percent in 1989 to only 18 percent by 1996.

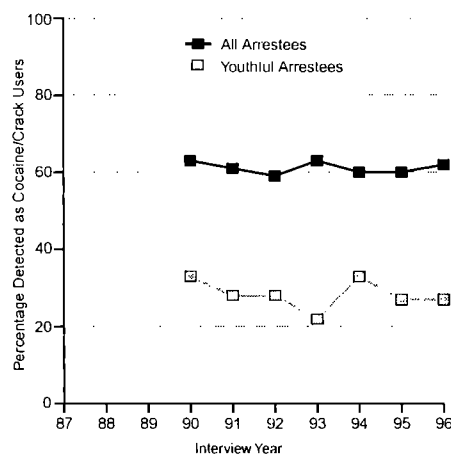
San Jose



The crack epidemic from 1987 to 1996 in interior sections of the country

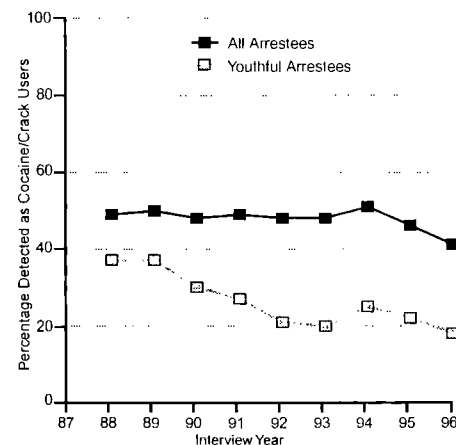
Atlanta—Plateau. The crack epidemic in Atlanta was in the plateau stage from 1990 to 1996, with the overall rate hovering around 60 percent. The rate among youthful arrestees was much lower (about 30 percent) but similarly stable over the observation period.

Atlanta



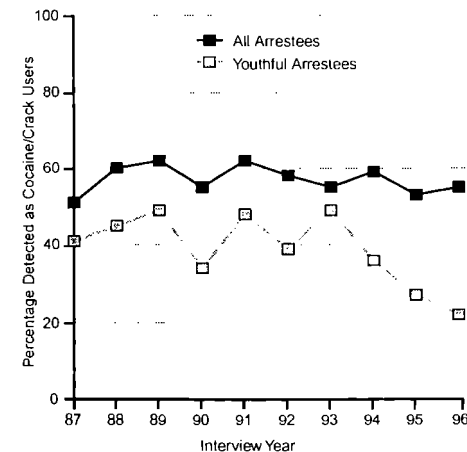
Birmingham—Slow decline starting in 1990. The crack epidemic in Birmingham started to decline in 1990. Among youthful arrestees it went down from 37 percent in 1989 to 21 percent by 1992, where it roughly remained through 1996. The overall rate remained constant at about 50 percent through 1994 and subsequently declined to 41 percent by 1996.

Birmingham

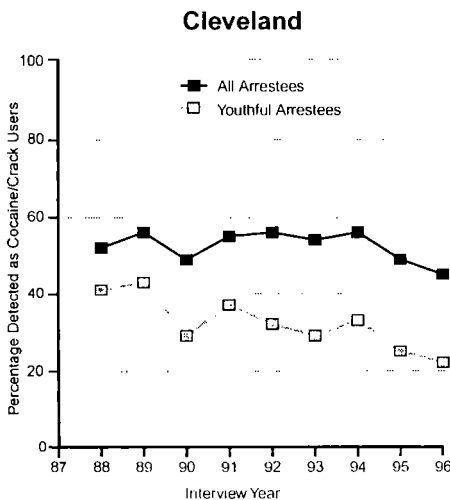


Chicago—Slow decline starting in 1994. In Chicago the decline started in 1994. The rate among youths went down steadily from 49 percent in 1993 to 22 percent by 1996. The overall rate continued to hover around 58 percent.

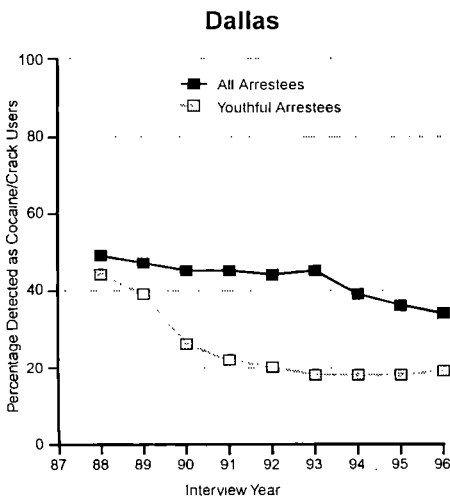
Chicago



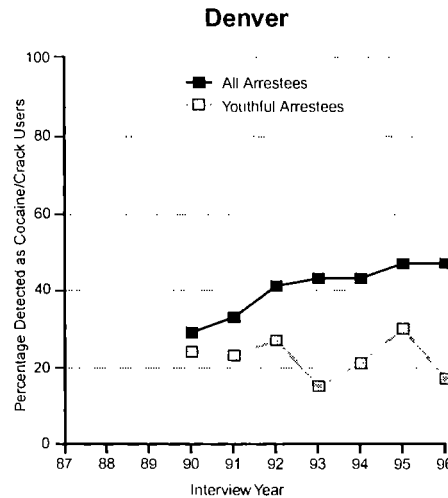
Cleveland—Slow decline starting in 1990. The crack epidemic in Cleveland entered a particularly slow but steady decline starting in 1990. The rate of detected cocaine/crack use among youthful arrestees declined in bits from 43 percent in 1989 to 22 percent by 1996. The overall rate hovered at around 55 percent through 1994 and subsequently dropped to 45 percent in 1996.



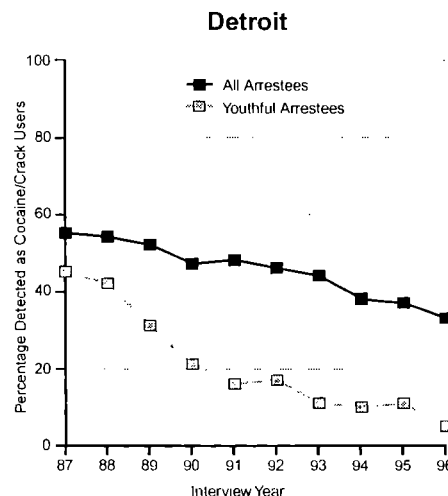
Dallas—Slow decline starting in 1989. In Dallas the epidemic showed a decline starting in 1989. The rate of detected cocaine/crack use among youthful arrestees went from 44 percent in 1988 down to 18 percent by 1993, where it roughly remained through 1996. The overall rate also began to exhibit a modest decline from 45 percent in 1993 and then somewhat more rapidly to 34 percent in 1996.



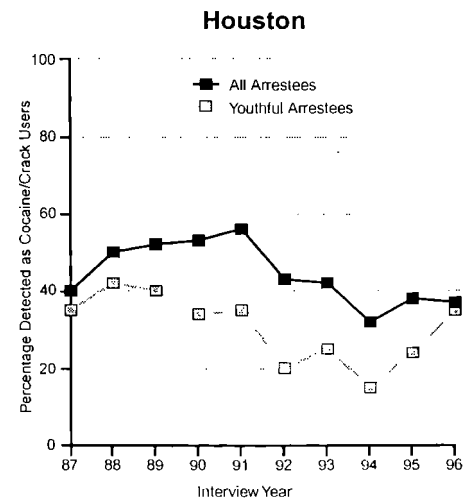
Denver—Plateau. From 1990 to 1992, the crack epidemic in Denver expanded, after which it entered a plateau phase. The overall rate of detected cocaine/crack use increased solidly from 29 percent in 1990 to 41 percent in 1992 and then continued up more gradually to 47 percent by 1996. The rate among youthful arrestees ranged erratically around 20 percent.



Detroit—Slow decline starting in 1988. Detroit experienced a consistent decline from 1987 to 1996. The rate among youthful arrestees went down steadily from 45 percent in 1987 to only 5 percent by 1996. The overall rate went down slowly from 55 percent in 1987 to 44 percent in 1993 and then somewhat more rapidly to 33 percent by 1996.

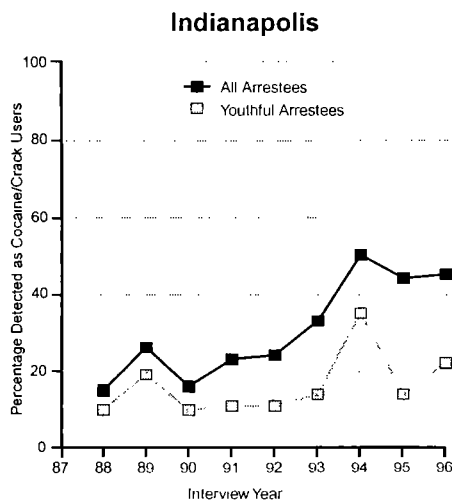


Houston—Erratic decline starting in 1992. The peak of the crack epidemic in Houston appears to have been short lived. The overall rate of detected cocaine/crack use rose from 40 percent in 1987 to a high of 56 percent in 1991, then declined precipitously to 43 percent by 1992 and more slowly to 37 percent by 1996. This was the only DUF location in which the overall decline occurred at the same time and as strongly as that of youthful arrestees. These data suggest that a substantial portion of the existing crack users apparently ceased their use in 1992. The rapid increase in the rate among youthful arrestees from its low of 15 percent in 1994 back up to 35 percent in 1996 suggests that Houston may have experienced a resurgence in crack use, but only among youths.

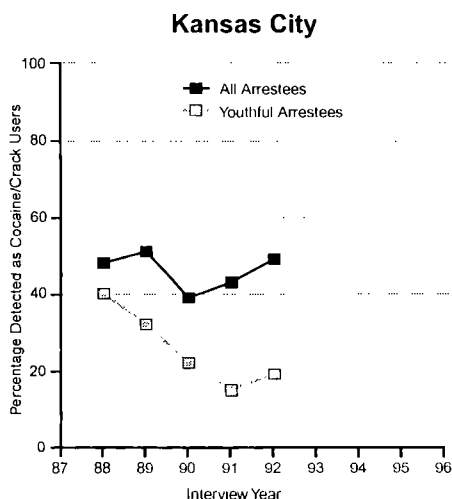


Indianapolis—Plateau/decline. The crack epidemic in Indianapolis exhibited a dramatic expansion from 1992 to 1994. The overall rate of detected cocaine/crack use increased from 24 percent in 1992 to 50 percent in 1994. The rate among youthful arrestees spiked at 35 percent in 1994 and returned to 14 percent in 1995. This dramatic drop in detected use among youths suggests that the crack epidemic may have immediately entered a decline in 1995, virtually skipping the

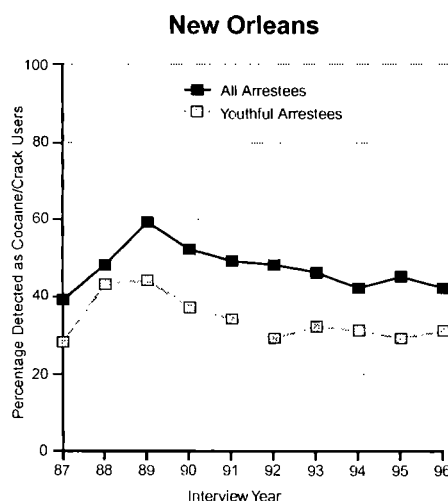
plateau phase. However, the return to 22 percent in 1996, instead of a further decline, suggests that the magnitude of both the peak and the subsequent decline may have been anomalous. Data from future years will confirm whether the crack epidemic in Indianapolis entered a decline in 1995.



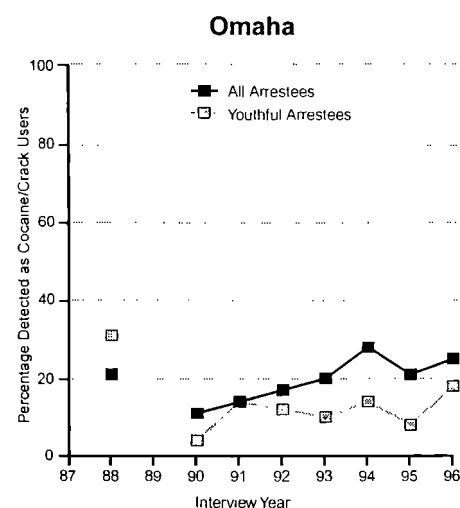
Kansas City (Missouri)—Slow decline starting in 1989. The crack epidemic in Kansas City showed a decline from 1988 to 1992. Although the overall rate continued to hover around 45 percent, the rate for youth declined from 40 percent in 1988 to as low as 15 percent in 1991. The DUF program stopped data collection in Kansas City in 1993.



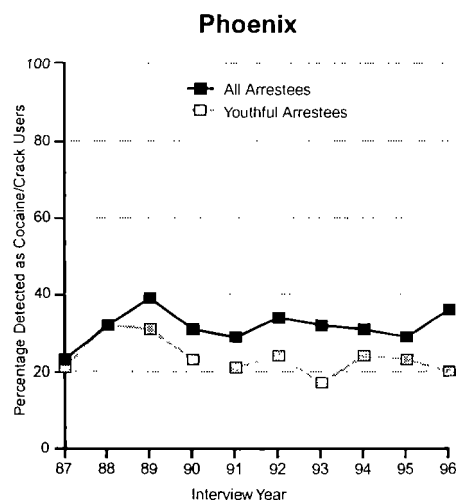
New Orleans—Slow decline starting in 1990. Crack use in New Orleans started to go down in 1990. The overall rate peaked at 59 percent in 1989 and appears to have declined slowly to 42 percent by 1996. However, this variation is not statistically significant after controlling for birth cohort and demographic effects.¹⁰ The rate among youths declined moderately from a high of 44 percent in 1989 to 29 percent in 1992, where it roughly remained through 1996.



Omaha—No significant epidemic. Omaha does not appear to have experienced a substantial crack epidemic from 1988 to 1996. The rate of detected cocaine/crack use increased slowly from 11 percent in 1990 to 20 percent in 1993, approximately where it had been back in 1988. The rate then jumped to 28 percent in 1994. However, this increase resulted from a change in DUF procedures. In 1994 the Omaha DUF location first started interviewing female arrestees, whose rate was about 10 percent higher than the male rate.

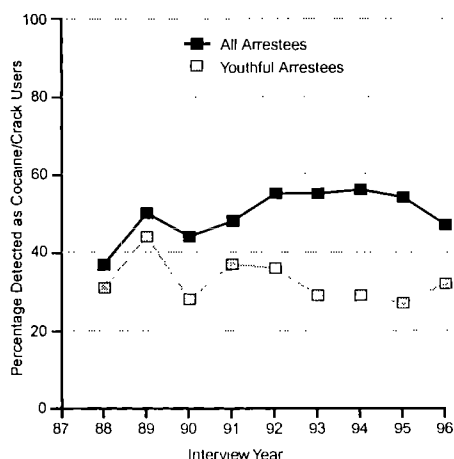


Phoenix—Plateau. The crack epidemic in Phoenix was in its plateau phase from 1987 to 1996, with the rate among all arrestees hovering around a moderate 30 percent. The rate was slightly lower (24 percent) among youthful arrestees.



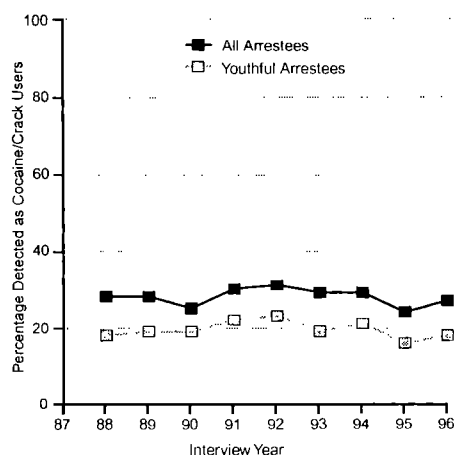
St. Louis—Plateau. Crack use expanded in St. Louis from 1988 to 1989. The overall rate of detected cocaine/crack use increased solidly from 37 percent in 1988 to 50 percent in 1989 and inched up to 55 percent by 1992 where it roughly remained through 1996. The rate among youthful arrestees rose to 44 percent in 1989 and settled back to a more stable 30 percent from 1993 to 1996.

St. Louis



San Antonio—No significant epidemic. The overall rate of detected cocaine/crack use in San Antonio exhibited a stable and low rate (about 28 percent) from 1988 to 1996. The youthful rate was similarly stable and slightly lower (about 19 percent).

San Antonio



Conclusion

This study confirmed that in much of the country the crack epidemic was in decline by 1996. The abundance of local data provided by the Drug Use Forecasting program allowed for an extensive analysis by major city. Such localized data are essential to informed drug policy. In this regard, the study confirmed how the popularity of



Careers in Crack: Study Findings

Another study, initially funded by NIJ and subsequently funded by the National Institute on Drug Abuse, begun in 1987, consisted of interviews with more than 1,000 crack users—released arrestees, probationers and parolees, and participants in selected drug treatment programs—to gather information on the use of crack cocaine, its impact on criminal careers, and the effectiveness of criminal justice policy in addressing the crack epidemic in New York City.¹¹ The study found that:

- Virtually all crack users had been frequent users of other drugs, and most also had extensive histories of prior drug abuse, drug selling, and nondrug criminality.
- Crack selling emerged suddenly as a new crime category in 1983 and, by 1988, sales income from crack surpassed that from other drugs.
- Crack was no more “instantly addicting” than cocaine powder, heroin, or marijuana.
- Marijuana (but not alcohol) served as the key gateway to further substance abuse.
- In 1988 crack users were only slightly more likely to commit aggravated assault and rape than were noncrack drug users. Crack use, itself, did not appear to be associated with initiation of violent behavior.
- Female crack users did not initiate prostitution subsequent to their starting to smoke crack. However, existing prostitutes reported dramatically higher frequency of prostitution following initiation of crack.
- Punitive policies were routinely imposed on all crack sellers and abusers, regardless of the seriousness of the presenting offense or the extent of the prior record.
- These tougher sanctions appeared to have no major deterrent effect. Analysis indicated that the severity of the sanction was not related to future recidivism after controlling for variations in age, minority status, prior time served, and prior arrest rates.

The researchers concluded that a more appropriate policy might emphasize drug prevention and treatment in lieu of or in addition to any criminal sanctions.

any particular drug, in this case cocaine/crack, can vary widely across the country. A substantial decline of at least 10 percent in the overall rate of detected cocaine/crack use was observed in Cleveland, Dallas, Detroit, Houston, Los Angeles, New Orleans, Philadelphia, San Diego, San Jose, and Washington, D.C. Other locations exhibited substantial declines in detected cocaine/crack use among youths, which suggested declines in the overall rate were forthcoming in Birmingham, Chicago, Fort Lauderdale,

Kansas City, Manhattan, Miami, and Portland. At a few locations in the interior of the country, the crack epidemic raged on as strong as ever; this includes Atlanta, Denver, Indianapolis, Phoenix, and St. Louis. Two locations, Omaha and San Antonio, exhibited no major evidence of having yet experienced a crack epidemic.

Moreover, the study demonstrates the DUF program’s potential for monitoring a drug epidemic while it occurs and an ability to distinguish four

phases in an epidemic. The existence of these phases and the ability to monitor them can provide an important basis for documenting the overall effectiveness of drug abuse control policies. Currently, the impact of a policy is typically measured by comparing drug use in one year to that of the preceding year. However, during the expansion phase, this measure is unrealistic. The course of the epidemic itself will result in dramatically increasing rates. Drug abuse control policies need not be blamed for such increases. Indeed, a constant rate or only a slight increase between years could suggest that a policy was very effective. Similarly, during the decline phase the overall rate can be expected to go down slowly across the years. A decline in the rate would not necessarily indicate an effective policy unless the decline also occurred among older arrestees, who tend to be more persistent in their drug use.

Notes

1. The 1996 DUF data included in this analysis are not in their final, archived form. Minor changes to the final 1996 data set, to be publicly released later this year, are possible.

2. Several excellent ethnographic accounts of the crack epidemic in New York City include Bourgois, 1995; Hamid, 1992; Seigel 1982; and Williams, 1989 and 1991. Johnson, Golub, and Fagan, 1995, provide important findings about the nature of the epidemic based on extensive interviews with 1,003 hard drug abusers from inner-city New York (see "Careers in Crack: Study Findings" on p. 11).

3. The DUF program started data collection in Manhattan in 1987, after the expansion phase had ended. Golub

and Johnson (1994a) estimated that this phase lasted in New York City from 1984 to 1986 based on an analysis of reported year of first use by serious crack abusers.

4. See Hamid, 1992; and Williams, 1991.

5. See Boyle and Brunswick, 1980; Clayton and Voss, 1981; Hunt and Chambers, 1976; and Johnson and Manwar, 1991.

6. See Golub and Johnson, 1994b; and Johnson, Thomas, and Golub, 1997.

7. Logistic regression and postdiction analysis were also employed to determine if the observed changes were statistically significant and substantial. Golub, Hakeem, and Johnson (1996) provide complete results of these statistical analyses and present age-period-cohort analyses for each of the 24 DUF locations based on the data collected from 1987 through 1994.

8. These determinations were based on a subjective comparison of the time series for each DUF location with the expectations from the hypothesized structure of the crack epidemic.

9. The speed of the decline in a community depends upon the number of established crack users and their persistence in addition to other factors such as the nature of the DUF sample. If youthful arrestees constitute a substantial portion of the DUF arrestees at a location, then the observed decline in the overall rate of detected cocaine/crack use will be faster.

10. See Golub, Hakeem, and Johnson, 1996.

11. See Johnson, Golub, and Fagan, 1995.

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Findings and conclusions of the research reported here are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, Bureau of Justice Statistics, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

NCJ 165707

This research was primarily supported by grant 95-IJ-CX0028 from the National Institute of Justice to Andrew L. Golub and Bruce D. Johnson. Andrew Golub is a principal research associate at the National Development and Research Institutes, Inc. (NDRI). His recent research examines drug use with an eye toward guiding public policy. His recent book, *Decision Analysis: An Integrated Approach* (John Wiley and Sons, 1997), examines the process of policy development. Bruce D. Johnson is the director of the Institute for Special Population Research and directs a pre- and postdoctoral training program in drug abuse research at NDRI. He has made numerous contributions in close to 30 years of research on drug use and abuse. A full summary report of their research, *Monitoring the Decline in the Crack Epidemic With Data From the Drug Use Forecasting Program*, is available from the National Criminal Justice Reference Service through interlibrary loan or photo reproduction. Call 800-851-3420. Ask for NCJ 164659.

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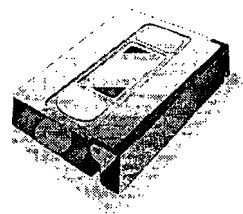
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6-9-97

4

7. Tobacco: As you know, the tobacco companies and state attorneys general may reach a settlement within the next few weeks. The DPC arranged a meeting last week at which Bruce Lindsey briefed representatives of HHS, Justice, and Treasury on the contours of the settlement. We asked HHS to provide an evaluation of the deal, from a public health perspective, within the next week or so. At the same time, Chris Jennings and Nancy-Ann Min are looking into how best to spend the federal government's share of the Medicaid reimbursement funds. As you know, Mike Moore proposed this week that both the state and federal shares go towards children's health coverage. Chris and Nancy-Ann are reviewing alternative ways to target this money.

8. Drugs -- Crack Cocaine: Generals Reno and McCaffrey are scheduled to report back to you in approximately three weeks concerning the National Sentencing Commission's recommendations on cocaine sentencing. As you know, current sentencing law imposes five-year mandatory minimum sentences for possession of five grams of crack and 500 grams of powder cocaine -- a 100:1 ratio. The Commission recommended that the mandatory minimum trigger for crack be raised to between 25 and 75 grams and the trigger for powder be lowered to between 125 and 375 grams. The Department of Justice would like to recommend that you support mandatory minimums at 25 grams of crack and 250 grams of powder -- a 10:1 ratio. General McCaffrey apparently is not convinced that any empirical data supports this ratio and therefore may press for a 1:1 ratio (or something very close to it). We think that the Justice Department has the recommendation about right and would like General McCaffrey to agree. But we think there is a strong possibility of your receiving a divided recommendation.

*Turno Miller
a much as possible*

THE WHITE HOUSE
WASHINGTON

Date 1/20

To: Bruce / Elena

From: The Staff Secretary

Can you draft a short cover
note for this before I send it
in to the President. Chuck is
aware I've asked you to do so.

Thanks,

Phil

Tom -

Please draft a cover note
(from Bruce)
to accompany the attached.

Run it by me before you

send to Phil. Thanks.

Elena

THE WHITE HOUSE

WASHINGTON

January 20, 1998

MEMORANDUM FOR THE PRESIDENT

FROM:  CHARLES RUFF

RE: Letter from Judge Oberdorfer

Judge Louis Oberdorfer sent the attached letter through me, following up on what I gather was a conversation he had with you in Hilton Head.

I can respond in whatever way you think useful.

Attachment

cc: (w/attm.) Rahm Emanuel

LOUIS F. OBERDORFER
1423 KIRBY ROAD
MCLEAN, VIRGINIA 22101

January 6, 1998

The President
The White House
Washington, D. C. 20500-2000

Dear Mr. President:

It was good to see Hillary and you in such fine fettle the other night at Hilton Head. Your responses to the Q and A were most refreshing.

Before dinner I gave Linda a question about a subject which we discussed years ago, before you were President: sentencing of non-violent drug law violators. The question didn't get past Linda's "cutting room." This, therefore, is the note that I mentioned to you just before dinner which spells out the suggestions implicit in that question.

How about an Executive Order grounded on the President's power to "Reprieve and Pardon"¹ to commute the sentences of certain non-violent drug law violators?

The Order could create within the Bureau of Prisons a blue ribbon committee (possibly a cadre of former state and federal judges) to recommend clemency in selected cases. The Order could also establish criteria for clemency: for example, those who are drug free and well behaved in prison, have otherwise clean records, and hold promise of living crime-free and drug-free during and after supervised release. Compare 28 C.F.R., ch. 1, § 1.3 (commutation of sentence, e.g. for "severity of sentence.")

¹U.S. Const., art. II, § 2.

01, 05-95 15 10 0292 273 0012 DEBORAH 2 004

One, but not the only, category of inmates eligible for clemency could be couriers ("mules") of crack cocaine and so-called "cookers" who convert powder cocaine to crack. Those convicted of involvement, for example, with five or more grams of crack cocaine attract the same sentence that would have been imposed on a courier of 500 or more grams of powder cocaine.

Attached is a summary of a case of mine which is another classic example: an addicted mother of seven paid \$100 by a government agent for cooking powder into crack and faces a 10-year crack sentence instead of a three year powder one.²

The Executive Order could authorize the supervised release of those non-violent crack couriers, cooks and the like who have served the term that they would have served if they had been handling powder. Or, the Executive Order could establish an appropriate increment for the crack courier or cooker — substantially less than that presently mandated by the 100 to 1 formula.

Whatever may have been the intention of the Congress which enacted the 100 to 1 formula, it has in practice, impacted overwhelmingly on young African-Americans. Neither the prosecutors, the appellate courts nor Congress has responded sympathetically to efforts by concerned sentencing judges and the Sentencing Commission to ameliorate the situation. The 100 to 1 discrepancy, as it has played out, is arguably the most flagrant practice of racial discrimination by the federal government since President Truman integrated the Armed Forces 50 years ago.

²United States v. Blakney, No. 97-3043, Judgment (D.C. Cir. Oct. 23, 1997); United States v. Walls, 70 F.3d 1323 (D.C. Cir. 1995), reversing and remanding 871 F. Supp. 24 (D.D.C. 1994); see also United States v. Campbell, 959 F. Supp. 20 (D.D.C. 1997).

The Framers of the Constitution empowered the President to grant "Reprieves and Pardons" in the name of "[h]umanity and good policy," because "[t]he criminal code of every country partakes so much of necessary severity, that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel." The Federalist No. 74 (Hamilton) at 482 (Modern Library College Ed.).

President Lincoln's 1863 Emancipation Proclamation was an Executive Order.

Here, an early Executive Order focusing on the 100 to 1 discrepancy would faithfully execute the constitutional law which vests in the President the exclusive power to grant humane Reprieves and Pardons. It would also significantly implement your commendable commitment to racial reconciliation.

Respectfully yours,



Attachment

ATTACHMENT

Re: United States v. Blakney, No. 97-3043, Judgment (D.C. Cir. Oct. 23, 1997); United States v. Walls, 70 F.3d 1323 (D.C. Cir. 1995), reversing and remanding 871 F. Supp. 24 (D.D.C. 1994); see also United States v. Campbell, 959 F. Supp. 20 (D.D.C. 1997).

A pair of hardened drug dealers offered a large quantity of powder cocaine to an undercover DEA officer. The undercover officer demanded crack to enhance the potential sentence. The dealers involved one Karen Blakney, an addict, with a record of petty (e.g. shoplifting) crimes, to "cook" the powder into crack. The undercover officer paid Blakney \$100 in government funds for her cooking services.

The dealers had intentionally and for big money poisoned hundreds of drug users. I sentenced them to life imprisonment.

Blakney has 7 children. By the time of sentencing she had dried out. I discounted to zero the cooking that she did in the pay of the United States and ruled that imposition on her of the 10 year sentence mandated by statute for her involvement with crack instead of the 3-year sentence applicable if she were involved with powder would be cruel and unusual and in violation of the Eighth Amendment. The case went up on appeal. Blakney served her three years with commendations from her warden and was released while the appeal was pending.

Nineteen months after her release the Court of Appeals affirmed the conviction, but reversed and remanded for resentencing for her involvement with crack.

Meanwhile, on supervised release, Blakney had reunited with her children (she is now expecting another momentarily), was (and remains) drug free, obtained a good job, and won the enthusiastic praise of her Probation Officer. According to the Sentencing Commission staff, only

five defendants out of more than 40,000 whose convictions were reversed on appeal had been free for a substantial period only to be returned to prison. See United States v. Campbell, 959 F. Supp. 20, 21 (D.D.C. 1997). I found that, even if, on the pre-sentence facts, a 10-year sentence was not cruel and unusual, sending her back to prison for 7 more years, after her "exemplary" return to private life, would be. I resentenced her to time served.¹

In open court, on the record, I literally implored the United States Attorney to forego any appeal, exercising the same sentencing discretion employed by the undercover officer who paid Blakney for cooking the powder and thus enhancing the mandatory sentences from the powder to the crack range.

The request went unheeded. The United States Attorney prosecuted the appeal with the suggestion to the Court of Appeals that it remove me from the case.

On December 23, 1997, I received the mandate of the Court of Appeals implementing its decision of October 23, reversing and remanding for resentencing with the observation that if the United States Attorney requested me to recuse myself, the Court was confident I would do so. Counsel has filed no further appeal.

I have today requested our Calendar Committee to reassign the case to another judge. The Court of Appeals obviously wants me out of the case. More importantly, in the circumstance, returning Blakney to prison for another 7 years would be, for me, too much like enforcing the pre-Civil War Fugitive Slave Laws.

The President is her last resort.

¹See enclosed Report on Adjustment of Supervised Releasee, Karen M. Blakney (Dec. 19, 1997).

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA
PROBATION OFFICE

RICHARD A. HOUCK, JR.
CHIEF UNITED STATES PROBATION OFFICER

FILED

DEC 22 1997

December 19, 1997 NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

*December 22 1997
let this be
filed and sealed
on counsel's motion
1-5-98*

SUITE 2800
E. BARRETT PRETTYMAN
UNITED STATES COURTHOUSE
WASHINGTON, DC 20001-2866
TELEPHONE (202) 565-1300

MEMORANDUM TO THE HONORABLE LOUIS F. OBERDORFER
UNITED STATES DISTRICT JUDGE

Re: **BLAKNEY, Karen M.**
Docket No.: 92-0234-02
Report on Adjustment of Supervised
Releasee

On December 3, 1992, Ms. Karen M. Blakney was found guilty by jury to Counts 1, 5, and 9, of a 12 count Indictment, charging her with Conspiracy to Distribute 50 Grams or More of Cocaine Base (Count 1), 21 U.S.C. §§ 846 and 841(a)(1); Unlawful Distribution of 50 Grams or More of Cocaine, Aiding and Abetting (Count 5), 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(iii), and 18 U.S.C. § 2; and Unlawful Use of a Communication Facility (Count 9), 21 U.S.C. § 843(b). On January 25, 1994, Ms. Blakney was sentenced to a term of 30 months on each count to run concurrent, to be followed by six years of supervised release on Counts 1 and 5, and one year of supervised release on Count 9, to all run concurrently. Special conditions imposed by the Court included special assessment in the amount of \$50 on each count for a total of \$150; the offender will participate in an educational/vocational training at the direction of the probation officer; and the defendant shall participate in a program of drug aftercare, as directed by the probation officer. Supervised release commenced on July 10, 1995.

On February 13, 1996, the U.S. Court of Appeals for the District of Columbia remanded this case to the U.S. District Court for resentencing. On February 27, 1997, offender Blakney appeared before Your Honor for resentencing. Ms. Blakney was committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of the time that was already served on each count, to be followed by the balance of the original period of supervised release, which was imposed on January 25, 1994. The special conditions were modified to include that the offender will report to the probation office, in person or by telephone, as often as directed by the probation officer.

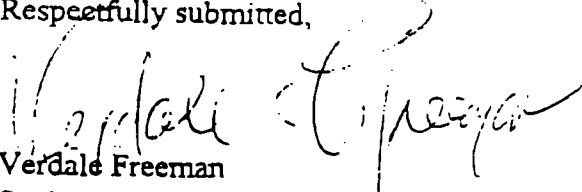
In reference to Ms. Blakney's overall adjustment to supervised release, it is noted that in regards to the special condition and the general conditions of supervision, her compliance have been exemplary.

Ms. Blakney is currently residing in a two bedroom apartment at 1820 Mississippi Avenue, S.E., Washington, D.C., with six of her seven children. It is also noted that she is expecting her eighth child on or about January 14, 1998. Prior to Ms. Blakney's pregnancy, she was employed in a capacity of an orders clerk for the Washington Convention Center, earning \$13 per hour. Illnesses related to her pregnancy forced this individual to terminate herself from this position. Ms. Blakney is currently receiving public assistance in the amount of \$719 per month, plus \$542 per month in food stamps. In addition, she is receiving \$200 child support monthly from her youngest child's father, as well as approximately \$200 per month from her oldest daughter who is employed and attending school.

Since July 1995, Ms. Blakney has not shown any involvement with illicit drug use. She successfully completed The Next Step Outpatient Drug Treatment Program on August 3, 1996, where she was involved in a twice weekly urine testing program and group counseling. Random urine testing is currently being taken on Ms. Blakney in the U.S. District Court Probation Office, all of which continue to reflect negative findings for illicit drug use. In addition, Ms. Blakney is involved in the Outreach Ministry Program with her church. Information received, revealed that this individual has been instrumental in working with the community youth, and others that are seeking salvation from drug addiction.

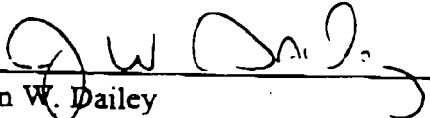
The above information clearly depicts Ms. Blakney's adjustment on supervised release, as well as her stability and contribution to the community.

Respectfully submitted,


Verdale Freeman

Senior United States Probation Officer
Phone No. (202) 565-1334

scm

APPROVED BY: 

John W. Dailey

Supervising United States Probation Officer



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FAX COVER SHEET

TO: Jose Cerda

FAX #: 456-7028

FROM: Andrew Foia

PHONE #: 514-2141

FAX #: 514-4482

DATE: 8/5/97

OF PAGES: 7 (INCLUDING COVER SHEET)

COMMENTS: _____

DRAFT

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DRAFT

DRAFT

CRACK STRATEGY

The following is a proposed strategy and accompanying tactics to guide our efforts in the coming weeks and months to enact legislation that would alter the sentencing structure for crack and powder cocaine offenses to reflect a ratio of ten to one as developed by DOJ and ONDCP. This is meant to be a discussion draft and can be augmented by other similar documents already prepared. I suggest everyone read it, analyze it and be prepared to discuss additions and modifications at an upcoming meeting I will arrange. When complete and agreed upon by all of us, the AG and ONDCP, it can serve as guide to all as to the strategy we are employing.

GOAL: To Enact Legislation Shifting the Crack-Powder Sentencing Structure to reflect a ten to one ratio.

Elements of Strategy:

Rollout of Recommendation and Legislation
Legislative
Press
Intergovernmental and Public Liaison

Rollout:

Goal: To announce recommendation and decision on ratio change, inform supporters of plans for announcement and seek those expected to be resistant to keep an open mind.

President spoke to NAACP and African American journalists on Thursday July 17th and I am told crack sentences did not come up. There is expected to be a blurb in Newsweek next week saying recommendation is ten to one.

Rollout options:

1. Recommendation/decision
2. Legislation

There can be "rollouts" for both the recommendation/Presidential decision and the legislation or one combined announcement plan.

1. Recommendation/decision

Options:

Saturday radio address

AG and McCaffrey in Oval present recommendation formally which is adopted by Pres who announces forthcoming legislation (African American leaders or groups? law enforcement? At least some U.S. Attorneys and of course DAG Holder

WH press release

McCaffrey availability

2. Legislation

If chose to do another separate leg intro event can have Pres or VP, AG, McCaffrey, Members of Congress, Sent Commission? African American leaders?, cops, lots of U.S. Attorneys etc

Timing:

Looks like Abraham may not offer his amendment to the youth violence bill at Committee markup (which may end this coming Thursday) even without talking to the AG. If we can hold out a little longer for the recommendation/decision rollout till markup is over, then go see Abraham and move forward that may be the best way to avoid a sudden vote in next week or two on the Abraham 20-1 amendment.

During early part of August Congressional recess would be good time to do our rollout of recommendation and decision and/or legislation. Target - week of August 4th.

Prior to rollout of either or both: AG should notify Congressional leaders of President's plans and ask for their support: Leahy, Conyers, Biden, Kennedy, Abraham, Maxine Waters, Schumer, John Lewis, Charles Rangel, Eleanor Holmes Norton. General McCaffrey should make other appropriate Congressional calls. They both should also ask each about their strategic thoughts. AG should say to Kennedy that she hopes she can work with him to make this the sort of issue he made the minimum wage last year by serving notice that no legislation was moving until his concerns were addressed.

Since it is a fair bet that Abraham will not offer the amendment on the jj bill we should, through staff, say we want to come up and see them. I would suggest AG, McCaffrey and appropriate staff to see Abraham and staff and that we do it right after the markup ends. If he can. If not, we tried and we should just let him know before announcement.

AG and McCaffrey should also call Mfume, Jesse Jackson and any other African American leaders identified by Public Liaison to preview and ask for support or at least ask them to keep an open mind.

Legislation should be drafted and transmitted to the Congress immediately following joint announcement or leg intro event.

Legislative:

Goal: To enact Administration ten to one ratio bill by concentrating on Senate, seeking to neutralize those reasonable Republicans who would address disparity with increase in powder only, seeking to have bill added to youth violence or other appropriate Senate bill on the floor after sufficient opportunity to make our case and preparing House to acquiesce in Senate action.

We should energize and consolidate Dem support among Kennedy, Biden and Leahy and shore up other Judiciary Committee Dems like Feinstein and Torricelli. We should also solicit people like Durbin and Kohl to play leadership roles on this issue. We should then expand into the leadership (Daschle - Schrier to call) and other Dems like Wellstone, Mosely Braun, Dodd etc. Here we will need WH support. We will also need to get to Breaux who last Congress had a bill that raised powder penalties to reach equalization.

As to Majority: convince or neutralize Sen Abraham who is designated Repl leader on this issue, then draw in reasonable Repubs like Sens Hatch and Specter and DeWine then Jeffords and Chafee.

We should try to utilize youth violence bill as vehicle unless that proves untenable. Reasonable to think we would have trouble achieving goal at Committee on this bill and should work to put issue off to the floor to get time to sell our idea. We should work Senate first and then the House but with some contemporaneous House Judiciary Committee leaders. If youth bill slows or bogs down then, with Sen Dems help, we should target any and every available vehicle on Senate floor. Plan should be to put it on a Senate bill or a House passed bill in the Senate and try to insist on House acceptance in conference. CBC should create climate in House for acceptance by banging away at issue and demanding equalization. Given profile of House and more frequent elections, Senate is most likely to accept our bill.

Bill should be introduced by Leahy and/or Kennedy-Biden in Senate and whoever of following will do it in the House: Schumer, Conyers, Delahunt, Meehan, Gephardt, John Lewis. We should see if D'Amato may have any interest in the issue for its own sake and for motivating Schumer to be helpful.

Kennedy and Biden and Leahy should be asked whether they think we should all push the Administration "ten to one" bill or whether Kennedy's "five to one" or maybe even equalization should be set up as the Dems initial position with ours as a fallback.

AG/MCC should immediately see Abraham then call and or visit every Senator on the Senate Judiciary Committee. Dems can possibly be done with calls at which strategy is also discussed. Feinstein and

Torricelli may need meetings. After Abraham, AG and McC and staff should meet with Hatch, Specter, DeWine, etc. Then they should meet with Daschle, along with Leahy, Kennedy and Biden and Erskine Bowles and Hilley, to stress importance and plot strategy.

On House side: AG and McCaffrey should see Hyde, Conyers, Schumer, McCollum, Waters, Norton, Payne, Lewis, Gephardt, and the Blue Dogs and some selected moderate Repubs like Shays, Castle etc. Try to sell strategy of House acquiescing in Senate provision on appropriate bill. There should also be a meeting with CBC and AG and McCaffrey and Bowles and Hilley. Message: listen and try to temper opposition to anything other than equalization.

Every Senate and Congressional visit should include corresponding U.S. Attorney if possible.

Prepare talking points and other supporting documents articulating law enforcement rationale.

White House

AG and McCaffrey should call Erskine Bowles right away, ask his advice and say that we will need his and the WH's support and help. Mention how we would like rollout of announcement/decision and legislation to play. Ask for WH contact person in or out of leg affairs. Eric should call Chuck Ruff and I will do John Hilley.

We should contact the President's Race Commission and work with them to plan a complete hearing-type presentation by the AG and McCaffrey and others on this issue and should see if they can as soon as possible issue some kind of interim report supporting our recommendations and bill.

Press:

Press conference with AG and McCaffrey and Sent Commission Chairman Conaboy and DAG Holder and Zach Carter and Greg Sleet and Don Stern of AGAC to kick off transmission of the bill. Pres? VP?

AG and McCaffrey should do series of Editorial Boards as identified by OPA in African American and general press.

AG and McCaffrey should author and place oped piece in NY Times, WSJ or similar major daily.

OPA should pitch cover story and in depth interviews with AG and McCaffrey to US News and World Report or Newsweek, both of which have shown consistent interest in this issue.

AG and General McCaffrey should do Thursday availability on this issue using props to show injustice of disparate results.

DOJ staff officials should do press background briefing to educate press.

OPA should offer AG and McCaffrey to NIGHTLINE on intro night or any other night.

U.S. Attorneys should do corresponding introductory press conferences in districts and do local edit boards of major local papers.

Prepare talking points and appropriate documentation.

Intergovernmental and Public Liaison

Every US Attorney should be armed with talking points and should make calls in the order of Congressional contacts noted above starting with Abraham immediately.

AG, McCaffrey and Bowles should meet with African American leaders to brief on proposal and see if they could at least accept if not support less than equalization.

IGA should brief each major national law enforcement and prosecutors group, including FLEOA, and enlist support and suggestions for supportive members.

IGA should try to identify any law enforcement figure or organization to support.

AG and McCaffrey should visit next meeting of Law Enforcement Steering Committee to brief and enlist support.

Jamie Gorelick should speak to Colin Powell about recruiting his leadership and calls to Repubs.

AG should call Warren Rudman and Bob Dole and seek their leadership and support. Dole introduced the Reagan Adm drug bill that had 20-1 and may want to be a statesman and racial healer.

AG should call Ed Dennis and Ron Noble and enlist support and action. They should do oped - as former prosecutors...

AG should call past AG's and DEA Administrators to seek support.

McCaffrey should call former ONDCP Directors Bennet and Martinez and Assistant Director Reggie Walton for support.

AG should take every opportunity to make speeches about the bill to be identified by OAG.

Public Liaison should work with WH and African American/civil rights groups to organize public expressions of opposition to present sentencing structure, support for our bill or one to one in

major cities and selected states and districts.

Staffing:

Maintaining momentum on this plan and doing preparation and planning is virtually a full-time job. Joe Graupensberger cannot handle an enhanced full court press and continue to be responsible, as he is, for almost every other criminal legislative issue. I believe that if this issue is to be the major press we all want it to be then a relatively full-time coordinator and leg lead person need be identified who is freed of most if not all other duties. The team this person should lead should include representatives from: Crim (Mary and Bob?), ODAG (Jon Schwartz), OAG (Kent?), EOUSA, IGA, OPA. Joe and I can provide advise and support but we cannot execute the legislative parts of this plan under the present circumstances of depleted OLA resources without dropping another significant project.

Post-It® Fax Note 7671

Date	1/30/98	# of pages	1
To	JOSE		
From	KENT		
Co./Dept.	Co.		
Phone #	514-3008		
Fax #	456-7024		

P. 02

United States Senate

WASHINGTON, DC 20510

January 29, 1998

JO. ELENA
Re: JOSE
JPR

President Bill Clinton
The White House
Washington, DC 20500

Dear Mr. President:

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

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

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

2

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

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

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

Sincerely,



Spencer Abraham
United States Senate

Orrin Hatch
United States Senate

Trent Lott
United States Senate

Total Pages: _____

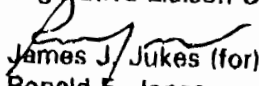
LRM ID: REJ371

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

Thursday, February 19, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM:  James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald E. Jones

PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: OMB Request for Views on S1593 Powder-Crack Cocaine Penalty Equalization Act of 1998

DEADLINE: Friday, February 27, 1998

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: A copy of S. 1593 is attached.

DISTRIBUTION LIST

AGENCIES:

61-JUSTICE - Andrew Fois - (202) 514-2141
118-TREASURY - Richard S. Carro - (202) 622-0650
89-Office of National Drug Control Policy - John Carnevale - (202) 395-6736
102-President's Crime Prevention Council - Nancy Hatamiya - (202) 395-5555
127-US Sentencing Commission - Jonathan Wroblewski - (202) 273-4500

EOP:

Karen A. Popp
Peter G. Jacoby
Cerde III Jose
Leanne A. Shimabukuro
Alice E. Shuffield
Julie J. Song
James Boden
Michael F. Crowley
Kevin P. Cichetti
Ellen J. Balis
Beverly B. Thierwechter
Victoria Wassmer

LRM ID: REJ371 SUBJECT: OMB Request for Views on S1593 Powder-Crack Cocaine
Penalty Equalization Act of 1998

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short 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 E. Jones Phone: 395-3386 Fax: 395-3109
 Office of Management and Budget
 Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

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

II

105TH CONGRESS
2D SESSION

S. 1593

To amend the Controlled Substances Act and the Controlled Substances Import and Export Act with respect to penalties for powder cocaine and crack cocaine offenses.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 1998

Mr. ALLARD (for himself and Mr. BREAUX) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Controlled Substances Act and the Controlled Substances Import and Export Act with respect to penalties for powder cocaine and crack cocaine offenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Powder-Crack Cocaine
5 Penalty Equalization Act of 1998".

6 SEC. 2. TRAFFICKING.

7 (a) 50-GRAM PENALTY.—Section 401(b)(1)(A) of the
8 Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is
9 amended—

1 (1) in clause (ii), by striking "5 kilograms" and
2 inserting "50 grams";

3 (2) by striking clause (iii); and

4 (3) by redesignating clauses (iv) through (viii)
5 as clauses (iii) through (vii), respectively.

6 (b) 5-GRAM PENALTY.—Section 401(b)(1)(B) of the
7 Controlled Substances Act (21 U.S.C. 841(b)(1)(B)) is
8 amended—

9 (1) in clause (ii), by striking "500 grams" and
10 inserting "5 grams";

11 (2) by striking clause (iii); and

12 (3) by redesignating clauses (iv) through (viii)
13 as clauses (iii) through (vii), respectively.

14 **SEC. 3. IMPORT AND EXPORT.**

15 (a) 50-GRAM PENALTY.—Section 1010(b)(1) of the
16 Controlled Substances Import and Export Act (21 U.S.C.
17 960(b)(1)) is amended—

18 (1) in subparagraph (B), by striking "5 kilo-
19 grams" and inserting "50 grams";

20 (2) by striking subparagraph (C); and

21 (3) by redesignating subparagraphs (D)
22 through (H) as subparagraphs (C) through (G), re-
23 spectively.

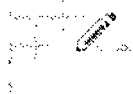
1 (b) 5-GRAM PENALTY.—Section 1010(b)(2) of the
2 Controlled Substances Import and Export Act (21 U.S.C.
3 960(b)(2)) is amended—

4 (1) in subparagraph (B), by striking “500
5 grams” and inserting “5 grams”;

6 (2) by striking subparagraph (C); and

7 (3) by redesignating subparagraphs (D)
8 through (II) as subparagraphs (C) through (G), re-
9 spectively.

○



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

Record Type: Record

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

cc:

Subject: Crack Cocaine

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

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

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

 Charles A. Blanchard
02/24/98 01:20:22 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP

cc:

Subject: Re: Abraham Crack Bill

I assume we are still on for today at 4. Here is the latest from our Leg. Affairs Office.

----- Forwarded by Charles A. Blanchard/ONDCP/EOP on 02/24/98 01:19 PM -----

 Melvin G. Dubee 02/24/98 01:18:28 PM

Record Type: Record

To: Charles A. Blanchard/ONDCP/EOP

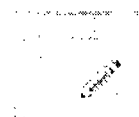
cc:

bcc:

Subject: Re: Abraham Crack Bill 

My latest information is that the Republicans cannot agree among themselves on how they want to proceed. Some support the Abraham bill, others want to go to 5 and 5, and still others (the UN black helicopter crowd) do not want to lower the powder level at all because it means more federal government involvement in local affairs. My sources think this means no movement in the near future. If, however, the ONDCP reauthorization bill comes up one of the factions could use this as a vehicle and attach their version to it.

Charles A. Blanchard

 Charles A. Blanchard
02/20/98 03:33:41 PM

Record Type: Record

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

cc: Melvin G. Dubee/ONDCP/EOP

Subject: Abraham Crack Bill

This morning's Detroit News reports that Senator Abraham's cocaine sentencing bill (which lowers the powder threshold from 500 grams to 100 grams) "is expected to be brought to the Senate floor within the next two weeks, Abraham said."

Date: 03/14/98 Time: 10:45

PCrack mom serving 8-year prison term pins hopes on U.S. Supreme

EASLEY, S.C. (AP) Late in the afternoon of Feb. 5, 1992, the police chief, a detective and two social workers entered the maternity ward of Easley Baptist Medical Center and took custody of 3-day-old Tevin Dashuan Whitner.

Not finding the infant's mother, they left a notice on her hospital bed.

The next morning, police came back, arrested Cornelia Whitner and led her away handcuffed and weeping. She had smoked crack cocaine before going into labor and the drug was found in her newborn's urine. To authorities this was child neglect.

Six years later, dimple-cheeked Tevin is a healthy, lively kindergartner who loves his books and his bicycle. He calls a great-aunt ``Mama.''

His real mother is serving an eight-year prison sentence in the only state that treats drug addiction during pregnancy as child neglect and imprisons the new mothers.

Efforts to do this in about 30 other states have been beaten back in the courts and in state legislatures. But in a 3-2 ruling last fall, the South Carolina Supreme Court for a second time upheld Ms. Whitner's conviction and said child abuse laws also apply to a viable fetus. It's the highest court anywhere to read the law that way.

Ms. Whitner's lawyers plan this week to ask the U.S. Supreme Court to hear her case and those of two other women caught in the same snare.

The cases highlight a painful dilemma: Are women who use illegal drugs during pregnancy addicts who need treatment or criminals who belong in prison?

Nationwide, about 70,000 pregnant women annually are cocaine users, according to a federal survey. South Carolina estimates as many as 3,200 cocaine users give birth in their state every year.

South Carolina Attorney General Charlie Condon and the state's high court have ``made up a new crime that the legislature never intended, and every medical group opposes, and that these women could not have known,' ' said Ms. Whitner's lead attorney, Lynn Paltrow of the New York-based Center for Constitutional Rights.

Ms. Whitner's conviction also challenges the 25-year-old Roe vs. Wade ruling that a woman's privacy includes her actions during pregnancy. Abortion opponents, however, take small comfort from the case.

April Holley of the anti-abortion National Right to Life Committee in Washington said threatening pregnant addicts with prison could encourage them to have abortions. ``Our goal as a society,' ' she said, ``should be to help the mother and the child.''

Those who see their job as helping mothers and children say what South Carolina is doing will hurt more than help. ``All of us want to do everything in our power to salvage a fetus,' ' said Dr. Nelson Weston, president of the South Carolina Medical Association, which opposes the state's policy. ``But if the mother is addicted to cocaine, she's the one who needs treatment ... not prison.''

Attorney General Condon says every viable fetus is ``a fellow South Carolinian.' ' As a former prosecutor in Charleston, he had pregnant and postpartum addicts arrested. ``In our state, the rights of the fetus do not come from the mother, they come from God,' ' Condon said. In fact, he also advocates legal curbs on

drinking and smoking during pregnancy.

Some critics protest that the state's policy targets poor black women. Like Ms. Whitner, nearly all of the more than 40 addicts prosecuted since 1989 under South Carolina's child abuse law, are black. Ms. Whitner is not ready to blame bigotry for her predicament.

``It's a drug problem. I just don't think I deserve prison,'' she said by telephone from Leath Correctional Institution in Greenwood, about 60 miles southeast of Easley.

As for the U.S. Supreme Court, she said, ``I just want them to understand this is a sickness.''

In a series of phone calls the prison bans face-to-face interviews she spoke in a soft voice of wanting to get a house and a job and finish raising the three sons she hardly knows.

When she was born 34 years ago with a diamond-shaped patch of white on her brown forehead and hair, the family thought it might be a sign, ``like she was going to be special, a gift from God,'' her oldest sister, Pansy Harris, said.

She was the last of six children born to Margaret Whitner, a chambermaid. Mrs. Whitner was sweet-natured but strict, kept a Bible in the house and reins on her children. After her husband left, there were other men, but she raised the children alone. Cornelia barely knew her father.

As a girl, Cornelia Whitner dreamed of becoming a nurse. She liked to sing and run. Her playmates were cousins in her warm, extended family.

One morning, the children heard a thump when their mother fell out of bed. Cornelia ran next door to call an ambulance, but help came too late. Margaret Whitner was dead at 42 of a worn-out heart.

Cornelia was 14 years old.

``That was the worst thing that ever happened to me. I felt like I had nobody,'' Ms. Whitner said. ``That's when I started smoking weed and drinking beer and stuff. Ain't nobody like your mom.''

With a sister and brother, she moved in with Miss Harris, whose stringent rules could not stop Cornelia's slide. ``All the preaching and all the talking and all the upkeeping I tried to put on her didn't help,'' said Miss Harris, 43.

By 16, Ms. Whitner was a mother. She quit school and moved out on her own, drifting aimlessly from town to city, living on the margins of the state's prospering and scenic northwestern wedge. She was still smoking marijuana and drinking, and sometimes, she snorted cocaine.

Terrell, her firstborn, remembers her with love.

``Whenever she wasn't smoking, or doing, like, the bad stuff, we like played together, like tickle each other,'' said the lanky 17-year-old who inherited his mother's patch of white in his ink-black hair. He attends Seneca High School, his mother's school until she left in 9th grade, the year he was born.

He also remembers hunger. ``We went without food for, like, a few days,'' Terrell said. ``I would find something to eat. I can make a sandwich with ketchup.''

After Leroy, her second child, was born in 1989, Ms. Whitner moved them all to Easley, a growing town of 20,000 where the old South is giving way to traffic jams and glittering shopping centers. The Whitners settled into a neighborhood of tumbledown houses near the railroad tracks.

There, Ms. Whitner met crack cocaine and ``my life just fell apart.''

At a boyfriend's house she found a party going on. ``I'm a curious person, and they were smoking on this little pipe.''

Former neighbor Maurice Grissom recalled the woman in the small brick house, her white streak of hair and terrible craving. ``She was a very nice lady. She tried to get off that stuff,'' Grissom said. ``She said she tried to get help for it, but nobody would help her.''

MORE

APNP-03-14-98 1057EST

Senator seeks increase in drug-dealer sentences

ASSOCIATED PRESS

Instead of adopting President Clinton's proposal to lower sentences for crack dealers, Congress ought to make the sentences for powder cocaine dealers a lot tougher, Sen. Spencer Abraham said yesterday.

"It would be a catastrophe to let any drug dealer think the cost of doing their deadly business is going down," the Michigan senator said yesterday in the Republicans' weekly radio broadcast.

Mr. Abraham noted that over the past seven years — "most of which has occurred during this administration" — the percentage of high school seniors admitting to illegal drug use has risen by half, while drug use among 10th graders has doubled.

"Faced with this bad news," he said, "the president has finally submitted a long-range, national drug strategy to Congress. It has taken him nearly five years to begin action."

Senior White House adviser Rahm Emanuel lamented Mr. Abraham's "political finger-pointing."

Last summer, Mr. Clinton asked Congress to reduce the huge differences between sentences for selling crack vs. powder cocaine.

Attorney General Janet Reno and Mr. Clinton's top drug-policy adviser, Gen. Barry McCaffrey, had recommended lowering the disparity to a 10-1 ratio, meaning that the mandatory five-year sentence for selling 25 grams of crack also would apply to dealing 250

grams of powder cocaine.

Current law sets a five-year sentence for selling 5 grams of crack or 500 gram of powdered cocaine, a 100-1 ratio. Black lawmakers in particular have pressed to end the disparity, contending that it sharply discriminates against minorities who are more inclined to use crack because it is the cheaper form of cocaine.

"Going easier on crack peddlers — the dealers who infest our schoolyards and playgrounds — isn't a solution," Mr. Abraham said. "Here's the Republican answer: Let's make the sentences for powder cocaine dealers a lot tougher."

Mr. Abraham also knocked the Clinton administration for what he called its belated implementation of last year's Drug-Free Community Act, which provided for federal grants to assist neighborhood drug-fighting campaigns.

The senator noted that nearly a year after the law was signed the administration has not yet appointed the grant-making board. "As a result, communities still can't apply for these critical funds," he said.

Nanda Chitre, a spokeswoman for the White House, countered that Congress did not appropriate funds for the grants until last October. She also noted that board nominations are "in the final stages of vetting" and that the administration's office of justice programs is already setting up the process for taking grant applications.

his kidnapping. Hodoyan has not been seen since he was nabbed in a downtown Tijuana parking lot by armed men, allegedly including Weber.

Weber later was identified by Hodoyan's mother, who tried to stop the kidnappers from dragging her son out of their vehicle. Weber remains under house arrest in Tijuana.

■ In May, 21 police and army officers—including the Mexican commander and four members of a combined border task force—were arrested for allegedly stealing a half-ton of cocaine from the evidence room at the Mexican attorney general's office in San Luis Rio Colorado, which straddles the Arizona border. Only two remain in custody.

Some packages of the stolen cocaine, marked with the attorney general's evidence stamps, later were confiscated during a drug bust in San Diego, according

to senior Mexican law enforcement officials.

■ Horacio Brunt Acosta, a Mexican federal police commander in charge of intelligence operations for the border task forces, was fired last year for allegedly taking bribes from drug traffickers. U.S. and Mexican law enforcement officials recently identified Brunt as a suspected drug trafficker in Arizona. U.S. officials said they have asked the Mexicans for information on Brunt's activities but so far have received nothing.

■ Another senior task force member based in Monterrey last year invited drug traffickers to the agency's "safe house," not only giving away the location but allowing the traffickers to identify all the agents, U.S. officials said.

Because of the lack of funds, U.S. officials said, the task forces' safe houses, which were to be changed every few months to avoid raising suspicions, were left unchanged for two or three years. Only in the past month, as funds have become available, have some of the houses been changed, said U.S. and Mexican officials.

Perceptual problems also have hindered the task forces. While Mexican officials said the task forces were seen as intelligence-gathering units, U.S. officials said they envisioned the integration of intelligence gathering and operational capabilities for a comprehensive attack on the drug cartels.

In a measure of just how different perceptions are, at the same time that U.S. officials outline the failure of the task forces, Mexican officials are saying the units are functioning as planned.

"The task forces are fully equipped and fully operational," said Eduardo Ibarola, deputy attorney general for international affairs, in a meeting with journalists in Washington.

Mexican officials said the task forces have been in effect since May, when 70 young officers passed background checks by the Mexican attorney general's office and the FBI, and underwent FBI training at Quantico.

They also said 150 troops from elite, U.S.-trained Mexican military units are being sent to the border as reinforcements.

But a senior U.S. law enforcement official said no cross-border intelligence is being shared and that there would be no such cooperation until the security issue and corruption were addressed.

U.S. officials also remain furious that U.S. agents cannot carry weapons into Mexico. U.S. agents stopped crossing the border on Jan. 1, 1997.

"The issue of personal security for U.S. agents working with the task forces in Mexico has not been resolved and as a result, the task forces are not operational and will not be until the security issue is resolved," Feinstein said Wednesday in a Senate speech.

"This critical joint working relationship is made impossible by Mexican policies that do not allow for adequate immunities or physical security for U.S. special agents while working in Mexico," Feinstein said.

A Mexican official disputed the charge, saying it is an issue of national sovereignty.

"Mexico cannot permit foreign agents to carry weapons in Mexico as we do not ask that Mexicans be allowed to carry weapons elsewhere," the official said. "It is a very sensitive issue; it may be one of those differences that may not be resolvable."

Farah reported from Washington, Moore from Mexico City.

THE WHITE HOUSE

WASHINGTON

March 22, 1998

Dear Mr. Leader:

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

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

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

The Honorable Trent Lott
Page Two

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

(2) Kids and Guns. Juvenile access to firearms is at the heart of our youth crime and drug problem. The number of juveniles committing homicide with guns quadrupled between 1984 and 1994, and more teenagers now die from gunshot wounds than all natural causes combined. That is why I have proposed banning violent juveniles from owning guns when they become adults, and that is why my budget includes \$28 million for the Bureau of Alcohol, Tobacco and Firearms (BATF) to crack down on illegal gun traffickers.

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

The Honorable Trent Lott
Page Three

offenders remain drug-free through testing and treatment.

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

Again, thank you for your letter. I look forward to working together on all of these issues before the 105th Session of Congress adjourns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Clinton", with a long horizontal flourish extending to the right.

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, D.C. 20510

Date: 04/17/98 Time: 14:28
CState penalty against 'crack moms' attacked

WASHINGTON (AP) At the heart of the divisive debate over abortion lies a question simultaneously medical, legal and moral: Is a fetus a person? That same query, asked in a different context, presents itself in a South Carolina dispute now before the Supreme Court.

Two women in prison for using crack cocaine while pregnant are challenging the state child-endangerment law used to convict them.

The law makes it a crime to ``refuse or neglect to provide the proper care and attention'' so that a child ``is endangered or is likely to be endangered.'' The South Carolina Supreme Court says a viable fetus one able to live outside the uterus is a child under the law.

So far, no other state's top court has allowed prosecutions of pregnant women for behavior that could affect the fetus inside them. The highest courts in Florida, Kentucky, Nevada and Ohio explicitly have disallowed such prosecutions.

But courts long have treated the ``unborn viable child'' as a person when someone else has killed or injured a woman's fetus. The South Carolina court calls it ``absurd to recognize the viable fetus as a person for purposes of homicide laws and wrongful-death statutes but not for purposes of statutes proscribing child abuse.''

Lawyers for the liberal Center for Constitutional Rights and American Civil Liberties Union, representing the two women in an appeal recently filed with the nation's highest court, say the South Carolina law, as interpreted by the state court, has two major flaws making it unconstitutional.

First, the appeal says, pregnant women cannot know with certainty when fetal viability has occurred. Second, the law fails to tell women just what conduct is prohibited.

What about women who smoke, drink or take prescription drugs during pregnancies? The appeal contends that this conduct, too, may be subject to punishment under the South Carolina law.

All such uncertainty could be avoided, the appeal says, if the justices would rule that child-abuse laws are meant to protect children, not fetuses.

The court has not yet said whether it will grant full review to the case. But a coalition of health care providers and social services workers is urging the justices to do so and strike down the state law. The group contends that the law imposes on them ``a duty of unknowable dimensions and sweeping breadth.''

The coalition includes the National Association of Alcoholism and Drug Abuse Counselors, American Nurses Association and American College of Obstetricians and Gynecologists.

The law makes it a crime punishable by up to six months in prison for such professionals to fail to report a case of child endangerment by a pregnant woman.

Since 1989, South Carolina prosecutors have invoked the state law against more than 40 women. One of the first was Malissa Crawley, who pleaded guilty after son Antwon was born with cocaine in his blood in late 1991.

Her five-year prison sentence initially was suspended but she was imprisoned last month.

Cornelia Whitner was sentenced to eight years in prison for using crack cocaine while pregnant. She has served almost two years of that sentence.

Their lawyers say the fate of both women has created a ripple effect of endangerment. ``Threatening women with arrest for conduct engaged in during pregnancy will endanger both fetal and maternal health by frightening women away from prenatal and other needed care,'' the appeal says.

EDITOR'S NOTE Richard Carelli covers the Supreme Court and legal issues for The Associated Press.

APNP-04-17-98 1427EDT

United States Senate

WASHINGTON, DC 20510

January 29, 1998

President Bill Clinton
The White House
Washington, DC 20500

Dear Mr. President:

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

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

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

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

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

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

Sincerely,



Spencer Abraham
United States Senate

Orrin Hatch
United States Senate

Trent Lott
United States Senate

BARRY MCCAFFREY 64

War on drugs and stereotypes

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

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

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

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

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

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

charges, are black.

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

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

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

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

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

Lower-level



Illustration by Bob Newman/LA Times Syndicate

crack dealers should be prosecuted by state and local authorities.

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

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

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

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



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Politics

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July 22, 1997

Officials Urge Smaller Gap in Cocaine Sentences

By CHRISTOPHER S. WREN

Attorney General Janet Reno and the White House drug-policy director have recommended to President Clinton that the possession of crack and powder cocaine be treated with less disparity in mandatory federal sentences.

But they have stopped well short of urging that this disparity, which treats possession of small amounts of crack far more harshly, be eliminated altogether, although the White House drug official, Gen. Barry McCaffrey (Ret.), said in a telephone interview on Monday that he personally favored doing so.

With their recommendation, whose adoption would require Congressional approval, Ms. Reno and McCaffrey have stepped into one of the most contentious and protracted debates in the long war against drugs: whether there is justification for harsher penalties for crack than for powder cocaine, a policy that in practice has tended to treat blacks more severely than whites.

The recommendation was issued in a letter that Ms. Reno and McCaffrey sent to the president on July 3. In that letter, the two Cabinet-level officials said federal judges should be required to impose a minimum prison term of five years on defendants convicted of possessing 25 grams of crack or 250 grams of powder cocaine.

At present, that mandatory minimum sentence applies to thresholds of 5 grams of crack and 500 grams of powder. The proposal, then, would narrow the gap from the current 100 to 1 down to 10 to 1.

Although 25 grams still amounts to less than an ounce of crack, and although crack is not pure cocaine, the proposal seems bound to find resistance among some congressmen and others who support severe penalties for any drug use. But it is also likely to be welcomed by federal judges and prosecutors, who feel that the current five-gram crack threshold deprives them of discretion in making the punishment fit the crime.

Asked on Monday about the proposal, which was first reported in the current issue of Newsweek, Rahm Emanuel, senior White House adviser, confirmed that the president had received it and said Clinton had directed Ms. Reno and

McCaffrey to pursue the issue with Congress.

"He's concerned about the disparity and how to reduce the disparity," Emanuel said of Clinton. "They are to continue to work with Congress to find a common resolution."

The 100-to-1 disparity was created by legislation enacted by Congress in 1986. The law required federal judges to impose the same five-year minimum sentence on defendants convicted of possessing 5 grams of crack or 500 grams of powder.

The law was Congress's response to voter fears prompted by a wave of violence among dealers competing to a new product, crack, which had first appeared in the nation's drug market earlier in the decade.

But critics have attacked the disparity, saying that it puts far more blacks than whites behind bars for five years or longer, because whites are statistically more likely to snort or inject cocaine, while blacks are likelier to smoke cocaine in its cheaper crack form. The disparity has also been faulted for punishing low-level pushers just as harshly as high-level dealers, or even more harshly.

Cocaine hydrochloride, as powder cocaine is called scientifically, is refined from alkaloids extracted from coca leaves. The powder is turned into crack through a simple process that involves cooking it with baking soda and water.

In the interview on Monday, McCaffrey said he had wanted to propose eliminating the sentencing disparity entirely because pharmacologically, crack and powder cocaine are the same psychoactive compound and, he said, are equally addictive.

"From a drug-abuse perspective, 1 to 1 made more sense to me," McCaffrey said.

But, he said, he ultimately accepted the argument of Federal law-enforcement officials, including Ms. Reno, that crack must continue to be punished more severely, on the ground that it has long been associated with greater violence, particularly among street-level dealers.

Ms. Reno and McCaffrey submitted their recommendation after Clinton requested that they study a report issued on April 29 by the U.S. Sentencing Commission, which draws up sentencing guidelines for federal courts.

In that report, the commission proposed that Congress change the five-year minimum sentence for crack from 5 grams at present to a level between 25 and 75 grams, and that it adjust the minimum sentence for possession of crack cocaine from 500 grams to a level between 125 and 375 grams.

When the commission released its recommendation, Clinton agreed that some

adjustment was warranted so that federal prosecutors could focus on higher level drug traffickers rather than lower level drug offenders. Also, Clinton said, the disparity between sentences for crack and powder cocaine led to a perception that the Federal criminal justice system was unfair and inconsistent.

It is unclear whether Congress will narrow the discrepancy at a time when no politician wants to be accused of being soft on drugs. In February 1995, Congress, with Clinton's encouragement, rejected a previous proposal by the commission that the difference be all but eliminated.

McCaffrey said he and the attorney general would try to convince Congress that narrowing the disparity was a more prudent and balanced approach to fighting sales and use than the existing policy.

"We want the Senate and House to have a chance to listen to the rational arguments connected with this approach," he said.

McCaffrey said that while the current disparity was never aimed at any racial group, "the outcome on the face of it appears unjust."

In their letter, Attorney General Reno and McCaffrey said the disparity "has become an important symbol of racial injustice in our criminal justice system," adding "We cannot turn a blind eye to the corrosive effect this has had on respect for the law in certain communities and on the effective administration of justice."

The sentencing disparity survived a legal challenge in the Supreme Court, which ruled on May 13, 1996, that the statistical predominance of blacks prosecuted for possessing crack cocaine did not in itself sufficiently prove that the federal government selectively gave African-Americans harsher sentences.

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U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FAX COVER SHEET

TO: Jose Cerda

FAX #: 456-7028

FROM: Andrew Foïs

PHONE #: 514-2141

FAX #: _____

DATE: 6-5-97

OF PAGES: _____ (INCLUDING COVER SHEET)

COMMENTS: _____

**10:1 RATIO WITH HIGHER CRACK THRESHOLDS/LOWER PENALTIES
AND LOWER POWDER THRESHOLDS/HIGHER PENALTIES:
CRACK THRESHOLDS AT 25 AND 250 GRAMS; POWDER THRESHOLDS AT 250 AND 2,500 GRAMS (2.5 KG)**

QUANTITY	DRUG (RANGE)	PROPOSED OFFENSE LEVEL	PROPOSED SENTENCE (IN MONTHS)	PROPOSED PENALTY RATIO (AT MINIMUM)	PRESENT OFFENSE LEVEL	PRESENT SENTENCE (MONTHS)
5 G	Crack (5-10 G) Powder (< 12.5 G)	18	~~27-33~~	5.4:1 1/ - crack/powder	26	~~63-78~~
		12	10-16		12	10-16
10 G	Crack (10-15 G) Powder (< 12.5 G)	20	~~33-41~~	6.6:1 -- crack/powder	26	~~63-78~~
		12	10-16		12	10-16
25 G	Crack* (25-100 G) Powder (25-50 G)	26	63-78	3:1 -- crack/powder	28	78-97
		16	21-27		14	15-21
50 G	Crack (25-100 G) Powder (50-100 G)	26	~~63-78~~	2.3:1 -- crack/powder	32	121-151
		18	27-33		16	21-27
100 G	Crack (100-175 G) Powder (100-150 G)	28	78-97	2.4:1 -- crack/powder	32	121-151
		20	33-41		18	27-33
200 G	Crack (175-250 G) Powder (200-250 G)	30	97-121	1.9:1 -- crack/powder	34	151-188
		24	51-63		20	33-41
250 G	Crack ♦ (250-750 G) Powder* (250 G-1 KG)	32	121-151	1.9:1 -- crack/powder	34	151-188
		26	63-78		20	33-41
500 G	Crack (250 G-750 G) Powder (250 G-1 KG)	32	121-151	1.9:1 -- crack/powder	36	~~67-84~~ 188-235
		26	63-78		26	~~63-78~~
2 KG	Crack (750 G-2.5 KG) Powder (1.75-2.5 KG)	34	151-188	1.6:1 -- crack/powder	38	~~84-105~~ 225-293
		30	97-121		28	~~178-97~~
2.5 KG	Crack (2.5-7.5 KG) Powder ♦ (2.5-7.5 KG)	36	188-235	1.6:1 -- crack/powder	38	235-293
		32	121-151		28	78-97
5 KG	Crack (2.5-7.5 KG) Powder (2.5-7.5 KG)	36	188-235	1.6:1 -- crack/powder	38	235-293
		32	121-151		32	121-151

cut sentence
by 37-45

30-37m

15-18

(6m)

58-73m

6m

43-54m

6-8

6-8

150m

150m

150m

150m

150m

150m

150m

150m

150m

150m

150m

150m

150m

150m

150m

$$\frac{32}{63} = \frac{100}{180}$$

$$63 \overline{) 315}$$

$$\frac{27}{63} = \frac{100}{250}$$

$$63 \overline{) 250}$$

$$\frac{33}{78} = \frac{100}{230}$$

$$78 \overline{) 230}$$

$$\frac{33}{63} = \frac{100}{180}$$

$$63 \overline{) 180}$$

$$\frac{78}{121} = \frac{100}{121}$$

$$\frac{15}{78} = \frac{100}{520}$$

$$\frac{6}{27} = \frac{100}{450}$$

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.

25/2500 → 10:1 (from 100:1)
→ per force or up bill



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY

Washington, D.C. 20503

June 20, 1997

Kerston

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

South -

Dear Madam Attorney General:

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

ONDCP's findings include:

- (1) *Prevalence.* Crack use has stabilized in both regular/current (past month) use and in the number of new initiates. The greater use of cocaine continues to be outside inner cities.
- (2) *Similarities of Crack and Powder Cocaine.* Crack users consume about 54% of the total U.S. cocaine consumption. Cocaine in both the smokeable form and in the intravenous powder form show the same abuse liability. The two forms of the drug are substantially similar in rate of consumption, in their physiological and psychoactive effects and in their treatment outcomes.
- (3) *Trafficking.* Practically all cocaine enters the U.S. in powdered form. One gram of powder cocaine converts into .89 grams of crack. Drug Enforcement Administration (DEA) characterizes a mid-level crack dealer as one who deals in multiple ounces. The majority of federal crack defendants traffic in more than 80 grams of crack. Crack users and dealers have a greater cumulative exposure to law enforcement activities because they engage in multiple, anonymous, open air markets in the urban core.
- (4) *Violence.* Multiple, anonymous, open air drug sales contribute to the systemic violence in crack markets. Federal crack defendants are more involved with weapons violations than powder defendants (approximately 31% to 14%); however, the existing sentencing guidelines address the use of weapons.
- (5) *Budgetary Impact of Federal Cocaine Policy.* Given the need to balance the federal budget, limited federal resources (7,000 DEA agents) and the distinction between the drug control responsibilities of federal and state/local authorities (interstate and foreign versus local communities), federal policy should reflect a focus on international dealers and domestic drug wholesalers. The DEA characterizes such dealers as dealing in quantities of a kilogram or more. Mid-level dealers, who can provide information on drug distribution organizations, deal in quantities of less than a kilogram. Our recommendation would also realize a net savings of approximately 2,000 prison beds.

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

Respectfully,

Barry
Barry R. McCaffrey
Director

Draft -- 6/24/97

The President
The White House
Washington, DC 20500

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

Dear Mr. President:

Introduction

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

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

Recommendation

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

Rationale

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

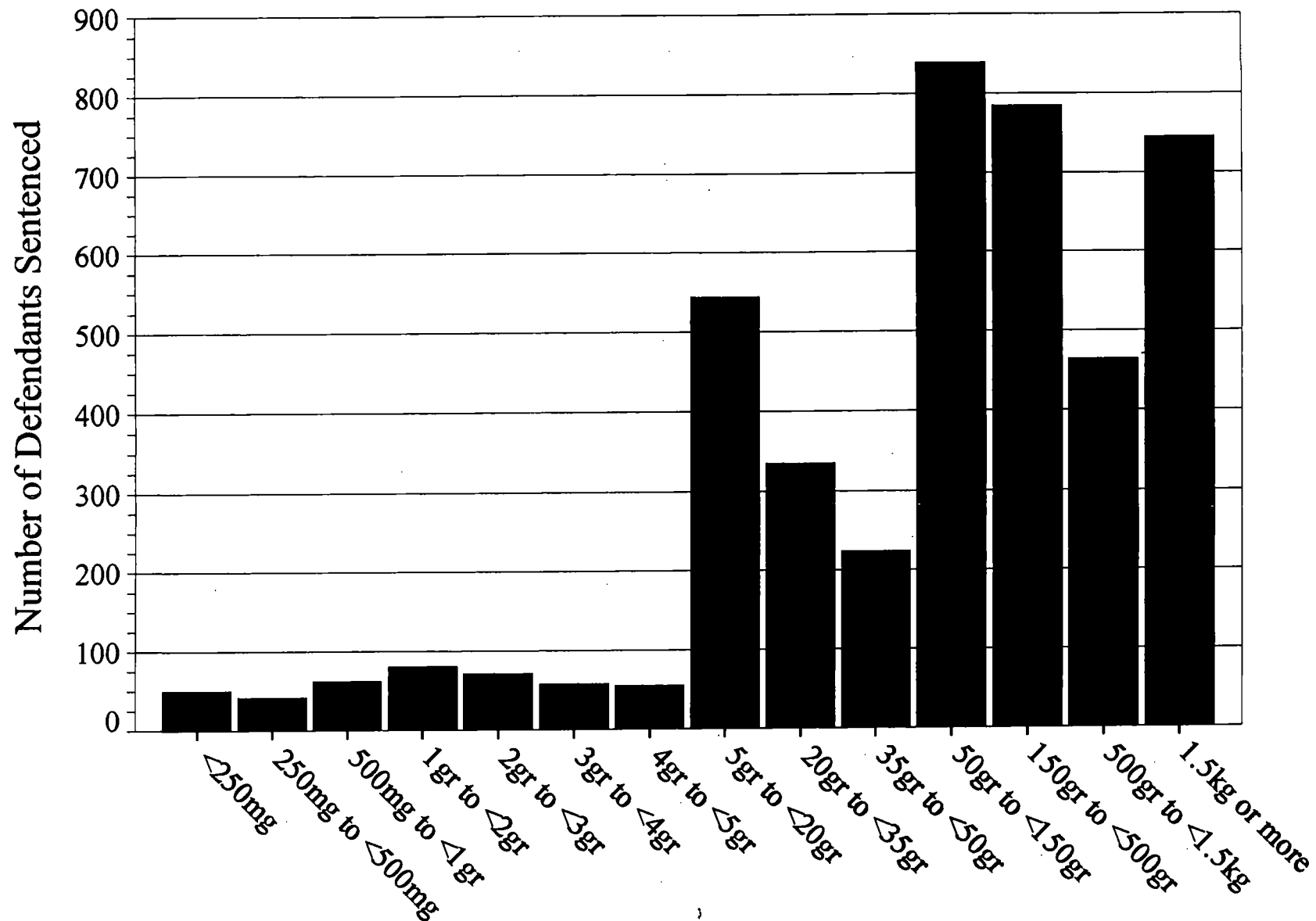
Janet Reno
Attorney General

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

CURRENT STRUCTURE DIVERTS RESOURCES FROM HIGHER LEVEL DEFENDANTS

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

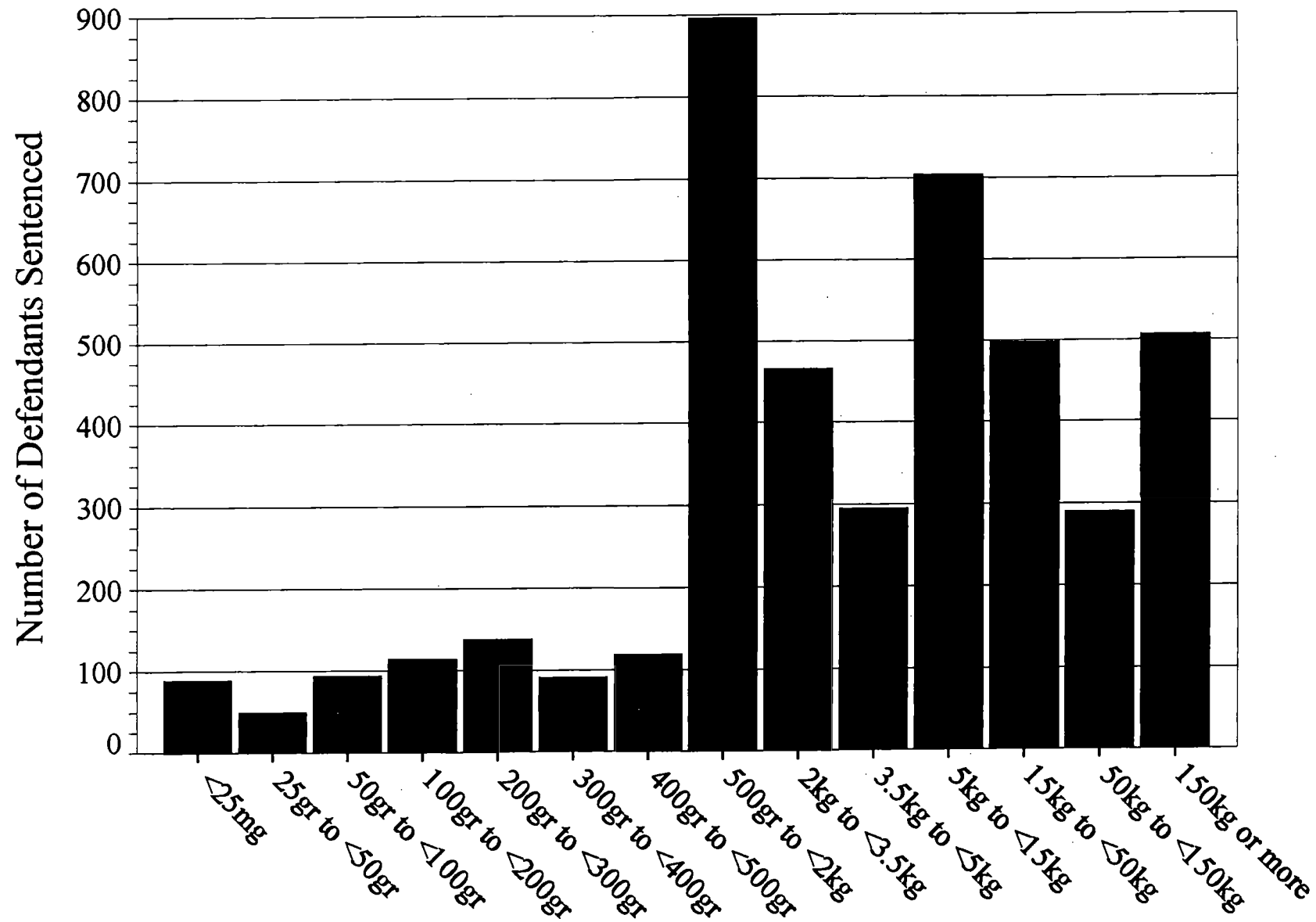
Crack Trafficking Defendants by Drug Amount - FY 1996



N = 4,355

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

Cocaine Powder Trafficking Defendants by Drug Amount - FY 1996



N = 4,350

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

THE PRESIDENT HAS SEEN
7-7-97

THE WHITE HOUSE

WASHINGTON

July 4, 1997

Copied
Reed
Kagan
COS

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN *PC*

SUBJECT: Crack/powder cocaine sentencing recommendations

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

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

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

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

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

*OK
Cox
Murray
S. G. Kelly
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2000
Graham
Graham*

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

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

☒ Agree

☐ Disagree

☐ Discuss

Though I would favor
further education—
unless there is a criminal
justice or biological aspect
justification of having it used—
agm can't see having such
ceiling - contains much more

THE WHITE HOUSE
WASHINGTON

July 3, 1997

'97 JUL 3 PM7:30

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN

SUBJECT: CRACK SENTENCING RECOMMENDATIONS

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

I. Background

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

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

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

II. Department of Justice and ONDCP Recommendation

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

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

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

III. Suggested Course of Action

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

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

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

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

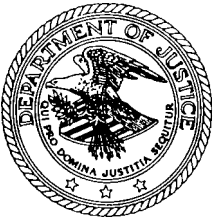
We also suggest, if you accept the recommendation, that you authorize the Attorney General and ONDCP Director to begin immediate discussions with Members of Congress on this issue. Senators Hatch and Abraham may offer their alternative proposal as early as next week at the Senate Judiciary Committee's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

_____ Agree

_____ Disagree

_____ Discuss

197 JUL 3 4:05



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

July 3, 1997

The President
The White House
Washington, DC 20500

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

Dear Mr. President:

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

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

Recommendation

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

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

Rationale

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

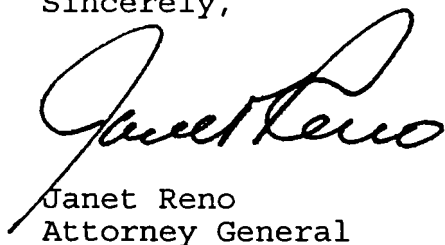
In short, we support a revised penalty structure with the five-year mandatory minimum threshold for crack set at 25 grams and the corresponding threshold for powder set at 250 grams because it would:

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

The President
Page 5

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

Sincerely,



Janet Reno
Attorney General

Sincerely,



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

THE WHITE HOUSE
WASHINGTON

95 NOV 12 10:41

November 2, 1995

MEMORANDUM TO THE PRESIDENT

From: Bruce Reed
Rahm Emanuel
Dennis Burke 

Subject: The "Safety Valve" and mandatory minimums

You had mentioned that Director Brown believed you had incorrectly stated the law on the "Safety Valve" for mandatory minimums in your Roundtable with the Trotter group on Wednesday.

We have checked the transcript from that meeting and believe that you made a minor misstatement of the law but it by no means had any bearing on your argument.

Your Crime Bill created a "safety valve" to permit judges to apply the sentencing guidelines rather than the statutory mandatory minimum penalties in cases of first-time, non-violent drug offenders. During the interview, you had stated that the judge could ignore the guidelines under the safety valve. However, under the safety valve, what the judge is ignoring is the mandatory minimum -- which is the real issue in this whole debate -- and applying the guidelines instead, which results in lesser sentences. This is a very minor misstatement that does not effect the thrust of your argument.

Without the safety valve, a defendant convicted with 5 or more grams of crack cocaine would have to serve -- at the minimum -- 5 years. However, the safety valve provides an exemption from that mandatory minimum if the defendant 1) doesn't have a significant criminal history; 2) did not cause death or seriously bodily injury; 3) was not an organizer, leader, manager or supervisor; and 4) provided information about the offense to the Government.

The Sentencing Commission predicts that around 600 defendants -- which will be about 3.6% of all drug defendants -- will be sentenced under the safety valve this year and that it will result in an average reduction in a person's sentence of 25%.

These facts support the thrust of your argument to these reporters -- you believe that crack should be punished harsher than cocaine powder; our U.S. Attorneys are in reality busting high-level crack traffickers and not first-time offenders; and you enacted real sentencing reform in last year's crime bill with your "safety valve" provision.

FACTS ON THE FEDERAL PROSECUTION OF CRACK COCAINE

In 1994, of the 3,430 crack defendants convicted, the number of youthful, small-time crack offenders with no prior criminal history and no weapons involvement was just 51 --- that is less than 1.5% of the total crack convictions.

The median crack defendant was convicted of trafficking in 109 grams. Only 10% of crack defendants had trafficked in less than 2-3 grams of crack. We are busting traffickers of this stuff, not small-time peddlers or users.

Are these young kids? No. Only 10% were under the age of 21. 63% are 26 and older.

1/3 of the crack defendants were convicted for possessing a firearm during their crime. If you possess a firearm in a Federal crime, under 924(c) you receive a 5 year mandatory minimum on top of your underlying offense. This would further explain some of the long sentences that crack defendants receive. ✓

In 1994, white defendants accounted for 93.4 percent of those sentenced for trafficking in LSD. So, if they bring up any claim about Federal Districts in which only blacks are prosecuted for crack, then counter with the fact that in the overwhelming amount of Federal Districts, the only LSD defendants are white -- so, under their theory, could the white guy bring a discrimination case to get his indictment thrown out?

S. 1254 passed the Senate by unanimous consent and passed the House by a vote of 332 to 83 (w/ 17 not voting).

CRACK SENTENCING TALKING POINTS

-- The President will sign/has signed legislation to reject proposals of the Sentencing Commission that would equalize the penalties for crack and powder cocaine distribution by dramatically reducing the penalties relating to crack.

-- This legislation was supported by a significant bipartisan majority in both the House and Senate and is substantially similar to a bill the Administration submitted to Congress earlier this year.

-- Crack distribution, as well as the violence associated with it, continues to have a devastating impact on communities all across this country, especially inner-city minority communities. The effects on individuals and their families and related gang activity, turf battles and other violence, require substantial penalties for crack distribution.

-- Differences under current law between sentences for crack, as compared to the same amounts of powder cocaine, result in substantial disparity in sentences. The bill/law instructs the Sentencing Commission to undertake further review of these issues and report back on what sentencing structure can provide the penalties needed by law enforcement while ensuring that our drug laws are fair.

-- The President has asked the Attorney General to work closely with the Sentencing Commission to develop this sentencing structure [including the possibility of raising the penalties for distribution of powder cocaine.] And we must ensure that traffickers of powder cocaine that is turned into crack are punished more severely than the lower-level crack dealers. The President has asked the Attorney General to develop enforcement strategies to ensure that these big-time powder cocaine dealers are severely punished.

-- The President will be convening a bipartisan White House Conference on Youth, Drugs and Violence at which law enforcement, juvenile, medical and community leaders will make recommendations on how together we should combat these problems that plague too many of our Nation's young people today.

-- The President and this Administration has a strong record on crime and drug abuse: Brady bill, assault weapons ban, 100,000 cops on the beat, death penalty for drug kingpins, breaking up the Cali cartel, drug testing for student athletes, etc. And its working -- crime rates are down.

S. 1254 -- the Administration's Crack Sentencing Guidelines Legislation

Questions and Answers

Q. Why does the Administration oppose the Sentencing Commission's guideline recommendation on crack sentencing?

A. We are concerned that the equalization of the penalties for crack and cocaine powder trafficking does not reflect:

- * the significant differences between the two;
- * the impact crack has had on our communities;
- * and the effect a drastic change in penalties would have on deterring those who traffic in this dangerous drug.

Q. What's the point of sending this back to the Sentencing Commission -- isn't the President just punting a political hot potato?

A. The Sentencing Commission's recommendations will go into effect on November 1 unless the President signs this legislation beforehand.

The President is saying this to the Sentencing Commission -- "I disagree with your recommendations; I want you to go back, work with my Attorney General, and come back in May with sentences that treat crack distribution more harsher than powder cocaine, but I also want sentences that ensure that we treat a high-level powder cocaine distributor as severely as street-level crack distributors."

Q. Why doesn't the President propose legislation that would increase the sentences for cocaine -- won't that reduce the disparity in the current sentencing system?

A. The President wants the Sentencing Commission, working with the Attorney General, to have the opportunity to reexamine their recommendations and return with sentences that still reflect his concern with crack distribution.

In the mean time, the President is also asking the Attorney General to begin working immediately with United States Attorneys to make sure that high-level power cocaine distributors are prosecuted for what they know they are doing -- selling powder cocaine that is ending up as crack on our streets.

Crack is a more dangerous drug than powder cocaine; the President believes that the sentencing structure should reflect this in some way. But a high-level drug distributor who knows his powder cocaine is ending up as crack vials on the street, should be punished for what he is doing -- pushing crack.

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

A. Crack is more psychologically addictive than cocaine powder. The Administration's conclusions about the harmful effects of crack as compared to cocaine powder are virtually the same as those reached by the Sentencing Commission. Indeed in its 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."

Furthermore, as the Sentencing Commission itself stated:

"crack dealers generally tend to have a stronger association with systemic violence and are more likely to possess weapons than powder cocaine dealers."

Q. Doesn't the current penalty structure discriminate against African-Americans?

A. The President has recently spoken, as you know, of his concern with the number of young African-Americans who enter the criminal justice system. That is an issue he will continue to address. But reducing crack cocaine sentences is not the solution to that problem. Instead, reduced sentences for crack trafficking would ignore the devastation this drug has cause so many communities and victims across the country. A crack dealer could only interpret it one way -- the cost of business is going down, keep pushing.

The legislation he signs today includes an amendment by Senator Kennedy that was unanimously accepted in the Senate, which instructs the Sentencing Commission to undertake a review and report back to Congress its findings and recommendations on what sentencing structure can both provide the penalties needed by law enforcement but also ensure that our drug enforcement laws and policies are fair.

Money Laundering

Q. Why are you disapproving of the money laundering guideline?

A. The Commission recommended amendments to the money laundering guidelines that would substantially lower the penalties for many serious money laundering offenses.

As the President has stated, we are committed to combatting the drug networks at every level -- from top to bottom -- and he believe they need to be sentence severely at each level. Money laundering statutes are an essential law enforcement weapon in convicting high-level drug traffickers.

When the President recently spoke before the U.N., he stated that he was directing our government to identify and put on notice nations that tolerate money laundering. He does not believe that we should be reducing money laundering penalties at home while we are working to catch drug traffickers attempting to hide their ill-gotten gains overseas..

Further Background

Q. What exactly did the Sentencing Commission do?

The Sentencing Commission actually took 2 steps that if adopted would result in drastically reducing the penalties for crack.

First, the Commission recommended that Congress eliminate the differential treatment of crack and cocaine powder by amending the current mandatory minimum statute for crack.

Second, the Commission promulgated an amendment of the sentencing guidelines to treat crack and cocaine powder alike under the guidelines, regardless of whether Congress first revised the statutory minimum penalties.

It is the second step that this legislation would prevent from occurring.

If Congress adopted these 2 recommendations, some offenses now subject to a 5 year or 10 year mandatory minimum prison term would potentially result in a sentence involving no required prison term at all.

Furthermore, by not disapproving of the Sentencing Commission's guideline recommendation through this legislation, a tenth of a gram of crack could make the difference between a guideline sentence of a halfyear of imprisonment (or probation with conditions of confinement) and a five-year mandatory minimum term. Moreover, many sentences that would have been well above the mandatory minimum levels, base on quantity would be reduced to the mandatory minimum.

The result would be that we would be greatly decreasing the cost of business for crack dealers.

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The result would be that we would be greatly decreasing the cost of business for crack dealers.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 30, 1995

STATEMENT BY THE PRESIDENT

Today I reject United States Sentencing Commission proposals that would equalize penalties for crack and powder cocaine distribution by dramatically reducing the penalties for crack. The Sentencing Commission would also reduce the penalties for money laundering by combining the guidelines on money laundering with those on transactions in unlawfully acquired property. I am opposed to both of these changes.

Since I took office, my Administration has fought to stop drug abuse and to stamp out the crime and violence that are its constant companions. We are battling drug traffickers at every level of their networks -- from the very top to the very bottom.

The Cali Cartel, which pumped drugs into America with seeming impunity, is now on the run. We have intensified our efforts to work with drug producing countries to stop drugs from coming into the United States and to capture major drug traffickers. We told criminals convicted time and again for serious violent crimes or drug trafficking that from now on, it's three strikes and you're out. And we established the death penalty for drug kingpins, because they should reap what they sow.

We are putting 100,000 police officers on America's streets. We banned assault weapons because America doesn't want drug dealers to be better armed than police officers. We are helping schools to rid themselves of guns, and we are also helping schools to prevent teenage drug use by teaching children about the dangers of drugs and gangs. And we support schools who test student athletes for drugs.

All of this is beginning to work. For the first time in a very long time, crime has decreased around the country. But we cannot stop now. We have to send a constant message to our children that drugs are illegal, drugs are dangerous, drugs may cost you your life -- and the penalties for dealing drugs are severe. I am not going to let anyone who peddles drugs get the idea that the cost of doing business is going down.

Trafficking in crack, and the violence it fosters, has a devastating impact on communities across America, especially inner-city communities. Tough penalties for crack trafficking are required because of the effect on individuals and families, related gang activity, turf battles, and other violence.

Current law does require a substantial disparity between sentences for crack as compared to equal amounts of powder cocaine. Some adjustment is warranted, and the bill I am signing today, S. 1254, directs the Sentencing Commission to undertake additional review of these issues and to report back with new recommendations.

Furthermore, the sentencing structure should reflect the fact that all crack starts as powder. When large-scale cocaine traffickers sell powder with the knowledge that it will be converted into crack, they should be punished as severely as those who distribute the crack itself. I have asked the Attorney General to immediately develop enforcement strategies to bring about this result. As I said before, we are going after drug traffickers at every level of their networks.

THE WHITE HOUSE,
October 30, 1995.



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

750 First Street, N.E., Suite 1020 • Washington, D.C. 20002-4241

(202) 842-4420 • (800) 322-NAPO • (202) 842-4396 FAX

President

THOMAS J. SCOTTO
President, Detective
Endowment Association
of New York City
New York, NY

FOR IMMEDIATE RELEASE:

October 30, 1995

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President, Central
Coast Chapter, IOPAC
San Jose, CA

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS LAUDS REJECTION of NEW SENTENCING GUIDELINES

Treasurer

WILLIAM BIRDSEYE
Police Officers
Association of Michigan

The National Association of Police Organizations (NAPO) today applauded President Clinton's decision to sign legislation keeping intact the current cocaine sentencing guidelines and overriding the U.S. Sentencing Commission's proposed parity changes. Clinton's action follows recent votes by Congress to reject the Sentencing Commission's proposed changes. Last spring, the Sentencing Commission proposed new guidelines because current law provides for a 100-1 disparity in sentences for powder and crack cocaine.

Sergeant-at-Arms

MARTIN McKEAN

Executive Secretary,
Ohio PBA
Berea, OH

Executive Secretary

B. D. "BUD" STONE

Past President POFAC
Berkeley, CA

NAPO Executive Director Robert T. Scully stated, "Law enforcement officers see daily the devastating impact that crack cocaine has had on neighborhoods across the country. That is why we wholeheartedly support keeping these strict guidelines in place."

"NAPO salutes the bipartisan majority in Congress and President Clinton for staying tough and sticking with law enforcement against the war on drugs," Scully continued.

NAPO is a national law enforcement organization representing over 185,000 sworn law enforcement officers and 3,500 police unions and associations throughout the country.



FRATERNAL ORDER OF POLICE

NATIONAL LEGISLATIVE PROGRAM

309 MASSACHUSETTS AVENUE, N.E. • WASHINGTON, DC 20002
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GILBERT G. GALLEGOS
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

BERNARD H. TEODORSKI
NATIONAL VICE PRESIDENT
CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE

FOR IMMEDIATE RELEASE

Contact: Jim Pasco
(202) 547-8189

10 - 30 - 95

PRESS RELEASE

FRATERNAL ORDER OF POLICE PRAISES CLINTON FOR TOUGH ANTI-DRUG STAND

Gilbert Gallegos, National President of the Fraternal Order of Police, strongly praised President Clinton's signing of legislation which will retain tough mandatory minimum sentences for possession of crack cocaine. The legislation also directs the U.S. Sentencing Commission to develop tougher penalties for high level cocaine traffickers.

"This was a difficult course of action for the President", said Gallegos, "and one fraught with political hazards. We think the legislation strikes an equitable balance by holding the line on crack violators while at the same time turning up the pressure on criminals who traffic in powdered cocaine. There is no such thing as a minor narcotics violation -- too many of them lead to tragedy".

The Fraternal Order of Police is the largest police organization in the United States, with over 270,000 members.

1995-18

NATIONAL SHERIFFS' ASSOCIATION



Resolution

NSA OPPOSES REDUCTION OF PENALTY FOR CRACK COCAINE OFFENSES

WHEREAS, on May 1, 1995, the United States Sentencing Commission submitted to the United States Congress various amendments to sentencing guidelines, policy statements and official commentary regarding a reduction in the penalties for cocaine base (crack) to equal cocaine powder quantities in the imposition of drug trafficking penalties. The amendment will take effect November 1, 1995, unless an Act of Congress provides otherwise; and

WHEREAS, there is a significant difference between crack and crack hydrochloride (cocaine powder). Crack is a more dangerous and harmful substance than cocaine powder; and

WHEREAS, in use and administration of these two drugs, crack is deemed the more psychologically addictive of these two drug substances, particularly as smoking crack produces quicker, more intense and shorter-lasting effects than snorting cocaine powder; and

WHEREAS, identifiable unsociable behavioral changes occur much more quickly with the use of crack than with the use of cocaine powder; and

WHEREAS, crack can be broken down and packaged into very small and inexpensive quantities for distribution and is marketed to the most vulnerable members of our society, including America's youth; and

1995-18

N.S.A. Opposes Reduction of Penalty
for Crack Cocaine Offenses
Page 2

WHEREAS, the open-air street markets and crack houses used for distribution of crack contribute heavily to the continuing deterioration of neighborhoods and communities; and

WHEREAS, the present crack market is associated with violent crime to a greater extent than that of cocaine powder; and

WHEREAS, the U.S. Sentencing Commission recommendation would change the statutory minimum criminal penalty from a minimum criminal ten year term of imprisonment for distributing 50 grams of crack (about 500 doses) to as little as four to ten months of imprisonment, which could be satisfied by probation with conditions of confinement, such as home detention; and

THEREFORE, the National Sheriffs' Association calls upon U.S. Congress to enact laws to maintain the current higher penalty for trafficking in cocaine base (crack cocaine) to adequately reflect the greater dangers associated with crack than with cocaine powder. Any such federal law must be signed by the President no later than October 31, 1995.

Adopted at a general membership
meeting on the 14th day of June, 1995
in San Antonio, Texas



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

June 12, 1997

Dear Madam Attorney General:

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

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

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

African Americans form:

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

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

Best wishes,

Barry R. McCaffrey
Director

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

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DRAFT

June 12, 1997

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

Re: Joint Recommendation on Crack/Powder Cocaine Sentencing Disparity

Dear Mr. President:

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

Recommendation

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

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

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

Summary of Analysis

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

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

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

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

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

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

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

Respectfully,

Janet Reno
Attorney General

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

cc: Vice President
Chief of Staff

Attachments (4)

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Tab A

*Office of National Drug Control Policy
12 June 1997*

PREVALENCE

Crack use is holding stable.

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

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

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

Far More Whites Use Cocaine and Crack than Blacks

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

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Powder Cocaine use by demographics:

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

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

Crack cocaine use by demographics:

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

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

*Low precision; no estimate reported.

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Tab B

Office of National Drug Control Policy
12 June 1997

SIMILARITIES

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

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

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

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

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

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

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*Office of National Drug Control Policy
12 June 1997*

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

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

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

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

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*Office of National Drug Control Policy
12 June 1997*

TRAFFICKING

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

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

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

The NIJ researchers found:

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

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*Office of National Drug Control Policy
12 June 1997*

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

- Crack users are described as more desperate individuals.

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

Drug Possession at Conviction

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

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VIOLENCE

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

Literature Review

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

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

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

- Systemic crime

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

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

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

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

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

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

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

- Psychopharmacologically Driven Crime

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Office of National Drug Control Policy
12 June 1997

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

- Economic Compulsive Crime

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

Domestic Violence and Drug Abuse

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

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

Sentencing Commission Data

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

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

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

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*Office of National Drug Control Policy
12 June 1997*

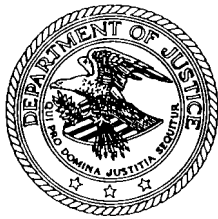
most likely to score in the career offender range (6.3%). Crack defendants also are more likely to have a recent criminal history, with 33.7 percent under a pre-existing criminal justice sentence at the time of their most recent Federal offense. Also, 14.5 percent of crack defendants -- compared to 6.6%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

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

Weapons

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

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

July 3, 1997

The President
The White House
Washington, DC 20500

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

Dear Mr. President:

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

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

Recommendation

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

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

Rationale

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

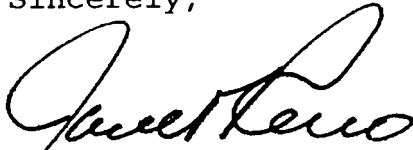
In short, we support a revised penalty structure with the five-year mandatory minimum threshold for crack set at 25 grams and the corresponding threshold for powder set at 250 grams because it would:

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

The President
Page 5

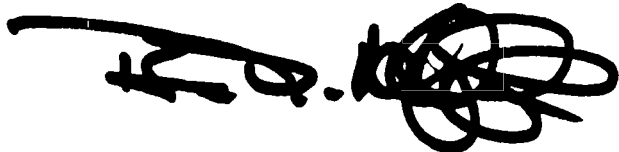
With your concurrence, we will work with Congress to adopt legislation that will improve federal law enforcement's response to the scourge of powder and crack cocaine trafficking in this country.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno".

Janet Reno
Attorney General

Sincerely,

A handwritten signature in cursive script, appearing to read "Barry R. McCaffrey".

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

Draft -- 6/24/97

The President
The White House
Washington, DC 20500

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

Dear Mr. President:

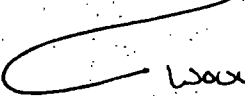
Introduction

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

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

Recommendation

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

 WOULD FURTHER RECOMMEND

Rationale

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

- Maintain tough federal sentences for serious drug offenders.
- Properly focus federal law enforcement efforts on mid-level and high-level drug traffickers.
- Improve the allocation of scarce federal law enforcement resources.
- Address perceptions of serious unfairness in the current sentencing scheme.
- Continue to reflect an appropriate distinction between crack and powder cocaine. (AT A RATIO OF ABOUT 10 TO 1)

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

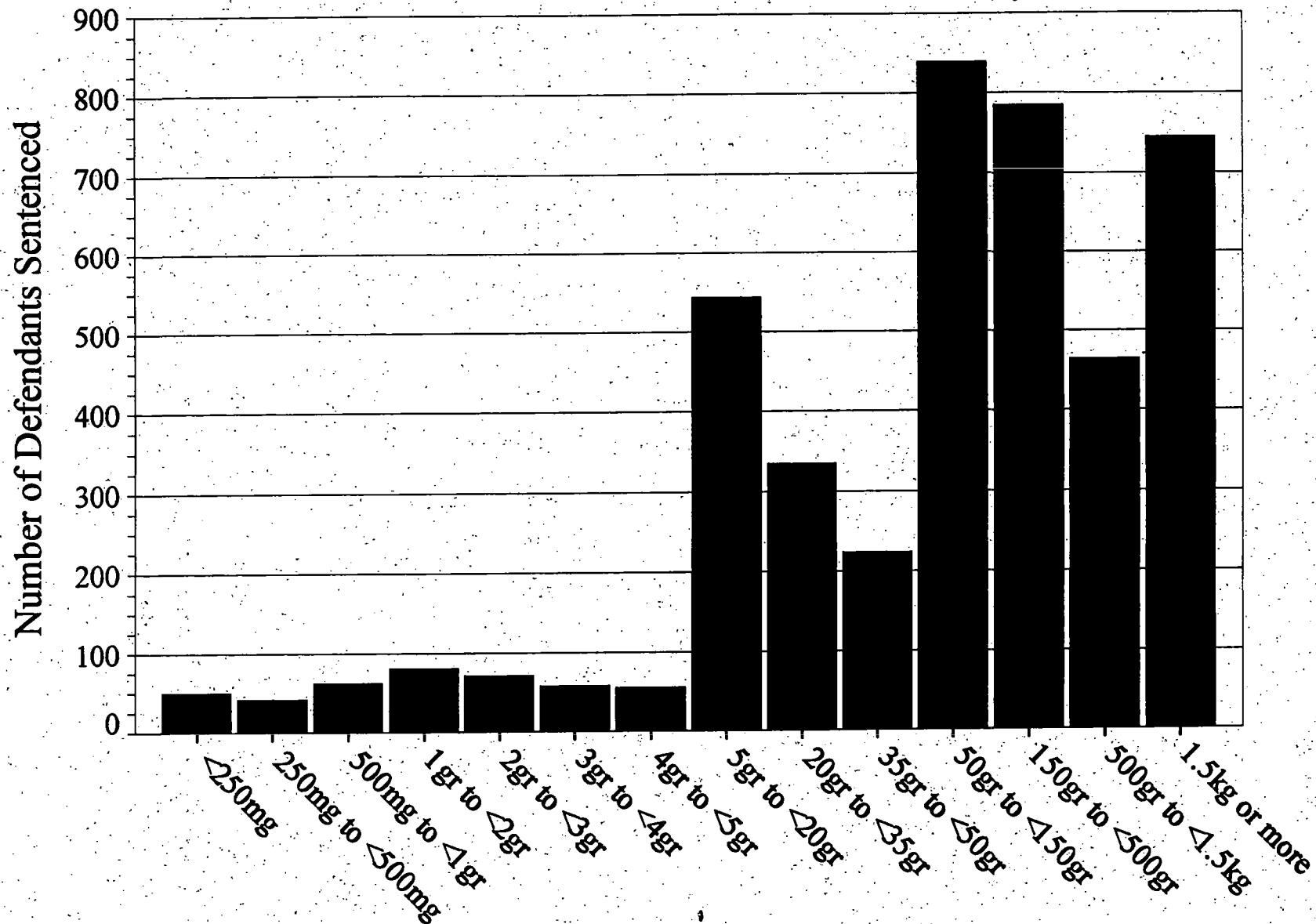
Janet Reno
Attorney General

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

CURRENT STRUCTURE DIVERTS RESOURCES FROM HIGHER LEVEL DEFENDANTS

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

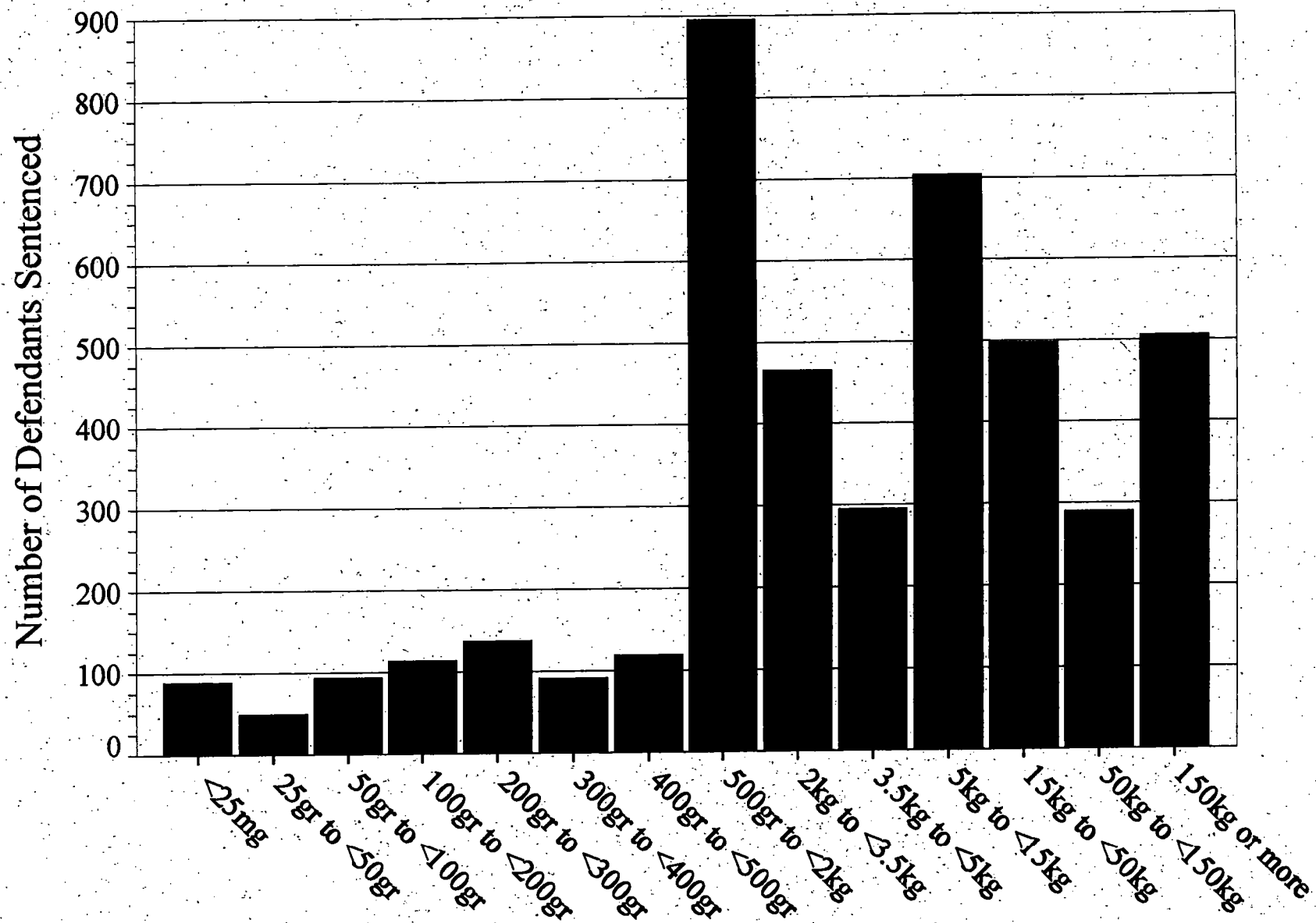
Crack Trafficking Defendants by Drug Amount - FY 1996



N = 4,355

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

Cocaine Powder Trafficking Defendants by Drug Amount - FY 1996



N = 4,350

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



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF NATIONAL DRUG CONTROL POLICY

Washington, D.C. 20503

June 20, 1997

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

South -

Dear Madam Attorney General:

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

ONDCP's findings include:

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

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

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

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

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

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

Respectfully,

[Signature]
Barry R. McGaffrey
Director

Date: 07/22/97 Time: 08:25

RReno says she favors more equity in crack cocaine, powder

MIAMI (AP) Getting caught with 5 grams of crack cocaine warrants a minimum five years in prison by current federal law. To get that much time for powder cocaine, a person would have to be caught with at least 500 grams.

Attorney General Janet Reno has recommended narrowing that 100-fold disparity, and in doing so has waded into controversial waters.

Critics of the disparity say it is unfair to blacks, who are more likely to smoke the cheaper crack, which they say is no more powerful a drug than powder cocaine. But others charge crack is far more addictive than powder cocaine and the cause of much more violence among dealers.

Reno, who recommended in a July 3 letter to President Clinton that the disparity be reduced to a 10-fold difference, appears to fall somewhere in the middle.

``Those who sell crack ought to be punished more,'' Reno told black police executives in Miami on Monday, noting the violence and havoc it wreaks on inner cities. But she said the disparity was far too extreme, and was perceived as unfair in the black community.

``I want the (sentencing policy) to be one that is fair, and one that the community thinks is fair,'' Reno told the National Organization of Black Law Enforcement Executives. ``I want it to be one that also imposes a fair, stiff penalty that fits the crime.''

Reno may have opposition from some members in Congress, where the proposed change must be approved. But her recommendation has the support of retired Gen. Barry McCaffrey, the White House drug policy adviser, and many federal judges and prosecutors as well.

Those in the federal system have argued in the past that the laws forced them to treat crack ``mules,'' or people who delivered the drug, the same as powder cocaine traffickers.

In 1995, the Federal Sentencing Commission recommended equalizing the penalties for possession and sale of the two varieties, partly because of complaints of racial bias. More than 90 percent of defendants in the more heavily penalized crack cases are black, compared with only 25 percent of powder defendants.

Federal law now requires a five-year minimum sentence for possession of 5 or more grams of crack. For powder cocaine, the threshold for a five-year sentence is 500 grams or more.

Reno wants the five-year minimum to apply to people convicted of either 25 grams of crack, or 250 grams of powder cocaine. That plan was reported in Newsweek's July 28 issue, and Clinton's receipt of a letter to that effect was reported in today's editions of The New York Times.

Clinton's spokesman Mike McCurry said the president is reviewing the recommendation and will consult with Congress.

``It clearly is not 100 to 1, that doesn't make sense, and, from a criminal justice perspective, one-to-one doesn't make any sense either,'' McCurry said.

The issue has been before the courts. A federal appeals court had rejected the racial-bias argument, and the Supreme Court declined without comment to overturn the ruling.

``Congress has not acted with a discriminatory purpose in setting greater penalties for cocaine base crimes than for powder cocaine offenses,'' the U.S. Circuit Court of Appeals for the District of Columbia ruled.

APNP-07-22-97 0843EDT

Date: 07/22/97 Time: 16:14

Clinton seeks changes in cocaine penalties

WASHINGTON (AP) President Clinton on Tuesday approved his attorney general's proposal to reduce the huge differences between sentences for selling crack and powdered cocaine and turned the plan over to an uncertain fate in Congress.

The plan offered by Attorney General Janet Reno and Clinton's drug-policy adviser, Barry McCaffrey, would lower the difference in sentencing for the two different forms of cocaine to a 10-1 ratio.

That means the mandatory five-year sentence for selling 25 grams of crack also would apply to dealing 250 grams of powder cocaine. Current law sets a five-year sentence for selling 5 grams of crack or 500 grams of cocaine, a 100-1 ratio.

"That's our position, and we're going to try to work with Congress now to achieve a resolution," Clinton said before a meeting with his budget advisers.

But it was not certain how the plan would fare on Capitol Hill, where even the chairwoman of the Congressional Black Caucus among the first to raise the issue was opposed to it.

"It's not good enough. Crack wouldn't be crack without powdered cocaine," said Rep. Maxine Waters, D-Calif. Plus, she said, "I'm just annoyed they have not discussed with me or the caucus where they were going on this issue. Most people (in Congress) don't even know about the plan."

Clinton himself had little to say about the proposal. White House spokesman Mike McCurry said that simply reflects "the reality that we have to work with Congress now to see what would be enacted into law."

McCaffrey said he believes the plan will get a favorable hearing in Congress "if we lay out the facts and figures" of the exorbitant cost of keeping thousands of people in prison for low-level drug crimes.

"There's a lot of money, \$17 billion, wrapped up in running a gigantic prison system in the United States," McCaffrey said.

The recommendation, McCaffrey predicted, may reduce cocaine sales without creating "what, at first glance, looked like a tremendous racial injustice, which was unintended, I think, when these guidelines were put down."

Critics of the disparate sentences say they are unfair to minorities who possess crack, which they say is cheaper but no worse than powder. Others say crack is far more addictive than powder cocaine because of its concentrated form.

"Parity does not reflect the fact that these are two different drugs, associated with two different types of social behavior," McCurry said. "Crack cocaine is associated with much more violent, much more dangerous, much more anti-social behavior."

Reno's recommendation, made in a July 3 letter to Clinton, appears to fall somewhere in the middle. She echoed the sentiments of an April 29 report by the U.S. Sentencing Commission, which proposed narrowing the disparity while leaving high penalties for crack possession in place.

Waters said she fears conservatives will "walk lockstep" in rejecting the proposal and will try to raise the penalties even further, while liberals will reject it because it does not call for equal sentences for cocaine crimes regardless of the drug's form.

APNP-07-22-97 1632EDT

W_R-FLPB and
Crime - Crack sentencing

Don/Leanne -

FYI on crack.
Elena

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

Record Type: Record

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

cc:

Subject: Rematch

Gingrich: More Welfare
Reform On GOP Agenda

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

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

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

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

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

**PHOTOCOPY
MISC. HANDWRITING**

members of racial
minorities.

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

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

Exemption for those in welfare-to-work programs

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

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

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

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

'We are moving in the right direction'

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

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

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

**PHOTOCOPY
MISC. HANDWRITING**

Recommendations on Crack Cocaine Sentencing

July 22, 1997

Announcement

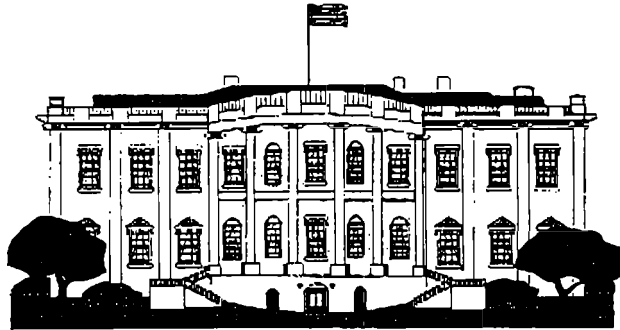
- Today, the President stated that he had accepted a recommendation from the Attorney General and Drug Director to reduce the disparity between crack and powder cocaine sentences from a ratio of 100 to 1, to a ratio of 10 to 1. Specifically, the recommendation calls for increasing the trigger for 5-year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

Background

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

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy
Washington, DC 20503



Office of Legal Affairs

FACSIMILE MESSAGE

TO: Jose Cerda

FAX: 456-7028

DATE: 8/28/97 TIME: 15:01:56 PAGES:2 + Cover

FROM: Charles A. Blanchard

FAX NUMBER: (202) 395-5543

OFFICE NO: (202) 395-4611

COMMENTS: These are the talking points that DoJ and ONDCP jointly prepared. We hope to begin using them early next week.

THE CLINTON ADMINISTRATION'S STRENGTHENED STRATEGY TO FIGHT COCAINE TRAFFICKERS

Reducing the Disparity in Federal Penalties for Crack and Powder Cocaine

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

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

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

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

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

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

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

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