



Office of Policy Development
United States Department of Justice

950 Pennsylvania Ave. NW, Room 4242
Washington, D. C. 20530-0001

TO: *Jose Cerda*

FAX: *456-7028*

FROM: *Liz Fine*

VOICE: (202)

FAX: (202) 514-5715

Total Pages (excluding this cover): *2*

Additional Message:

AGENDA

ONDCP/DOJ Crack Initiative Working Group Meeting

August 26, 1997

4:00pm

Room 4118, Main Justice

1. Finalize Talking Points
2. Review Joint Legislative Strategy
3. Discuss Target List
4. Assignments (identify and distribute tasks)
5. Administrative Matters (meeting schedule)

Congressional Targets**Senate**Top Tier

Spencer Abraham (R-MI)
Joseph Biden (D-DE)
Thomas Dashchle (D-SD)
Mike DeWine (R-OH)
Orrin Hatch (R-Utah)
Edward Kennedy (D-MA)
Patrick Leahy (D-UT)
Trent Lott (R-MS)
Jeff Sessions (R-AL)
Arlen Specter (R-PA)

Second Tier

John Breaux (D-LA)
Robert Byrd (D-WV)
John Chafee (R-RI)
Max Cleland (D-GA)
Robert Durbin (D-IL)
Russell Feingold (D-WI)
Dianne Feinstein (D-CA)
James Jeffords (R-UT)
Bob Kerrey (D-NE)
Frank Lautenberg (D-NJ)
Carol Moseley-Braun (D-IL)
Robert Torricelli (D-NJ)

House

Bob Barr (R-GA-7)
Sanford Bishop (D-GA-2)
Howard Coble (R-NC-6)
John Conyers (D-MI-14)
Elijah Cummings (D-MD-7)
Richard Gephardt (D-MO-3)
Henry Hyde (R-IL-6)
Steny Hoyer (D-MD-5)
Jesse Jackson, Jr. (D-IL-2)
Sheila Jackson-Lee (D-TX-18)
Ray LaHood (R-IL-18)
Bill McCollum (R-FL-8)
Charles Rangle (D-NY-15)
Charles Schumer (D-NY-9)
Robert Scott (D-VA-3)
Maxine Waters (D-CA-35)
Melvin Watt (D-NC-12)
Frank Wolf (R-VA-10)

CRACK COCAINE WORKING GROUP

NAME	U.S. DEPARTMENT OF JUSTICE	TELEPHONE	FAX
Ian Alberg	Office of Intergovernmental Affairs	514-3465	514-2504
Bernie Delia	Executive Office of U.S. Attorneys	514-8500	514-8340
Kristen Fennel	Office of Policy Development	514-9114	514-5715
Elizabeth Fine	Office of Policy Development	514-3824	514-5715
Carole Florman	Office of Public Affairs	616-2765	514-5331
Nick Gess	Office of Intergovernmental Affairs	514-3465	514-2504
Joe Graupensperger	Office of Legislative Affairs	514-3951	616-6773
Helaine Greenfeld	Office of Policy Development	514-6131	514-5715
Mary Harkenrider	Criminal Division	514-2419	514-9412
Joe Koehler	Executive Office of U.S. Attorneys	616-0188	514-8340
Kent Markus	Office of the Attorney General	514-3008	514-1724
Julie Samuels	Criminal Division	514-3062	514-9087
Jonathan Schwartz	Office of the Deputy Attorney General	514-4375	514-9368
Monty Wilkinson	Office of the Deputy Attorney General	514-1725	514-6897

NAME	OFFICE OF NATIONAL DRUG CONTROL POLICY	TELEPHONE	FAX
Dr. Hoover Adger	Deputy Director	395-6645	395-5653
Alejandra Castillo	Office of the Deputy Director	395-7286	395-5653
Chuck Blanchard	Office of Legal Counsel	395-4611	395-5543
Dennis Greenhouse	Bureau of State and Local Affairs	395-7252	395-6721
Rob Housman	Office of Strategic Planning	395-7225	395-6641
Leroy Jones, Jr.	Office of Legislative Affairs	395-6625	395-6640
Pancho Kinney	Office of Strategic Planning	395-6710	395-6641
Judith Leonard	Office of Legal Counsel	395-6709	395-5543
Bob Weiner	Office of Public Affairs	395-6626	395-6730

NAME	THE WHITE HOUSE	TELEPHONE	FAX
Jose Cerda	Domestic Policy Council	456-5568	456-7028
Rahm Emanuel	Executive Office of the President	456-2531	456-2530
Peter Jacoby	Legislative Affairs	456-7161	456-2604
Elena Kagen	Domestic Policy Council	456-5584	456-2878
Lianne Shimabukuro	Domestic Policy Council	456-5574	456-7028

DRAFT

The Clinton Administration Crack-Powder Initiative August 1997

I. Overview of Legislative Strategy

- Generate support among key Members of Congress -- including Judiciary Committee members, moderate Democrats and Republicans, and members of the Black Caucus.
- Identify must pass legislation and legislation that is likely to move this Session as possible vehicles for a crack-cocaine amendment.
- Demonstrate to Congress that the President and his Administration are fully behind the effort to reduce the disparity in crack and powder penalties to 10 to 1.
- Prepare for the possible need to oppose legislative measures on crack and powder cocaine that could make it harder for law enforcement to press ahead with anti-drug measures.

II. Generate Support Among Members of Congress

A. Outreach to Members of Congress and Congressional Staff

- Review list of key Members of Congress.
- During the week of 8/25/97, DOJ and ONDCP will meet with majority and minority staff of Senate Judiciary Committee and House Judiciary Committee to provide background information on the Administration's proposal and assess legislative vehicles and minority Members who are interested in playing a leadership role on the issue.
- Continue ongoing staff-level contacts during the weeks of 8/25/97 and 9/2/97 to provide background information for Members and staff -- including with the staff of Members of the Black Caucus.
- During the weeks of 9/2/97 and 9/9/97, set up meetings and phone calls for the Attorney General, the Deputy Attorney General, and General McCaffrey to meet with and call key Members of the House and Senate.
- During the weeks of 9/2/97 and 9/9/97, set up meetings and phone calls for Administration officials, including members of the Cabinet, White House officials and law enforcement officials from the Department of Justice to meet with or call key Members of Congress.
- Set up meetings or phone calls for U.S. Attorneys to talk with Members in their respective Congressional districts.
- Set ongoing strategy as we gain information about Member interest in this issue.

- Establish regular contact with Members and their staff who are interested in advancing the Administration's proposal.
- Make background materials on the crack and powder cocaine issue widely available to Members and their staff.

B. Outreach to Interested Groups and Individuals Outside the Government

- Provide information on the Administration's proposal to interested outside groups and individuals.
- Identify upcoming meetings of key law enforcement organizations and civil rights groups that would be interested in this issue and seek support for the Administration proposal.
- Encourage and identify outside support from influential individuals in the civil rights community, the law enforcement community, and state and local government and from former federal government officials, including former Department of Justice officials under the Clinton and prior administrations.
- Beginning the week of 9/2/97, set up meetings and or phone calls for Attorney General Reno and General McCaffrey to discuss the Administration's proposal with key individuals and organizations outside of the government.

C. Communications Strategy

The appropriate focus for communication efforts is not a broad public information campaign but a targeted approach to generate support by key Members of Congress.

- Set up meetings for the Attorney General and General McCaffrey with editorial boards in key congressional districts -- taking full advantage of the Attorney General and General McCaffrey's travel schedules.
- Consider possibility of speeches on the Administration's crack-cocaine proposal by the Attorney General and/or General McCaffrey and by other surrogates in key congressional districts.
- Make appropriate use of radio talk shows in key congressional districts.
- Consider utility of an op ed piece by the Attorney General and General McCaffrey or by other administration officials in newspapers in key districts or influential publications.

III. Identify Legislative Vehicles

- Consider possible introduction of legislation.
- Monitor the status of Juvenile Justice legislation. Press for inclusion of our proposal as an amendment on the Senate floor -- if the Senate takes up the measure this session.
- Monitor appropriations measures for possible inclusion of our proposal as an amendment on the House side.

IV. Demonstrate Administration Support for Proposed Restructuring of Crack and Powder Cocaine Penalty Structure

- Review Presidential statements on crack and powder cocaine issue and assess possibility of obtaining a statement by the President in support of Administration proposal.
- Utilize officials from across the Administration to seek support of Congress for the Administration's proposal.
- Continue to emphasize that the Administration's recommendations are part of a strong anti-drug program being deployed by agencies across the Clinton Administration. Discuss the proposal in context of other anti-drug efforts being announced or discussed on the Hill or in public.

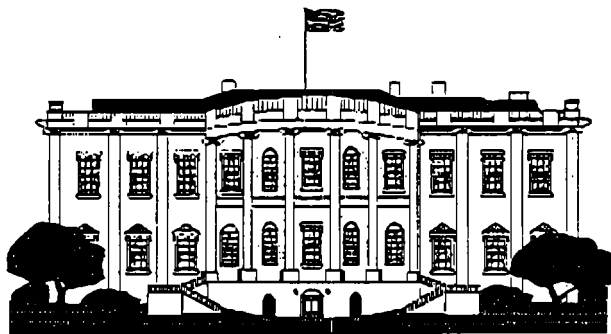
V. Prepare to Oppose Measures that Work Against Federal Government's Efforts to Control Illegal Drugs

- Monitor legislation that has been introduced in the House and Senate that deals with crack and powder cocaine. This includes:
 - The Abraham-Hatch proposal(S. 260) to reduce disparity in crack and powder cocaine sentences to 20 to 1 by reducing trigger amount for powder cocaine to 100 grams.
 - Legislation pending in the House and Senate to bring crack and powder penalties into parity -- with 5 grams of either substance triggering a 5-year mandatory minimum sentence.
 - The Crack Cocaine Equitable Sentencing Act of 1997 -- introduced in the House to bring crack and powder cocaine to a 1 to 1.
- Work closely with sponsors and supporters of legislation that the Administration would oppose.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Washington, DC 20503



OFFICE OF NATIONAL DRUG CONTROL POLICY

FACSIMILE MESSAGE**TO: Elena Kagan & Jose Cerda****FAX: 456-2878 456-5557****DATE: 8/22/97 TIME: 18:24:26 PAGES:3 + Cover****FROM: PATRICIA A. SEITZ, DIRECTOR, OFFICE OF LEGAL COUNSEL****FAX NUMBER: 202-395-5543****OFFICE NO: 202-395-6621****COMMENTS:**

Elena and Jose: Understand from DoJ that you received its draft talking points. Attached are ONDCP's. Still working the joint version (Chuck is drafting the latest). Will send it to you ASAP.

Any word on a change in the release of the McCaffrey/Reno letter to the President? Pat

STRENGTHENING FEDERAL CRACK AND COCAINE LAW ENFORCEMENT: THE ADMINISTRATION'S 10-1 CRACK/POWDER SENTENCING REVISIONS

To ensure our laws are as effective as possible, the Administration conducted an extensive review of the problems of crack and powder cocaine in our communities. As a result, the Administration proposes revising the federal cocaine sentencing laws: *the mandatory minimum sentence for crack should be triggered at 25 grams and the minimum for powder should be triggered at 250 grams.*

This revision targets dangerous mid- and upper level traffickers:

- Current federal law: a defendant dealing 5 grams of crack gets a mandatory five-year prison sentence.
 - 5 grams of crack is typical of a low-level street seller.
 - The typical mid-level dealer deals in ounce or multi-ounce quantities. (1 ounce=28 grams.)
- Guaranteed long sentences for low-level crack dealers provide an incentive to federal law enforcers to focus on street sellers. Mid- and upper level traffickers should be their prime targets.
 - The current average powder cocaine sentence is 60 months; for crack the average is 97 months.
 - In 1995, 47.9 % of all crack convictions are of street-level sellers.
- Crack is derived from cocaine. Almost all cocaine enters the U.S. as powder. Increasing the focus on cocaine trafficking better combats both crack and powder threats.
- The Administration's revision realigns sentencing policy with enforcement efforts targeting the dealers and traffickers who supply the low-level street sellers.

The Administration's revision better allocates federal, state and local resources:

- State and local law enforcement are best suited to tackle local crack and powder threats.
- The federal government -- with enforcement tools, such as RICO and the drug kingpin statutes -- is best suited to attack the international and inter-state drug distribution chains that feed these local threats.
- Federal efforts against street-level sellers divert scarce enforcement resources away from higher priorities -- targeting large-scale and more serious drug traffickers.
- Every low-level street seller imprisoned for five years costs the taxpayers \$100,000; money better spent targeting high level traffickers.
- The revision would ensure that federal resources are allocated where they have the most impact.

The Administration's revision is tough on crack dealers:

- The revision's 10-1 ratio recognizes that crack is still a greater threat than powder cocaine.
 - In 1996, 24.7% of crack convictions involved weapons; as opposed to 11% for powder convictions.
- The 10-1 ratio maintains tough penalties for all mid- and upper level crack dealers and traffickers.
- Under the revision, federal law enforcement will still target even low-level crack sellers if the individual can provide information that can be used against their higher-ups; is part of an organized dealing

network; uses a weapon; uses a minor in trafficking; or deals near a school.

- *Under the federal sentencing guidelines, the presence of these and other aggravating factors guarantee longer, more severe penalties regardless of the amount of crack involved.*

The revision ensures that tough penalties for crack dealing fit the crime and the threat:

- The current sentencing system was put in place because crack use, and crack-driven violence and crime were escalating at dangerous rates.
- Today's crack market has stabilized.
- Today's crack associated violence is declining.
 - From 1990 to 1996, weapon use in federal crack crimes dropped roughly [--] percent.
- Today's crack associated crime is declining.
 - A 1997 National Institute for Justice study found that crack use among arrestees fell from 55 percent in 1987, to 33 percent in 1996.
 - The sharpest decreases in arrestee crack use occurred in cities, such as New York, Detroit, Philadelphia, and Washington, which were hardest hit during the 1980s.
- The revision keeps in place tough penalties for crack dealing. However, the revision better allocates our resources in keeping with today's crack threats.

Reaching parity by increasing powder sentences would only exacerbate the current problems:

- Such a change would cost taxpayers billions of dollars in new expenditures.
 - Increasing powder penalties (using 5 grams as the 5 year sentence trigger) would cost taxpayers roughly \$1.2 billion after the first five years, and \$20.8 billion after 30 years.
- Larger penalties for still smaller amounts of powder would exacerbate the misallocation of scarce federal resources away from mid- and upper level traffickers toward low-level street sellers.
- Such a change would not address the widespread perceptions of unfairness that surround the current sentencing structure. The impacts of such a change could worsen these perceptions.

The revision will help unify efforts against crack by reducing perceptions of discrimination:

- The current sentencing system has created perceptions of discrimination within minority communities that have been most impacted by the mandatory minimum.
 - African-Americans make up 88% of those convicted on federal crack cocaine dealing charges.
- America's crack and cocaine problems are not black or white, Hispanic or Asian; our drug problems are as multiracial as the face of America.
 - For example, demand for crack is driven largely by whites, who consume roughly 53% of the nation's crack.
- Perceptions of discrimination divide what should be a united effort to deal with drugs. When communities lose confidence in the fairness of the law, our ability to enforce the law suffers.
- By more effectively targeting the real drug threats, the revisions will reduce perceptions that our laws discriminatorily target a single racial group.

The public response backs the Administration's proposal:

"President Clinton took a step forward toward fairer sentencing yesterday when he proposed narrowing the disparity that treats crimes involving crack cocaine, popular in poor black neighborhoods, 100 times more harshly as crimes involving powder cocaine, popular among whites. . . . Moreover, critics and many Federal judges have questioned the five-gram crack threshold, since it punishes low-level dealers as harshly as those at a high level, and hits blacks more severely than whites. [In proposing the change, McCaffrey and Reno] recognized the danger of turning a blind eye to a disparity that 'has become an important symbol of racial injustice in our criminal justice system.' By now, so should Congress."

The New York Times, July 23, 1997, p. ---

"After far too long and far too much posturing, Atty. Gen. Janet Reno and the White House drug policy director [Barry McCaffrey] have stood up for fairer penalties for cocaine possession. . . . Now the question is will Congress have the common sense to follow suit. . . . Reno and McCaffrey's plan is nonetheless a welcome signal that good sense may be returning to the drug wars. Congress should take note."

The Los Angeles Times, July 23, 1997, B6

"President Clinton is moving toward greater fairness in the lopsided system for sentencing drug offenders convicted of cocaine trafficking. [The President's revision] is a good starting point It's a contribution to a sensible drug policy and racial fairness too."

The Washington Post, July 30, 1997, p. --

"Change is overdue Narrowing the gap makes sense. . . . Congress should recognize this and avoid making the Reno-McCaffrey proposal into another 'Who's toughest on drugs diversion.'"

The Christian Science Monitor, July 28, 1997, p. 20

"This proposal hardly represents a softening of attitudes toward drug use. It does, or should, free criminal justice resources now spent on low-level dealers. . . . Reducing this huge disparity shows a refreshing willingness to examine the get-tough policies and make adjustments as warranted."

The Miami Herald, July 24, 1997, p. 24A

"Now if only Congress looks at the big picture, we might get a drug policy that is both more effective and fairer."

Newark Star Ledger, July 26, 1997, p. 15

"President Clinton has taken a step in the right direction by endorsing the revisions in cocaine laws recommended by Attorney General Reno and drug czar Barry McCaffrey. . . . [T]here is no defense for a policy that squanders resources and fosters racial discrimination. Congress should adopt the White House proposal for this overdue revision of drug laws."

San Francisco Chronicle, July 28, 1997, p. A20

"The administration's proposal would be a major step toward eliminating the perception of unfairness in federal drug laws."

St. Petersburg Times, July 28, 1997, p. 6A

"If lawmakers won't end the disparity, they should at least narrow it sharply."

Long Island Newsday, July 27, 1997, A20

OhD



Office of Policy Development
United States Department of Justice

950 Pennsylvania Ave. NW, Room 4242
Washington, D. C. 20530-0001

Patricia Seitz / CHUCK BLANCHARD 5-4611 395-5543
Dennis Greenhouse 395-6721
TO: Rahm Emanuel FAX: 456-6423
Jose Cerda 456-5557
Elena Kagan 456-2878
FROM: Monty Wilkinson and Elizabeth Fine VOICE: (202) 514-5225
FAX: (202) 514-5715

Total Pages (excluding this cover): -3-

Additional Message:

THE CLINTON ADMINISTRATION'S STRENGTHENED STRATEGY TO FIGHT COCAINE TRAFFICKERS

Reducing the Disparity in Federal Penalties for Crack and Powder Cocaine

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

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

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

This new penalty structure makes sense for several reasons:

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

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

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

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

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

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

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

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

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

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

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



SHIMABUKUR L @ A1
07/28/97 07:55:00 PM

Record Type: Record

To: Jose Cerda III, Leanne A. Shimabukuro

cc:

Subject: EDITORIAL: JUSTICE HAS FALLEN THROUGH THE CRACK

Date: 07/28/97 Time: 18:12

EDITORIAL: Justice Has Fallen Through the Crack

Akron Beacon Journal, Ohio
Knight-Ridder/Tribune Business News

Jul. 28--In 1986, Congress enacted a federal sentencing law for drug possession that is very hard to justify. With drug-related violence spreading in many cities, the pressure was on to be tough on crime, and Congress responded by imposing a five-year minimum sentence for those convicted of possessing cocaine.

The penalty is stiff, but it is a powerful tool, coupled with treatment for the addicted, against the crime and violence associated with drug addiction. The federal penalties for trafficking in drugs are even stiffer, ranging from a minimum sentence of 10 years to life in prison without parole.

But in clamping down on cocaine possession, Congress made a distinction that is patently unjust. The five-year minimum sentence kicked in for someone convicted of possessing 5 grams of crack cocaine.

To draw the same sentence, someone who favored powder cocaine had to have 500 grams of the stuff in his or her possession.

As some supporters explained then, the disparity was because crack, which is cooked from the powder into hard "rocks," provoked more street violence and also was more powerfully addictive than identical amounts in powder form.

Last week, Attorney General Janet Reno and drug-policy director Gen. Barry McCaffrey recommended that the disparity be narrowed. They recommend that the five-year sentence be imposed for possessing 25 grams of crack or 250 grams of powder cocaine.

This urging represents a movement toward more equitable justice, as a similar recommendation two years ago was rejected.

However, narrowing the disparity doesn't make the law fair. The disparity should be eliminated altogether. Cocaine in either form is a disaster and should be treated with equal severity.

As McCaffrey acknowledges, the drugs are the same, and they are equally addictive. The association with violence is as likely with cocaine powder as with crack. The violence attributed to cocaine cartels in Colombia should dispel any doubts.

The best argument for eliminating the disparity is made by Reno and McCaffrey, who said it "has become an important symbol of racial injustice in the criminal justice system."

Why? Because statistics indicate that users of the cheaper crack cocaine tend to be predominantly black, urban and low income. Users of powder cocaine

tend to be white. The sentencing law thus sweeps more blacks into prison for possessing 5 grams of crack, while a user of powder cocaine can possess 499 grams and not draw the mandatory sentence.

Reno and McCaffrey continue: "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."

As attorney general and drug policy director, Reno and McCaffrey ought to know. It will be highly unfortunate if President Clinton and Congress turn a blind eye to this most obvious unfairness.

ON THE INTERNET:

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Half-Right on Cocaine

To the Editor:

The Clinton Administration proposes to replace the 100-to-1 disparity between crack and powder cocaine mandatory sentencing guidelines with a more moderate 10 to 1 ratio (editorial, July 23).

While I agree that the gap should be eliminated, I caution that the Administration's plan is misguided. The Administration would soften the law, raising the threshold at which the mandatory minimum for crack is applied from 5 grams to 25.

If we are serious about winning the war on drugs, zero tolerance must be more than just a slogan. It must be the law. I have introduced legislation, co-sponsored by Representative Gerald B. H. Solomon of New York, that increases the punishment imposed for selling powder cocaine to that for dealing crack. The drug war will not be won with concessions, but only with a dedication of resources and a commitment to tough laws. BILL PASCRELL JR.
Member of Congress, 8th Dist., N.J.
Washington, July 25, 1997

FILE:
CRIME - CRACK

Los Angeles Times

DATE: 7-29-97
PAGE: A-1

UC Affirmative Action Halt May Clash With U.S. Law

■ **Education:** Clinton aide says schools may be breaking civil rights statutes. Statement startles state officials.

By DAVID G. SAVAGE
TIMES STAFF WRITER

WASHINGTON—A top Clinton administration official says the University of California may have violated federal civil rights law by dropping its affirmative action rules and relying on test scores and grades as a basis for selecting new students.

The law forbids not just different treatment of blacks and Latinos, but use of standards that have "a discriminatory effect" on minorities. Judith Winston, the Education Department's general counsel, said in an interview "Particular race-neutral criteria [such as tests] can have a discriminatory effect" on black and Latino applicants, she said, given that minority students as a group tend to score lower on standardized exams.

Winston declined to comment directly on a complaint filed with the federal government that challenges the UC system's decision to end its affirmative action program for student admissions. But her remarks Thursday indicated that the administration's view of the law is closely aligned with the position taken by the Mexican American Legal Defense Fund, the NAACP Legal Defense Fund and other groups that filed the complaint.

The complaint, filed in March, said the use of strict academic standards violates federal law because it "results in substantial exclusion of qualified minority applicants."

In response, the Education Department announced two weeks ago that it had begun an official investigation of the UC law schools at Berkeley, Los Angeles and Davis because of sharp drop-offs in the number of minority students admitted.

The University of California as a whole receives more than \$1.1 billion in federal funds. In theory, the Education Department could cut off those funds if the UC system is found to violate civil rights law.

President Clinton has urged his legal advisors "to use federal law to the maximum extent" to promote diversity, and the Education Department's lawyers have taken the lead.

A spokesman for Gov. Pete Wilson called Winston's statements "shocking."

It turns civil rights law on its head, to say a "colorblind admissions policy" is discriminatory, said spokesman Sean Walsh. "In essence, the Education Department and the Clinton administration are still arguing for discrimination and quotas."

A UCLA official also said he was taken aback by Winston's comments.

"That sounds frightening," said Michael Rappaport, dean of admissions at the UCLA Law School. "I hope that neither the federal government nor MALDEF is suggesting an academic institution can't use academic criteria when evaluating candidates for its academic program."

The dispute was triggered by the 1995 vote of the UC Board of Regents barring the use of race, ethnicity or gender as criteria for admitting students. That policy took effect this year in the graduate programs, including the three law schools. Admissions officials now rely mostly on measures of academic merit in selecting applicants, but Rappaport said they also gave some preference to applicants who came from low-income families or had an otherwise disadvantaged background.

As a result of the new standards, the UCLA Law School said it admitted 80% fewer black students and 35% fewer Latinos to this fall's incoming class. Boalt Hall at Berkeley may have no black students in its fall class because none of the 14 black students who were admitted have so far said they would enroll.

Federal civil rights law says schools and colleges that receive federal funds may not subject any

person "to discrimination... on the ground of race, color or national origin." In the past, the Supreme Court has said that means individuals may not be treated differently because of their race or ethnic background.

But in some employment cases, the court has gone further and said a seemingly neutral standard can be illegal if it has a "disparate impact" or "discriminatory effect" on minorities of women. For example, some police and fire departments were forced to drop minimum height and weight rules because they were judged to unfairly exclude women.

These employment-law standards generally have not been used in the education area. But the comments by Winston, a Clinton appointee, made it clear that her office believes that in enforcing civil rights laws for colleges and universities, the "discriminatory effect" of using test scores and grades to determine admission must be evaluated.

She added that to justify the use of academic standards that exclude most minorities, school officials would have to prove "those are the best measures" for selecting students and "there are no other non-discriminatory alternatives available."

Two lawyers who have fought on opposite sides of an affirmative action battle said they doubt that approach would be upheld by the Supreme Court.

"She is voicing a theory that does not have support in the courts," said University of Texas Law School professor Samuel Issacharoff, a defender of affirmative action. "I'm not aware of any legal support for the idea that would say the Harvard Law School, for example, cannot accept only the cream of the crop if doing so would have an impact on a minority group."

Terence Pelt, an attorney for the Center for Individual Rights in Washington, which opposes affirmative action, agreed. "It's a real stretch on their part," he said.

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

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

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

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

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

REVISED PENALTY STRUCTURE FOR CRACK AND POWDER COCAINE

 (a) AMENDMENTS RELATING TO 10-YEAR MINIMUMS

Sections 401(b)(1)(A) of the Controlled Substances Act and 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 841(b)(1)(A) and 960(b)(1)) are each amended --

(1) by striking "5 kilograms" and inserting "2500 grams";
and

(2) by striking "50 grams" and inserting "250 grams".

(b) AMENDMENTS RELATING TO 5-YEAR MINIMUMS

Sections 401(b)(1)(B) of the Controlled Substances Act and 1010(b)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 841(b)(1)(B) and 960(b)(2)) are each amended --

(1) by striking "500 grams" and inserting "250 grams";
and

(2) by striking "5 grams" and inserting "25 grams".

(c) AMENDMENT RELATING TO CRACK POSSESSION

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by striking the fourth sentence.

Crack/Powder Sentencing Legislation
105th Congress
September 8, 1997

HOUSE BILLS

H.R. 332

Powder-Crack Cocaine Penalty Equalization Act of 1997

Introduced January 9, 1997

Sponsor: Gerald Solomon (R-NY)

(3 cosponsors: Johnson (R-TX), Goss (R-FL), Tiahrt (R-KS))

Committee Referrals: Commerce, Judiciary

Synopsis: H.R. 332 would amend the Controlled Substances Act (21 U.S.C. § 841(b)) to increase the penalties for trafficking in powder by reducing the amount of powder necessary to gain a 10-year minimum sentence from 5,000 grams to 50 grams (the same level as for trafficking in crack), and reducing the amount of powder necessary to gain a 5-year minimum sentence from 500 grams to 5 grams (the same level as for crack). 1:1 sentencing ratio.

H.R. 332 would amend the Controlled Substances Import and Export Act (21 U.S.C. §960) to increase the penalties for importing or exporting powder by reducing the amount of powder necessary to gain a 10-year minimum sentence from 5,000 grams to 50 grams (the same level as for importing or exporting crack), and reducing the amount of powder necessary to gain a 5-year minimum sentence from 500 grams to 5 grams (the same level as for crack). 1:1 sentencing ratio.

H.R. 2031

Crack-Cocaine Equitable Sentencing Act of 1997

Introduced June 24, 1997

Sponsor: Charles Rangel (D-NY)

(19 cosponsors: Carson (D-IN), Clayton (D-NC), Dellums (D-CA), Flake (D-NY), Hastings (D-FL), Lewis (D-GA), Thompson (D-MS), Green (D-VI), Conyers (D-MI), Dixon (D-CA), Hilliard (D-AL), Norton (D-DC), Towns (D-NY), Clay (D-MO), Cummings (D-MD), Ford (D-TN), Jefferson (D-LA), Payne (D-NJ), Rush (D-IL))

Committee Referrals: Commerce, Judiciary

Long Title: To amend the Controlled Substances Act and the Controlled Substances Import and Export Act to eliminate certain mandatory minimum penalties relating to crack cocaine offenses.

Synopsis: H.R. 2031 would amend the Controlled Substances Act (21 U.S.C. 841(b)(1)) to decrease penalties for crack trafficking by raising the level of crack required to gain a

10-year minimum sentence from 50 grams to 5,000 grams (the same level as for powder), and raising the level of crack required to gain a 5-year minimum sentence from 5 grams to 500 grams (the same level as for powder). 1:1 sentencing ratio.

H.R. 2031 would amend the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) to decrease penalties for importing or exporting crack by raising the level of crack required to gain a 10-year minimum sentence from 50 grams to 5,000 grams (the same level as for powder), and by raising the level of crack required to gain a 5-year minimum sentence from 5 grams to 500 grams (the same level as for powder). 1:1 sentencing ratio.

H.R. 2229

Get Tough on Cocaine Act of 1997

Introduced July 23, 1997

Sponsor: Bill Pascrell (D-NJ)
(No cosponsors)

Committee Referrals: Commerce, Judiciary

Long Title: 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

Synopsis: H.R. 2229 would amend the Controlled Substances Act (21 U.S.C. § 841(b) to increase the penalties for trafficking in powder by reducing the amount of powder necessary to gain a 10-year minimum sentence from 5,000 grams to 50 grams (the same level as for trafficking in crack), and reducing the amount of powder necessary to gain a 5-year minimum sentence from 500 grams to 5 grams (the same level as for crack). 1:1 sentencing ratio.

H.R. 2229 would amend the Controlled Substances Import and Export Act (21 U.S.C. §960) to increase the penalties for importing or exporting powder by reducing the amount of powder necessary to gain a 10-year minimum sentence from 5,000 grams to 50 grams (the same level as for importing or exporting crack), and reducing the amount of powder necessary to gain a 5-year minimum sentence from 500 grams to 5 grams (the same level as for crack). 1:1 sentencing ratio.

H.R. 2229 also would require the DEA Administrator to prepare an annual report to Congress detailing the number of federal arrests for crack and powder offenses, with a breakdown of the age, gender, and race of the arrestees, and the amounts of the controlled substances involved.

SENATE BILLS

S. 3

Omnibus Crime Control Act of 1997

Introduced January 21, 1997

Sponsor: Orrin Hatch (R-UT)

(28 cosponsors: Lott (R-MS), Abraham (R-MI), Allard (R-CO), Ashcroft (R-MO), Craig (R-ID), D'Amato (R-NY), Dewine (R-OH), Domenici (R-NM), Enzi (R-WY), Faircloth (R-NC), Gorton (R-WA), Grams (R-MN), Grassley (R-IA), Hagel (R-NE), Helms (R-NC), Hutchinson (R-AR), Kyl (R-AZ), Murkowski (R-AK), Nickles (R-OK), Roberts (R-KS), Smith (R-NH), Thomas (R-WY), Thurmond (R-SC), Warner (R-VA), Coverdell (R-GA), Mack (R-FL), McCain (R-AZ), Sessions (R-AL))

Committee Referrals: Judiciary

Long Title: To provide for fair and accurate criminal trials, reduce violent juvenile crime, promote accountability by juvenile criminals, punish and deter violent gang crime, reduce the fiscal burden imposed by criminal alien prisoners, promote safe citizen self-defense, combat the importation, production, sale and use of illegal drugs, and for other purposes.

Synopsis: Sec. 602 of S. 3 would amend the Controlled Substances Act (21 U.S.C. § 841(b)) to increase the penalties for trafficking in powder by reducing the amount of powder necessary to gain a 10-year minimum sentence from 5,000 grams to 1,000 grams, and reducing the amount of powder necessary to gain a 5-year minimum sentence from 500 grams to 100 grams. 20:1 sentencing ratio.

S. 209

[No short title]

Introduced January 28, 1997

Sponsor: John Breaux (D-LA)

(No cosponsors)

Committee Referrals: Judiciary

Long Title: To increase the penalty for trafficking in powdered cocaine to the same level as the penalty for trafficking in crack cocaine, and for other purposes.

Synopsis: S. 209 would amend the Controlled Substances Act (21 U.S.C. § 841(b)) to increase the penalties for trafficking in powder by reducing the amount of powder necessary to gain a 10-year minimum sentence from 5,000 grams to 50 grams (the same level as for trafficking in crack), and reducing the amount of powder necessary to gain a

5-year minimum sentence from 500 grams to 5 grams (the same level as for crack). 1:1 sentencing ratio.

S. 260

[No short title]

Introduced February 4, 1997

Sponsor: Spencer Abraham (R-MI)

(7 cosponsors: Hatch (R-UT), Feinstein (D-CA), Grassley (R-IA), Kyl (R-AZ), Hutchinson (R-AR), Roberts (R-KS), Robb (D-VA))

Committee Referrals: Judiciary

Long Title: To amend the Controlled Substances Act with respect to penalties for crimes involving cocaine, and for other purposes.

Synopsis: S. 260 would amend the Controlled Substances Act (21 U.S.C. § 841(b)) to increase the penalties for trafficking in powder by reducing the amount of powder necessary to gain a 10-year minimum sentence from 5,000 grams to 1,000 grams, and reducing the amount of powder necessary to gain a 5-year minimum sentence from 500 grams to 100 grams. 20:1 sentencing ratio.

Race and Drugs: Perception and Reality
New Rules for Crack Versus Powder Cocaine
by Barry R. McCaffrey, Director
Office of National Drug Control Policy

"Would you close your eyes for a second, envision a drug user, and describe that person to me?" This question appeared on a survey, the results of which were published in 1995 in the *Journal of Alcohol and Drug Education* (Burston, Jones, and Robertson-Saunders, "Drug Use and African Americans: Myth Versus Reality"). 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 U.S. drug users. Before falsely stigmatizing any minorities, we should bear in mind that more whites than blacks use *both* forms of cocaine (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 for "crack" versus powder cocaine reflects and contributes to racial tension. At present, federal laws pertaining to crack cocaine are a hundred 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 five hundred 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. (Crack accounts for about half of total U.S. cocaine consumption.) For crimes involving 50 to 150 grams of cocaine, crack defendants received median sentences of 120 months in prison compared to 18 months for powder. Since nearly all cocaine is smuggled into our country and transported over state lines in powdered form (one gram of powder cocaine converts into .89 grams of crack), 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 regarding 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 ten times worse than powder -- not a hundred times worse, as is currently the case. This difference would reflect -- without gross exaggeration -- 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. Crack use in America, including new initiates, has stabilized since 1988. The estimated number of chronic cocaine users is 2.1 million. The intense psychotropic effect and addictive potential of crack are similar to powder cocaine when injected, and there is no mandatory minimum for powder. In keeping with a significant drop in national crime rates, violence has decreased from anonymous, open-air drug markets where crack is sold.

Federal drug enforcement efforts should target drug distribution chains, particularly interstate and international traffickers. Federal agencies should also target mid-level dealers when they can provide information about drug distribution organizations. The current sentencing structure for cocaine undermines the proper division of responsibility between state and federal law enforcement. Lower-level crack dealers should be prosecuted by state and local authorities. Imprisoning thousands of small-scale crack dealers for long periods of time is a costly, counter-productive practice that will not solve our nation's drug problem.

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 the federal and state system. 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 United States now incarcerates six to ten times the number of people (relative to total population) imprisoned by other Western nations.

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. To this end, we have asked Congress to budget more money for drug courts. Two hundred drug courts already offer effective alternatives to non-violent offenders who give up drugs. Changing federal sentencing pertaining to cocaine is a major step towards a drug policy that is perceived by all Americans as both fair and effective.

The five hundred to five disparity in crack versus powder cocaine sentencing guidelines has been bad drug policy, has resulted in poor use of valuable law enforcement, and has created a public perception of gross injustice. With the bipartisan support of Congress, it's time we fixed the situation. Both crack and powder cocaine are pure evil and must be confronted through rational but tough-minded policy, which includes strong law enforcement, effective drug prevention targeted on children, and treatment for the misery of the addicted.

EMPOWER AMERICA

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

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John Sitten
Ward W. Woods

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

Dear Senators Hatch and Leahy:

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

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

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

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

Opponents of the current law argue that law enforcement 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

EMPOWER AMERICA

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

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Washington, D.C. 20510

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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

THE WHITE HOUSE
WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM:

SAMUEL BERGER *for (K)*

JOHN HILLEY *John Hilley*

BRUCE REED *Bruce*

CHARLES RUFF

SUBJECT: Response to Representative Maxine Waters Regarding
Programs to Combat Drug Use

Purpose

To reply to a letter from Representative Waters.

Background

Maxine Waters wrote you with two general requests (Tab II). She is outraged at the sentencing disparity between crack and powder cocaine offenders, and she wants a timely and exhaustive answer to the allegations that CIA and DEA were involved with the Contras in bringing drugs into the United States. Your response lays out your policy on reviewing the sentencing guidelines. It also states that the CIA and Justice IG reports will be completed by the end of September. We have left unanswered her request for you to mention these topics at an earlier press conference, but we will provide copies of your response to General McCaffrey, AG Reno and George Tenet to make them aware of the importance you attach to these issues. CIA, Justice and ONDCP have all coordinated on this response.

RECOMMENDATION

That you sign the letter at Tab A.

Attachments

Tab A Response to Representative Maxine Waters

Tab B Incoming Correspondence

cc: Vice President
Chief of Staff

THE WHITE HOUSE

WASHINGTON

Dear Maxine:

Thank you for writing to share your views about the effect of drug trafficking on the African American community. I, too, am deeply concerned about the crack addiction, distribution and associated violence that continue to plague many American communities.

At the same time, I fully understand your concern about the substantial disparity between sentences for crack- and powder cocaine-related offenses. I commend the U.S. Sentencing Commission for moving forward with recommendations to Congress to reduce the disparity between crack and powder cocaine penalties. These recommendations, released on April 29 of this year, will be given serious consideration by my Administration. I have assigned Director McCaffrey and Attorney General Reno to review the Commission's recommendations and to report back to me with 60 days after their release.

With respect to allegations that CIA and DEA were involved with the Contras in bringing drugs into the United States, I remain committed to getting to the bottom of this story. America and the black community deserve no less. We expect both the CIA and Justice reports to be thorough and completed by the end of September. We will then brief the relevant committees and undertake to make both reports public to the extent possible.

I am sending copies of this letter to the Attorney General, the Acting Director of Central Intelligence Agency and General McCaffrey to indicate how strongly I feel about both these issues.

Sincerely,

The Honorable Maxine Waters
House of Representatives
Washington, D.C. 20515-0535

cc: Attorney General Reno
Acting, Director of Central Intelligence Tenet
General McCaffrey (ONDCP)

Congress of the United States
House of Representatives
Washington, DC 20515-0535

PLEASE REPLY TO:
230 CANNON HOUSE OFFICE BLDG.
☐ WASHINGTON, DC 20515-0825
(202) 225-2201
FAX (202) 225-7864
DISTRICT OFFICE
10124 S. BROADWAY
SUITE 1
☐ LOS ANGELES, CA 90003
(213) 757-8900
FAX (213) 757-9308

February 24, 1997

1484

William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C.

Dear Mr. President:

I have been working with the Director of the Office of National Drug Control Policy (ONDCP), Barry McCaffrey and Director of the Office of Management and Budget, Frank Raines on programs to combat drug use in our society. The eradication of drugs is the number one priority of the Congressional Black Caucus (CBC) for this term of Congress. The CBC will be unveiling its program to deal with the drug program in the very near future.

I have worked well with ONDCP and am delighted with the overall tenor and thrust of this year's drug strategy, especially the proposed increases in drug treatment, prevention, and education. We believe that these emphases are crucial components of a successful long-term program of drug abuse reduction.

In addition, there are two other issues which are of primary concern to Members of the Congressional Black Caucus and their constituents. Our community is outraged by the disparity in sentencing between crack and powder cocaine. We have been inundated with letters from prisoners, their families, and other concerned citizens who have seen extremely lengthy prison terms applied to small- and first-time offenders for crack-related offenses. It is impossible for us to discuss the problem of drugs in our communities without addressing this concern.

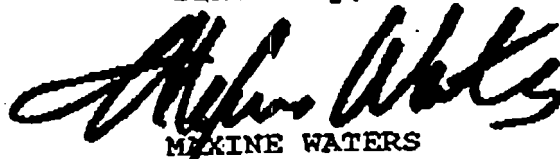
To that end, would it be possible for you, at your press conference tomorrow, to give recognition to this issue? It would be useful if you described your awareness that this issue is of great concern to many Americans, and pursuant to Congressional directive and the U.S. Sentencing Commission's charge, that the disparity question will be reviewed again this year.

Second, the startling revelations of alleged Central Intelligence Agency (C.I.A.) and Drug Enforcement Agency complicity in the drug trade with the Nicaraguan Contra in the 1980s have shocked much of America. This is an issue that has created more debate and discussion among African-Americans in particular than any public policy issue in recent times.
President Clinton

As you know, both the Justice Department and C.I.A. Inspectors General (I.G.) are in the process of conducting investigations into these allegations. I would like to know whether you could, again, during your press conference tomorrow, acknowledge these investigations. Although to date, no firm conclusions have been drawn from either the Justice Department or C.I.A.'s I.G. of U.S. government wrongdoing, your mention of the investigations and the significance of their timely, thorough, and exhaustive completion would show many Americans we are serious about getting real answers to these questions once and for all.

Thank you for your consideration of this matter. I look forward to working with you in the future.

sincerely,



MAXINE WATERS

Lewy Jones 56625

McCaffrey needs comment on sentencing

THE WHITE HOUSE

WASHINGTON

Dear Maxine:

Thank you for writing to share your views about the effect of drug trafficking on the African American community. I, too, am deeply concerned about the crack addiction, distribution and associated violence that continue to plague many American communities.

At the same time, I fully understand your concern about the substantial disparity between sentences for crack- and powder cocaine-related offenses. ~~I believe that the sentencing structure should reflect the fact that all crack starts as powder. My Administration strongly endorses the Sentencing Commission's planned review of this issue and looks forward to receiving its recommendations. Meanwhile, I have instructed the Attorney General to develop enforcement strategies that target equally those who distribute crack and those who sell powder with the knowledge that it will be converted into crack. We must go after drug traffickers at every level of their networks in order to make America's streets neighborhoods and communities safer.~~

With respect to allegations that CIA and DEA were involved with the Contras in bringing drugs into the United States, I remain committed to getting to the bottom of this story. We expect both the CIA and Justice reports to be thorough and completed by the end of September. We will then brief the relevant committees and undertake to make both reports public to the extent possible.

I commend the U.S. Sentencing Commission for moving forward with recommendations to Congress to reduce the disparity between crack and powder cocaine penalties. These recommendations, released on April 29 of this year, will be given serious consideration in my Administration. I have asked Director →

I am sending copies of this letter to the Attorney General, the Acting Director of Central Intelligence and General McCaffrey to stress my strong views on both these issues.

Sincerely,

The Honorable Maxine Waters
House of Representatives
Washington, D.C. 20515-0535

cc: Attorney General Reno
Acting Director of Central
Intelligence Tenet
General McCaffrey (ONDCP)



THE WHITE HOUSE

WASHINGTON

Dear Maxine:

Thank you for writing to share your views about the effect of drug trafficking on the African American community. I, too, am deeply concerned about the crack addiction, distribution and associated violence that continue to plague many American communities.

At the same time, I fully understand your concern about the substantial disparity between sentences for crack- and powder cocaine-related offenses. I believe that the sentencing structure should reflect the fact that all crack starts as powder. My Administration strongly endorses the Sentencing Commission's planned review of this issue and looks forward to receiving its recommendations. Meanwhile, I have instructed the Attorney General to develop enforcement strategies that target equally those who distribute crack and those who sell powder with the knowledge that it will be converted into crack. We must go after drug traffickers at every level of their networks in order to make America's streets neighborhoods and communities safer.

With respect to allegations that CIA and DEA were involved with the Contras in bringing drugs into the United States, I remain committed to getting to the bottom of this story. We expect both the CIA and Justice reports to be thorough and completed by the end of September. We will then brief the relevant committees and undertake to make both reports public to the extent possible.

I am sending copies of this letter to the Attorney General, the Acting Director of Central Intelligence and General McCaffrey to stress my strong views on both these issues.

Sincerely,

The Honorable Maxine Waters
House of Representatives
Washington, D.C. 20515-0535

cc: Attorney General Reno
Acting Director of Central
Intelligence Tenet
General McCaffrey (ONDCP)

Date: 05/12/97 Time: 17:39

MStudy: Mandatory minimum terms are least effective way to cut drug

WASHINGTON (AP) With a new debate beginning over cocaine penalties, a Rand Corp. study concluded Monday that mandatory minimum sentences are far less effective at reducing drug use and drug-related crime than normal law enforcement and treatment of heavy users.

Mandatory minimums quickly drive up the price of drugs as criminals seek larger rewards for risking such sentences. But because the cost of keeping those criminals in prison is so high, after just two years equal spending on conventional law enforcement and drug treatment begins producing far greater reductions in crime and drug use, said study leader Jonathan P. Caulkins of Rand's Drug Policy Research Center.

``Mandatory minimum sentences appear cost-effective only to the pathologically myopic,'' because their advantage over other strategies is so short-lived, said Caulkins, a Carnegie Mellon University professor.

The nonprofit think tank's study calculated that if \$1 million more were spent on each drug strategy, over 15 years:

Mandatory minimums would reduce national cocaine consumption by 13 kilograms. Conventional enforcement would cut it by 27 kilograms; treatment of heavy users would slash it by more than 100 kilograms.

Conventional law enforcement including more arrests of drug dealers, confiscations, prosecutions and standard-length prison terms would eliminate 70 percent more crimes against people than mandatory minimums. The average mandatory minimum sentence, usually triggered by possession of a fixed amount of drugs, is 6.7 years; the average conventional sentence is 1.1 years.

Treatment of heavy users would reduce about 10 times more serious crime against people and property than conventional law enforcement and 15 times more than mandatory minimums even though an average of only 13 percent of those receiving treatment kick their drug habits.

Because nearly all the cost of treatment, \$1,800 per person, occurs in the first year, incarceration initially looks better. But after the second year, as the cost of imprisonment mounts, treatment becomes dramatically more cost-effective as benefits from heavy users who quit drugs continue without additional cost, Caulkins said.

``Who has a two-year time horizon? Members of Congress and state legislatures,'' Caulkins said in an interview, offering an explanation for the political popularity and growth of mandatory minimums since the 1980s. The federal government and a large majority of states have such sentences.

A new debate is beginning over the federal minimums for cocaine five years in prison for possessing or selling 5 grams of crack cocaine or 500 grams of powder cocaine.

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 per cent of defendants in the more heavily penalized crack cases are black, compared with only 25 percent of powder defendants.

But Republicans in Congress and President Clinton rejected that on grounds that crack, which is made from powder, is easier to distribute and damages more neighborhoods. Attorney General Janet Reno suggested more modest adjustment.

Two weeks ago, the commission proposed five-year minimums for sale of 25 to 75 grams of crack, sale of 125 to 375 grams of powder cocaine, and possession of 500 grams of either.

Rep. Bill McCollum, R-Fla., said Monday the House crime subcommittee he chairs would hold hearings on the proposals by summer.

McCollum criticized the Rand study. ``They miss the principal value of mandatory minimums: the deterrent message that certainty of punishment gives,'' he said. ``There's no way to count the kids deterred from drugs in the first place.''

Clinton's drug policy chief Barry McCaffrey agreed with Rand's thesis. ``Swiftness and surety of sentencing, not just the length, are key to assuring the deterrent message,'' McCaffrey said. ``We cannot simply arrest our way out of the drug problem: Law enforcement must be linked with drug treatment.''

Republican Sen. Phil Gramm of Texas conceded that imprisonment ``is not the cheapest way to deal with drug crime,'' but said shorter sentences let criminals out to ``drain far more money and anguish from our society.''

Harvard Law Professor Philip B. Heymann, formerly Clinton's deputy attorney general, said, ``Congress and the president are inclined to do what feels good: Lock people up for a long time.''

``What works are things that get all over the addict, like treatment, even compulsory treatment and drug courts that slap them in jail if they drop out of treatment,'' Heymann said.

APNP-05-12-97 1753EDT

To: José Cerda
Fax #: 202/456-7028
Re: Crack/Cocaine Sentencing Disparity
Date: May 14, 1997
Pages: 8, including this cover sheet.

FACSIMILE

Attached are two draft documents on the above topic:

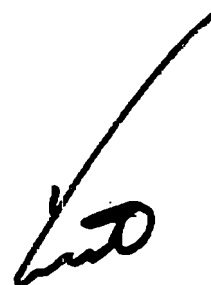
- 1) Outreach Strategy for Changes in Cocaine Sentencing (a Joint DOJ/ONDCP document), and
- 2) Response to Sentencing Commission: Justification for 25/250 Ratio (a DOJ document).

ONDCP has indicated that it is still considering the second document, but early indications are that they would like to get closer to 1 to 1 (as opposed to our proposed 10 to 1) and that they don't think we should have a number during the early outreach strategy.

The "Justification" document argues for a proposed outcome which DOJ believes is satisfactory and within the realm of possibility. While there are differing tactical views about the point during outreach and negotiations one should discuss specific numbers or a specific ratio, we fear that the absence of a "working number" towards which we are generally shooting -- a number which may or may not be publicly articulated and which can be modified depending on the success of outreach efforts -- is critical to the implementation of a strategic approach to this issue. We believe that an initial target needs to be set and understood by those working on this initiative.

Let me know your thoughts when you get a chance. Thanks.

cc: Attorney General Reno



From the desk of...

Kent Markus
Counselor to the Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

202/514-3008
Fax: 202/514-2107

DRAFT -- May 13, 1997

OUTREACH STRATEGY FOR CHANGES IN COCAINE SENTENCING

Overall Goal of the Cocaine Sentencing Plan:

Goal: Create political climate conducive to changing the current sentencing structure for crack and powder cocaine.

1. Persuade Congress that bringing crack and powder sentences closer together is effective law enforcement, a better use of resources, and a fair and just course of action.
2. Contrast (in terms of federal law enforcement goals and costs) the USSC/Administration plan with other proposals that only raise powder penalties.
3. Obtain support (or, at least passive support) from Members and others previously advocating equalization.

Message Development:

1. Develop internal consensus on whether to support specific ratio or to more generally support the ranges specified by the Sentencing Commission.
2. Identify key spokesmen/programs to highlight importance of the issue:
 - Attorney General/Director, ONDCP
 - United States Attorneys
 - United States Sentencing Commissioners
 - Other Public Officials
3. Identify potential opinion leaders:
 - Former federal law enforcement or drug policy officials
 - State and local prosecutors
 - Mayors/Police Chiefs
 - Academic/Research Groups
 - Press -- national, local, trade
 - Civil Rights Groups
 - Law enforcement organizations

DRAFT -- May 13, 1997**4. Ultimate target:****■ CONGRESS -- KEY MEMBERS****Leadership****Senate Judiciary Committee****House Judiciary Committee and Crime Sub-committee****5. Develop general informational press packet --****■ fact sheets****Possible Activities:**

- 1. Have Director, ONDCP address US Conference of Mayors**
- 2. Use press availability to educate DOJ press regulars on the issue**
- 3. Assess AG and Director, ONDCP (and other Cabinet Officers?) speaking schedules for other opportunities to raise issue to opinion leaders**
- 4. Have US Attys reach out to state and local counterparts to discuss Commission recommendations**
- 5. Raise at next Executive Working Group Meeting (early June)**
- 6. Coordinate w/COPS office and Inter-Governmental Affairs re outreach to police organizations and police chiefs**
- 7. Schedule US Attys/DAs to meet or phone targeted editorial boards around the country**
 - identify target states and media markets**
 - identify the proper local spokesmen**
- 8. Develop potential op-eds and authors**
 - Former DOJ and law enforcement officials**
--e.g., Jamie Gorelick, Jo Ann Harris, Drew Days, Deval Patrick, Ron Noble
 - Other respected individuals**
--e.g., Charles Ogletree, Patrick Murphy

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- Target Congressional Districts
--Seek support of former US Attys in these districts
9. Identify specific media to target for future contact and amplification
 - Key Congressional correspondents
 - Friendly editorial page editors
 - Legal affairs writers
 - Editors of law enforcement newsletters
 10. Schedule AG/Director, ONDCP/US Attys to meet or phone key Members of Congress
 11. Identify Senators who will take leadership in seeking change
 12. Schedule Congressional Staff Briefings on issue

Research:

1. Compile an up-to-date resource containing previous editorials or op-eds on crack and powder cocaine sentences
2. Compile previous statements on issue by former federal officials and other opinion leaders
3. Compile previous statements by key Members of Congress
4. Compile incarceration cost information

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**RESPONSE TO SENTENCING COMMISSION
JUSTIFICATION FOR 25/250 RATIO**

The United States Sentencing Commission has proposed a range of options for changing crack and powder cocaine sentences. The Commission suggests modifying crack penalties (in order to better target mid-level crack dealers) by changing the threshold for the five-year mandatory minimum from 5 grams to between 25 and 75 grams. The Commission also suggests adjusting powder penalties (to reflect the ease by which powder is transformed to crack) by changing the threshold for the five-year mandatory minimum from 500 grams to between 125 and 375 grams. Any of these options would reduce the sentencing disparity between crack and powder cocaine offenses.

We believe the most feasible and appropriate proposal would increase the threshold for a five-year mandatory minimum for distribution of crack cocaine from the present 5 grams to 25 grams, and decrease the threshold for powder cocaine from the present 500 grams to 250 grams.

Such a revised penalty structure would:

- Properly set five-year mandatory minimum for crack for the mid-level trafficker
- Improve allocation of federal resources
- Acknowledge harm of powder cocaine
- Maintain tough federal sentences for serious drug offenders
- Address perception of unfairness in current cocaine sentencing scheme
- Target traffickers not simple possessors of crack

Properly set five-year mandatory minimum for crack for the mid-level trafficker

- When Congress initially established the five-year mandatory minimum sentences, it said it wanted the mandatory minimum to apply to a "mid-level" or serious dealer. The current penalty structure leads to an over-emphasis in federal cases on lower-level defendants. We agree with

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Congress' initial conclusion that the federal government should be targeting those higher in the distribution chain.

- DEA data suggest that a mid-level crack dealer deals in ounce or multi-ounce quantities (1 ounce = 28 grams).
- The federal government's emphasis should remain on those who can provide information that would be useful in targeting and dismantling drug organizations and have a longer lasting impact on the trade overall.
 - Experienced prosecutors suggest that crack offenders prosecuted for less than ounce quantities of crack are unlikely to have information about the hierarchy of crack organizations.
 - The Sentencing Commission's data on crack cases in which defendants have been granted a downward departure for substantial assistance suggest that a crack defendant's ability to cooperate increases with the amount of crack for which he is prosecuted and, in particular, when the amount of crack exceeds 50 grams.
- Our proposed ratio would, in effect, adopt the original Reagan Administration proposal for the five-year mandatory minimum for crack cocaine (25 grams) and provide for more severe sentences for powder cocaine distributors than did the Reagan Administration proposal (500 grams).

Improve allocation of federal resources

- A re-designed penalty structure would target scarce federal resources in a more efficient and effective manner.
- Over 90% of all convicted drug traffickers are prosecuted in the state systems. The federal government should devote its limited prosecutions to the more serious cases. State and local prosecutors are often in a better position to target lower levels of the distribution chain and certainly can do so as effectively and possibly more cheaply than can the federal government.
- A five-year mandatory minimum sentence costs taxpayers over \$100,000 in incarceration costs.

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- Currently, the five-year mandatory minimum sentence applies to 5 grams of crack cocaine, worth as little as \$400, compared with 500 grams of powder which has a street value (based on price per gram) of approximately \$30,000.

Acknowledge harm of powder cocaine

- Decreasing the powder threshold from 500 to 250 grams recognizes that powder is easily transformed into crack, and better holds powder dealers responsible for the retail distribution and use of their product.
- Increasing powder penalties without changing crack penalties, however, is not the right solution:
 - Increasing powder penalties alone fails to address the problems with current crack penalties: 5 gram mandatory minimum for crack cocaine does not target the mid-level dealer, but instead sweeps in lower-level dealers.
 - Overly increasing powder penalties may have the unintended effect of focusing more federal resources lower in the distribution chain for powder cocaine.
 - Targeting lower-level powder offenders would increase prison costs for the less serious offenders.
 - Increasing powder penalties (using 100 grams as the five-year mandatory minimum trigger as does the Hatch Bill), could cost the government about \$500 million in the first five years in extra prison expenditures.
 - Projections suggest this could increase to \$4.7 billion in 20 years and \$9.5 billion in 30 years.

Maintain tough federal sentences for serious drug offenders

- Changing the sentencing ratio to 25/250 would continue to emphasize that crack cocaine is the more harmful form of cocaine and that the distribution of crack cocaine is a serious offense in our communities.
- The change in crack penalties would preserve substantial federal tools to focus on violent and dangerous offenders.

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- We will continue to prosecute crack cases in the federal system when there is organized drug dealing; use of weapons; using minors in drug trafficking; trafficking near schools and other places; or other aggravating factors. **The presence of aggravating factors in these cases will guarantee severe penalties regardless of the amount of crack involved.**

Address perception of unfairness in current cocaine sentencing scheme

- In addition to misdirecting resources, the disparity between sentences for powder and crack cocaine has led to a perception of unfairness and inconsistency in the federal criminal justice system. We are convinced that justice is served best and respected most when sentences are perceived as fair for all.
- The current harsh penalties for crack cocaine target an inappropriately low level of the drug trade and fall disproportionately on African-Americans.
- The problem inherent in this penalty structure is magnified because the harsh penalties, particularly for the small dealers, have become a symbol of racial injustice in the criminal justice system. When communities lose faith in the fairness of the legal process, our ability to enforce the law suffers. We need to recognize the corrosive effect the present cocaine penalties have had on respect for the law in certain communities and on the effective administration of justice.

Target traffickers not simple possessors of crack

- At present, simple possession of 5 grams of crack -- without the intent to distribute it -- carries a five-year mandatory minimum sentence. We recommend conforming penalties for simple possession of crack with penalties for simple possession of other drugs -- i.e., a maximum one-year penalty. Federal enforcement should be focused on those distributing drugs to others.

Supreme Court to Consider Issue of Cocaine Sentencing

Trafficking Case Concerns Crack Vs. Powder Disparity

By Joan Biskupic
Washington Post Staff Writer

The Supreme Court yesterday agreed to hear a drug sentencing case that will thrust the justices into one of the more racially sensitive issues in criminal justice: the disparity between punishments for crack and powder cocaine crimes.

While the new case will simply clarify what penalty is warranted when a person who dealt in both powder and crack is convicted of conspiracy, it is likely to bring new attention to the long-smoldering debate over why people who traffic in crack go to prison for far longer than those who deal in powder.

In a day of varied court business, the justices also refused to consider reinstating a Louisiana abortion regulation that gave judges more power in teenage girls' decisions to end a pregnancy. The justices also rejected a constitutional challenge to a Texas law that prohibits juries from being told exactly when a defendant could be paroled if he got prison time rather than the death penalty.

The drug sentencing case will spotlight the way the justice system handles federal drug crimes. Under current law, a seller of five grams of crack cocaine receives the same mandatory five-year prison term as a seller of 500 grams of powder cocaine. The U.S. Sentencing Commission has asked Congress to reduce or eliminate the disparity, noting that a disproportionate number of African Americans are convicted of trafficking in crack. Since 90 percent of the prisoners convicted for crack crimes are black, while most crack users are white, the commission argues that the law "results in a perception of unfairness and inconsistency."

The Clinton administration, after much internal disagreement over how harshly to punish crack dealing, this summer proposed cutting the disparity from the current 100-to-1 ratio to 10-to-1. But the recommendation is stalled in Congress, in part because key lawmakers believe crack is associated with far greater violence and deserves a tougher punishment.

In the case the court accepted yesterday, an Illinois jury convicted five defendants of conspiracy but did not specify the drug that was the "object" of the conspiracy, which prosecutors say is not uncommon in multiple-narcotics cases. The defendants, all black, had run a powder and crack cocaine ring in the Rockford area from 1989 to 1993. After the verdict, a sentencing judge considered the quantities of crack cocaine that prosecutors asserted were part of the conspiracy.

Two of the men were sentenced to life in prison and the three others got from 10 years to 28 years. If the verdict had been based on punishment for powder, their lawyer claims, "no life sentences without parole could have been imposed, and the sentences of the three other petitioners would have been significantly lower."

The U.S. Court of Appeals for the 7th Circuit upheld the sentences, saying a judge may consider kinds and quantities of drugs even if the jury does not. The Supreme Court will now resolve a conflict between the 7th Circuit and other appeals courts that have ruled that when a jury returns a general verdict, the defendant must be sentenced on the drug carrying the lesser punishment. The latter view suggests a judge cannot speculate about which drug the jury focused on to support its conviction.

Both sides of the case say much is at stake, given that it is common for dealers to trade in several types of drugs and powder is easily converted to crack. *Edwards v. United States* will be heard early next year and a decision is likely to be handed down before the justices recess next summer.

In the Louisiana case, the focus is a 1995 state law that detailed how girls under 18 could get around a requirement that they obtain parental consent before getting an abortion. The Supreme Court has allowed states to demand minors obtain one parent's consent before ending a pregnancy but has said states must provide alternatives if seeking such permission isn't possible. The usual alternative for states is to allow a teenager to make the case before a local judge that abortion is in her best interest.

The Louisiana law gave a judge considerable discretion over whether to approve the abortion request of a minor who could not get parental approval. The U.S. Court of Appeals for the 5th Circuit said the regulation—which was never enforced because of court challenges—gave the judge too much power and interfered with the constitutional right to abortion. In denying the state's appeal, the justices made no comment, and only Justice Antonin Scalia objected to rejecting the case of *Ieyoub v. Causeway Medical Suite*.

The death penalty case involves a Texas policy that allows juries to consider a defendant's "future dangerousness" before deciding whether capital punishment is appropriate. But the law stops the defendant from telling the jury when he would be eligible for parole if he were to get life in prison. Convicted murderer Arthur Brown said he should have been able to reveal that he would not have been paroled for at least 35 years if he had received the lesser sentence of life.

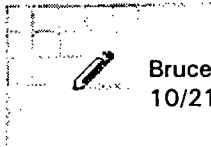
The court rejected the appeal in *Brown v. Texas*, but four of the justices (John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer) said the Texas rule "unquestionably tips the scales in favor of a death sentence that a fully informed jury might not impose."

FOR MORE INFORMATION

To read background on this term's cases, click on the above symbol on the front page of The Post's Web site at www.washingtonpost.com

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10/21/97

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PRESERVATION



Bruce N. Reed
10/21/97 05:13:08 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Jose Cerda III/OPD/EOP

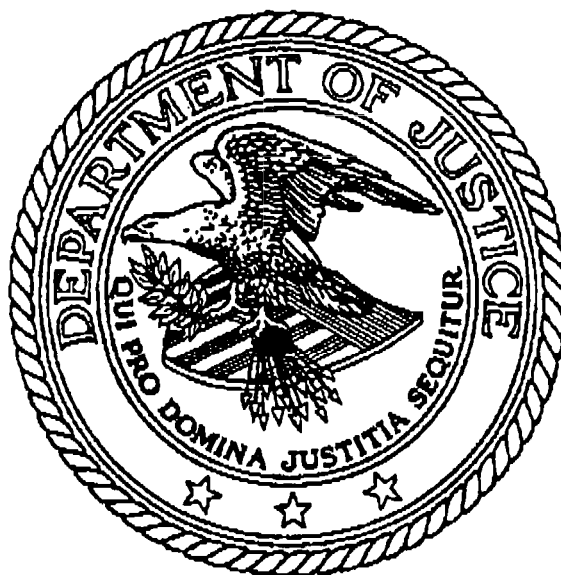
cc:

Subject: crack USSC case

Does the Admin have a position in the crack case the Supreme Court just agreed to hear?

Joe -
What was the
answer to this
question?
Elen

...



Office of Policy Development
United States Department of Justice
950 Pennsylvania Ave. NW, Room 4242
Washington, D. C. 20530-0001

TO: See attached list

FAX:

FROM: Liz Fine

VOICE: (202)
FAX: (202) 514-5715

Total Pages (excluding this cover): 11

Additional Message:

CRACK COCAINE WORKING GROUP

NAME	U.S. DEPARTMENT OF JUSTICE	TELEPHONE	FAX
Ian Alberg	Office of Intergovernmental Affairs	514-3465	514-2504
Louis DePalaise	Executive Office for U.S. Attorneys	616-2128	305-4937
Kristen Fennel	Office of Policy Development	514-9114	514-5715
Elizabeth Fine	Office of Policy Development	514-3824	514-5715
Carole Florman	Office of Public Affairs	616-2765	514-5331
Nick Gess	Office of Intergovernmental Affairs	514-3465	514-2504
Joe Graupensperger	Office of Legislative Affairs	514-3951	616-6773
Helaine Greenfeld	Office of Policy Development	514-6131	514-5715
Mary Harkenrider	Criminal Division	514-2419	514-9412
Joe Koehler	Executive Office of U.S. Attorneys	616-0188	514-8340
Kent Markus	Office of the Attorney General	514-3008	514-1724
Julie Samuels	Criminal Division	514-3062	514-9087
Jonathan Schwartz	Office of the Deputy Attorney General	514-4375	514-9368
Monty Wilkinson	Office of the Deputy Attorney General	514-1725	514-6897

NAME	OFFICE OF NATIONAL DRUG CONTROL POLICY	TELEPHONE	FAX
Dr. Hoover Adger	Deputy Director	395-6645	395-5653
Carol Bergman	Office of Legislative Affairs	396-6655	395-6708
Alejandra Castillo	Office of the Deputy Director	395-7286	395-5653
Chuck Blanchard	Office of Legal Counsel	395-4611	395-5543
Dennis Greenhouse	Bureau of State and Local Affairs	395-7252	395-6721
Rob Housman	Office of Strategic Planning	395-7225	395-6641
Leroy Jones, Jr.	Office of Legislative Affairs	395-6625	395-6640
Pancho Kinney	Office of Strategic Planning	395-6710	395-6641
Judith Leonard	Office of Legal Counsel	395-6709	395-5543
Bob Weiner	Office of Public Affairs	395-6626	395-6730

NAME	THE WHITE HOUSE	TELEPHONE	FAX
Jose Cerda	Domestic Policy Council	456-5568	456-7028
Rahm Emanuel	Executive Office of the President	456-2531	456-2530
Peter Jacoby	Legislative Affairs	456-7161	456-2604
Elena Kagen	Domestic Policy Council	456-5584	456-2878
Karen Popp	White House Counsel's Office	456-7901	456-7931
Lianne Shimabukuro	Domestic Policy Council	456-5574	456-7028

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**The Clinton Administration Crack-Powder Initiative
October 1997**

I. Overview

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

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

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

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

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

II. Steps Taken to Date

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

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

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their staffs.

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

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

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

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

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

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the Administration's proposal.

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

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

A. Continued Outreach in Congress

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

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

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

B. Line up Support Among Influential Opinion Leaders

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

C. Outreach to Organizations Outside the Government

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

1. Administration Spokespersons

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

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

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

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

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

- **Organizations representing state and local governments**

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

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

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

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

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

- **Law Enforcement Organizations**

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

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

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

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interested in working on the issue.

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

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

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

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

3. Upcoming Meetings and Events

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

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D. Communications Strategy

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

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

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

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- **Newspapers for the African-American Community:** We recommend the use of op-eds in newspapers that have a large African-American readership.

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

The Working Group recommends that mass media (such as radio and TV) not be used until we have first achieved strong support from the groups targeted by our inter-governmental affairs strategy. An aggressive media campaign could increase the risk of a bad result. At least initially, the proposal is most effectively presented in personal meetings with key decision makers. Encouraging aggressive media coverage of this issue will favor the proponents of increasing penalties for powder -- and not adjusting penalties for crack -- because our more nuanced message will not sell as well as the "tough on crime" opposition message in an age of sound bites. At some point, of course, we hope to achieve sufficient support in Congress and among our targeted groups to allow a more aggressive media strategy. At this time, however, our communications strategy must be more focused on obtaining the support of individuals and groups that will be essential to our ultimate success.



Office of Policy Development
United States Department of Justice
950 Pennsylvania Ave. NW, Room 4242
Washington, D. C. 20530-0001

TO: See attached list

FAX:

FROM: Liz Fine

VOICE: (202)

FAX: (202) 514-5715

Total Pages (excluding this cover): 11

Additional Message:

CRACK COCAINE WORKING GROUP

NAME	U.S. DEPARTMENT OF JUSTICE	TELEPHONE	FAX
Ian Alberg	Office of Intergovernmental Affairs	514-3465	514-2504
Louis DeFalaise	Executive Office for U.S. Attorneys	616-2128	305-4937
Kristen Fennel	Office of Policy Development	514-9114	514-5715
Elizabeth Fine	Office of Policy Development	514-3824	514-5715
Carole Florman	Office of Public Affairs	616-2765	514-5331
Nick Gess	Office of Intergovernmental Affairs	514-3465	514-2504
Joe Graupensperger	Office of Legislative Affairs	514-3951	616-6773
Helaine Greenfeld	Office of Policy Development	514-6131	514-5715
Mary Harkenrider	Criminal Division	514-2419	514-9412
Joe Koehler	Executive Office of U.S. Attorneys	616-0188	514-8340
Kent Markus	Office of the Attorney General	514-3008	514-1724
Julie Samuels	Criminal Division	514-3062	514-9087
Jonathan Schwartz	Office of the Deputy Attorney General	514-4375	514-9368
Monty Wilkinson	Office of the Deputy Attorney General	514-1725	514-6897

NAME	OFFICE OF NATIONAL DRUG CONTROL POLICY	TELEPHONE	FAX
Dr. Hoover Adger	Deputy Director	395-6645	395-5653
Carol Bergman	Office of Legislative Affairs	396-6655	395-6708
Alejandra Castillo	Office of the Deputy Director	395-7286	395-5653
Chuck Blanchard	Office of Legal Counsel	395-4611	395-5543
Dennis Greenhouse	Bureau of State and Local Affairs	395-7252	395-6721
Rob Housman	Office of Strategic Planning	395-7225	395-6641
Leroy Jones, Jr.	Office of Legislative Affairs	395-6625	395-6640
Pancho Kinney	Office of Strategic Planning	395-6710	395-6641
Judith Leonard	Office of Legal Counsel	395-6709	395-5543
Bob Weiner	Office of Public Affairs	395-6626	395-6730

NAME	THE WHITE HOUSE	TELEPHONE	FAX
Jose Cerda	Domestic Policy Council	456-5568	456-7028
Rahm Emanuel	Executive Office of the President	456-2531	456-2530
Peter Jacoby	Legislative Affairs	456-7161	456-2604
Elena Kagen	Domestic Policy Council	456-5584	456-2878
Karen Popp	White House Counsel's Office	456-7901	456-7931
Lianne Shimabukuro	Domestic Policy Council	456-5574	456-7028

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**The Clinton Administration Crack-Powder Initiative
October 1997**

I. Overview

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

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

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

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

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

II. Steps Taken to Date

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

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

their staffs.

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

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

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

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

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

the Administration's proposal.

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

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

A. Continued Outreach in Congress

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

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

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

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

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

- **Senator Edward Kennedy:** Senator Kennedy supports a move toward equalization of crack and powder sentencing. At the present time, he is not prepared to support the Administration's position because he does not believe the proposal goes far enough toward equalization. At the time the Administration's proposal was announced, Senator Kennedy was working on a possible compromise proposal that would set the triggering amounts for the five year mandatory-minimum at 250 grams for powder cocaine and 50 grams for crack cocaine. According to his staff, Senator Kennedy does not believe it would be productive to move ahead on any compromise or equalization proposal during the current legislative session.
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The Working Group has developed a revised strategy to advance the Administration's proposal and law enforcement interests over the course of the next session of Congress and during the 106th Congress. The strategy aims to continue to build support in Congress and to secure the backing of outside opinion leaders and organizations that are influential with members of Congress.

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

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

C. Outreach to Organizations Outside the Government

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

1. Administration Spokespersons

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

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

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

- **Organizations representing state and local governments**

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

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

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

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

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

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

- **Law Enforcement Organizations**

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

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

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

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

interested in working on the issue.

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

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

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

- **Civil Rights Groups**

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

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

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

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

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

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

- **Drug Treatment and Related Organizations**

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

3. Upcoming Meetings and Events

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

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

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

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

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

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

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

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

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

D. Communications Strategy

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

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

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

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

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

The Working Group recommends that mass media (such as radio and TV) not be used until we have first achieved strong support from the groups targeted by our inter-governmental affairs strategy. An aggressive media campaign could increase the risk of a bad result. At least initially, the proposal is most effectively presented in personal meetings with key decision makers. Encouraging aggressive media coverage of this issue will favor the proponents of increasing penalties for powder -- and not adjusting penalties for crack -- because our more nuanced message will not sell as well as the "tough on crime" opposition message in an age of sound bites. At some point, of course, we hope to achieve sufficient support in Congress and among our targeted groups to allow a more aggressive media strategy. At this time, however, our communications strategy must be more focused on obtaining the support of individuals and groups that will be essential to our ultimate success.

**National Institute on Drug Abuse
National Institutes of Health
and
National Institute of Justice
U.S. Department of Justice**

**THE CRACK DECADE:
RESEARCH PERSPECTIVES AND LESSONS LEARNED**

*Mt. Washington Conference Center
Baltimore, Maryland*

November 4-5, 1997

PROGRAM

Conference Moderator: Sally T. Hillsman, Ph.D., Deputy Director, National Institute of Justice

Tuesday, November 4, 1997

8:00 a.m.-8:45 a.m. CONFERENCE REGISTRATION—COFFEE

8:45 a.m.-9:15 a.m. PART ONE: HISTORICAL CONTEXT AND INITIAL RESPONSES TO CRACK

**Alan I. Leshner, Ph.D.
Director
National Institute on Drug Abuse**

**Jeremy Travis, J.D.
Director
National Institute of Justice**

**Kurt Schmoke
Mayor
Baltimore City**

**Thomas Frazier
Commissioner
Baltimore Police Department**

9:15 a.m.-10:15 a.m.

America's Experience with Drugs

David F. Musto, M.D.
Professor of Child Psychiatry and the History of Medicine
Yale University School of Medicine

10:15 a.m.-10:30 a.m.

BREAK

12:00
10:30 a.m.-11:45 a.m.

Epidemiology of Crack and the Early Response

Thom Feucht, Ph.D., Moderator
Director, Crime Control and Prevention Division
National Institute of Justice

Overview: Socio-Economic/Labor and Demographics

Philippe Bourgois, Ph.D.
Professor and Chair, Department of Anthropology
San Francisco State University

Criminal Justice Response

Mitchell L. Tyre, M.B.A.
Chief of Police
Juno Beach Police Department, Florida

Keith Burt, J.D.
Chief Deputy District Attorney
San Diego County

Public Health Response

Mark R. Bencivengo
Assistant Health Commissioner
Philadelphia Department of Public Health

Community Response

Rev. John H. Sanders
Board Member
San Antonio Fighting Back of United Way

~~12:00~~ a.m.-1:15 p.m.

PART TWO: THE RESEARCH RESPONSE [WORKING LUNCH]

Keynote Address: *Research and Its Capacity to Inform Policy*

Peter Reuter, Ph.D.
Professor of Public Policy
School of Public Affairs, University of Maryland

1:15 p.m.-2:35 p.m.

PANEL

Crack Through the Prism of Criminological Research

Jack Riley, Ph.D., Moderator
Director, Arrestee Drug Abuse Monitoring (ADAM) Program
National Institute of Justice

Setting the Context—Ethnography

Terry Williams, Ph.D.
Associate Professor
New School for Social Research

The Epidemiology of Crack

Mark Kleiman, Ph.D.
Professor
University of California, Los Angeles

Lessons Learned About Crack Through Research

Jeffrey Fagan, Ph.D.
Director, Center for Violence Research and Prevention
School of Public Health, Columbia University

Research/Collecting Data on the Crack Epidemic

Eric Wish, Ph.D.
Director
Center for Substance Abuse Research (CESAR)

2:35 p.m.-2:50 p.m.

BREAK

2:50 p.m.-4:15 p.m.

PANEL

Crack Through the Prism of Public Health Research

Donald R. Vereen, M.D., M.P.H., Moderator
Special Assistant to the Director for Medical Affairs
National Institute on Drug Abuse

Epidemiological Research

Zili Sloboda, Sc.D.
Director, Division of Epidemiology and Prevention Research
National Institute on Drug Abuse

Treatment Research

Walter Ling, M.D.
Professor and Chief, Substance Abuse Treatment Program
University of California, Los Angeles

Prevention Research

Mary Ann Pentz, Ph.D.
Director, Center for Prevention Policy Research
University of Southern California

4:15 p.m.-5:15 p.m.

BREAKOUT GROUPS

Wednesday, November 5, 1997

8:00 a.m.-8:30 a.m.

COFFEE AND ASSEMBLY

8:30 a.m.-9:10 a.m.

**PART THREE: FACING THE FUTURE—ISSUES, CONCERNS,
RESEARCH NEEDS**

*The Crack Experience and Our National Identity:
Reflections on Our Discussions*

Stephen Vicchio, Ph.D.
Professor of Philosophy
College of Notre Dame of Maryland

9:10 a.m.-10:30 a.m.

**ROUND TABLE DISCUSSION: RESEARCH NEEDS TO
INFORM WELFARE, PUBLIC HEALTH, TREATMENT**

Camille T. Barry, Ph.D., R.N., Moderator
Deputy Director
Center for Substance Abuse Treatment

James A. Inciardi, Ph.D.
Professor and Director, Center for Drug and Alcohol Studies
University of Delaware

John R. Miles, M.P.A.
Special Assistant to the Director on Corrections and Substance Abuse,
National Center for HIV, STD, and TB Prevention
Centers for Disease Control and Prevention

Rosalind Brannigan, M.P.H.
Vice President
Drug Strategies

Rev. Zina Jacque
Executive Director
Boston TenPoint Coalition

10:30 a.m.-10:45 a.m.

BREAK

10:45 a.m.-12:15 p.m.

**ROUND TABLE DISCUSSION: RESEARCH NEEDS TO INFORM LOCAL
STATE ISSUES—ENFORCEMENT, SENTENCING, INCARCERATION**

Francis X. Hartmann, Moderator
Executive Director, Program in Criminal Justice, Policy, and Management
John F. Kennedy School of Government, Harvard University

Colonel David B. Mitchell, M.P.P.
Superintendent
Maryland State Police

John Feinblatt, J.D.
Director
Center for Court Innovation

Paul F. Evans, J.D.
Police Commissioner
Boston Police Department

John H. Kramer, Ph.D.
Staff Director
U.S. Sentencing Commission

12:15 p.m.-1:45 p.m.

WORKING LUNCH: KEYNOTE SPEAKER

General Barry R. McCaffrey, USA (Ret.)
Director
Executive Office of the President, Office of National Drug Control Policy

1:45 p.m.-3:15 p.m.

BREAKOUT GROUPS AND BREAK

3:15 p.m.-4:30 p.m.

REPORT BACK SESSION

4:30 p.m.-5:00 p.m.

CONCLUDING REMARKS

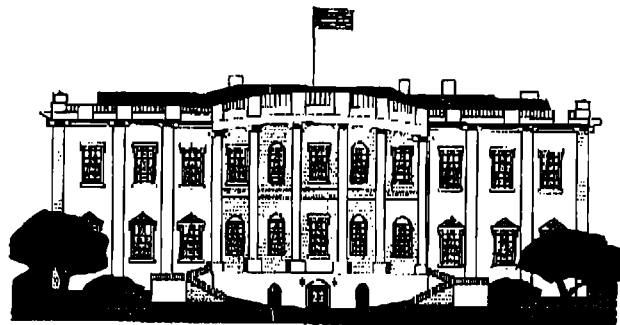
Hoover Adger, Jr., M.D., M.P.H.
Deputy Director
Executive Office of the President, Office of National Drug Control Policy

Jeremy Travis, J.D.
Director
National Institute of Justice

Richard A. Millstein, J.D.
Deputy Director
National Institute on Drug Abuse

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy
Washington, DC 20503



Strategic Planning

FACSIMILE MESSAGE

TO: Lee Ann Shimabukuro

FAX: 6-7028

DATE: 11/3/97 TIME: 11:18:41 PAGES: 9 + Cover

FROM: Rob Housman,

FAX NUMBER: 202-395-6641

OFFICE NO: 202-395-7225

COMMENTS:

① Juvie
② Reports
③ Crack Case

A hand-drawn sketch of a rectangular folder or box. It has a vertical line on the right side and a horizontal line near the bottom, creating a compartment. The text from the list is written to the left of this sketch.

Please copy ASAP @ 67028. Thanks.
Rob**DRAFT****DRAFT****DRAFT**

**The Clinton Administration Crack-Powder Initiative
October 1997**

I. Overview

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

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

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

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

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

II. Steps Taken to Date

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

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

their staffs.

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

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

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

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

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

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• **Law Enforcement Organizations**

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

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

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

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

interested in working on the issue.

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

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D. Communications Strategy

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

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

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

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- **Newspapers for the African-American Community:** We recommend the use of op-eds in newspapers that have a large African-American readership.

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

The Working Group recommends that mass media (such as radio and TV) not be used until we have first achieved strong support from the groups targeted by our inter-governmental affairs strategy. An aggressive media campaign could increase the risk of a bad result. At least initially, the proposal is most effectively presented in personal meetings with key decision makers. Encouraging aggressive media coverage of this issue will favor the proponents of increasing penalties for powder -- and not adjusting penalties for crack -- because our more nuanced message will not sell as well as the "tough on crime" opposition message in an age of sound bites. At some point, of course, we hope to achieve sufficient support in Congress and among our targeted groups to allow a more aggressive media strategy. At this time, however, our communications strategy must be more focused on obtaining the support of individuals and groups that will be essential to our ultimate success.



**Office of Policy Development
United States Department of Justice**
950 Pennsylvania Ave. NW, Room 4242
Washington, D. C. 20530-0001

TO: See attached list

FAX:

FROM: Liz Fine

VOICE: (202)

FAX: (202) 514-5715

Total Pages (excluding this cover): 11

Additional Message:

CRACK COCAINE WORKING GROUP

NAME	U.S. DEPARTMENT OF JUSTICE	TELEPHONE	FAX
Ian Alberg	Office of Intergovernmental Affairs	514-3465	514-2504
Louis DeFalaise	Executive Office for U.S. Attorneys	616-2128	305-4937
Kristen Fennel	Office of Policy Development	514-9114	514-5715
Elizabeth Fine	Office of Policy Development	514-3824	514-5715
Carole Florman	Office of Public Affairs	616-2765	514-5331
Nick Gess	Office of Intergovernmental Affairs	514-3465	514-2504
Joe Graupensperger	Office of Legislative Affairs	514-3951	616-6773
Helaine Greenfeld	Office of Policy Development	514-6131	514-5715
Mary Harkenrider	Criminal Division	514-2419	514-9412
Joe Koehler	Executive Office of U.S. Attorneys	616-0188	514-8340
Kent Markus	Office of the Attorney General	514-3008	514-1724
Julie Samuels	Criminal Division	514-3062	514-9087
Jonathan Schwartz	Office of the Deputy Attorney General	514-4375	514-9368
Monty Wilkinson	Office of the Deputy Attorney General	514-1725	514-6897

NAME	OFFICE OF NATIONAL DRUG CONTROL POLICY	TELEPHONE	FAX
Dr. Hoover Adger	Deputy Director	395-6645	395-5653
Carol Bergman	Office of Legislative Affairs	396-6655	395-6708
Alejandra Castillo	Office of the Deputy Director	395-7286	395-5653
Chuck Blanchard	Office of Legal Counsel	395-4611	395-5543
Dennis Greenhouse	Bureau of State and Local Affairs	395-7252	395-6721
Rob Housman	Office of Strategic Planning	395-7225	395-6641
Leroy Jones, Jr.	Office of Legislative Affairs	395-6625	395-6640
Pancho Kinney	Office of Strategic Planning	395-6710	395-6641
Judith Leonard	Office of Legal Counsel	395-6709	395-5543
Bob Weiner	Office of Public Affairs	395-6626	395-6730

NAME	THE WHITE HOUSE	TELEPHONE	FAX
Jose Cerda	Domestic Policy Council	456-5568	456-7028
Rahm Emanuel	Executive Office of the President	456-2531	456-2530
Peter Jacoby	Legislative Affairs	456-7161	456-2604
Elena Kagen	Domestic Policy Council	456-5584	456-2878
Karen Popp	White House Counsel's Office	456-7901	456-7931
Lianne Shimabukuro	Domestic Policy Council	456-5574	456-7028

DRAFT**DRAFT****DRAFT**

**The Clinton Administration Crack-Powder Initiative
October 1997**

I. Overview

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

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

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

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

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

II. Steps Taken to Date

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

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

their staffs.

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

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

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

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

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

the Administration's proposal.

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

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

A. Continued Outreach in Congress

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

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

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

B. Line up Support Among Influential Opinion Leaders

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

C. Outreach to Organizations Outside the Government

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

1. Administration Spokespersons

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

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

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

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

2. Outreach to Specific Groups

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

- **Organizations representing state and local governments**

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

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

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

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

A. Continued Outreach in Congress

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

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

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

B. Line up Support Among Influential Opinion Leaders

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

C. Outreach to Organizations Outside the Government

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

1. Administration Spokespersons

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

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

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3. Upcoming Meetings and Events

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

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

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

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

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

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

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

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

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D. Communications Strategy

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

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- **Journals/Magazines targeted to the Legal Community:** The legal community --

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

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- **Newspapers for the African-American Community:** We recommend the use of op-eds in newspapers that have a large African-American readership.

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

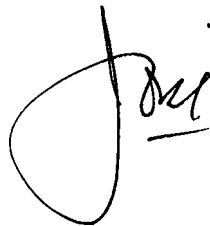
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THE WHITE HOUSE
WASHINGTON

11-18-97

BRUCE/ELENA/RAHM:

ATTACHED PLEASE FIND THE
"FINAL-DRAFT" REPORT OF
THE CRACK WORKING
GROUP, WHICH IS NOW
SHIFTING TO LONG-TERM
+ DEFENSIVE MODE.



CC: LEANNE



Office of Policy Development
United States Department of Justice
950 Pennsylvania Ave. NW, Room 4242
Washington, D. C. 20530-0001

TO: *See attached list*

FAX:

FROM: *Liz Fine*

VOICE: (202)

FAX: (202) 514-5715

Total Pages (excluding this cover): 10

Additional Message:

CRACK COCAINE WORKING GROUP

NAME	U.S. DEPARTMENT OF JUSTICE	TELEPHONE	FAX
Ian Alberg	Office of Intergovernmental Affairs	514-3465	514-2504
Louis DeFalaise	Executive Office for U.S. Attorneys	616-2128	305-4937
Kristen Fennel	Office of Policy Development	514-9114	514-5715
Elizabeth Fine	Office of Policy Development	514-3824	514-5715
Carole Florman	Office of Public Affairs	616-2765	514-5331
Nick Gess	Office of Intergovernmental Affairs	514-3465	514-2504
Joe Graupensperger	Office of Legislative Affairs	514-3951	616-6773
Helaine Greenfeld	Office of Policy Development	514-6131	514-5715
Mary Harkenrider	Criminal Division	514-2419	514-9412
Joe Koehler	Executive Office of U.S. Attorneys	616-0188	514-8340
Kent Markus	Office of the Attorney General	514-3008	514-1724
Julie Samuels	Criminal Division	514-3062	514-9087
Jonathan Schwartz	Office of the Deputy Attorney General	305-8060	514-9368
Monty Wilkinson	Office of the Deputy Attorney General	514-1725	514-6897

NAME	OFFICE OF NATIONAL DRUG CONTROL POLICY	TELEPHONE	FAX
Dr. Hoover Adger	Deputy Director	395-6645	395-5653
Carol Bergman	Office of Legislative Affairs	395-6655	395-6708
Alejandra Castillo	Office of the Deputy Director	395-7286	395-5653
Chuck Blanchard	Office of Legal Counsel	395-4611	395-5543
Dennis Greenhouse	Bureau of State and Local Affairs	395-7252	395-6721
Rob Housman	Office of Strategic Planning	395-7225	395-6641
Leroy Jones, Jr.	Office of Legislative Affairs	395-6625	395-6640
Pancho Kinney	Office of Strategic Planning	395-6710	395-6641
Judith Leonard	Office of Legal Counsel	395-6709	395-5543
Bob Weiner	Office of Public Affairs	395-6626	395-6730

NAME	THE WHITE HOUSE	TELEPHONE	FAX
Jose Cerda	Domestic Policy Council	456-5568	456-7028
Rahm Emanuel	Executive Office of the President	456-2531	456-2530
Peter Jacoby	Legislative Affairs	456-7161	456-2604
Elena Kagen	Domestic Policy Council	456-5584	456-2878
Karen Popp	White House Counsel's Office	456-7594	456-5055
Lianne Shimabukuro	Domestic Policy Council	456-5574	456-7028

DRAFT

The Clinton Administration Crack-Powder Initiative
November 1997

I. Overview

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

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

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

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

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

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

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

II. Steps Taken to Date

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

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

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

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

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