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FOLDER TITLE:

Drug Discussion Generally

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NATIONAL INSTITUTE OF JUSTICE

Research in Action

Charles B. DeWitt, Director

June 1991

A Comparison of Urinalysis Technologies for Drug Testing in Criminal Justice

by Christy Visher and Karen McFadden

Need for the study

It was once widely believed that drug users engaged primarily in minor property crimes to finance their habits. Recent research, however, indicates that the links between drugs and crime go well beyond minor theft. In fact, data from the National Institute of Justice's Drug Use Forecasting (DUF) Program in 1990 show that a majority of persons charged with serious property offenses and most types of violent crime test positive for illegal drugs at arrest. Moreover, several studies completed over the last decade indicate quite clearly that the most frequent, serious offenders are also the heaviest drug users. Surveys of State prison inmates conducted by the Bureau of Justice Statistics have found that over 40 percent of inmates report using illegal drugs on a daily or near-daily basis in the month before incarceration (see References).

Christy Visher, Ph.D., a Senior Research Associate with the National Institute of Justice, is currently examining the relationship between drug use and criminal behavior.

Karen McFadden, Branch Chief, Bureau of Justice Assistance, was responsible for the study's design and implementation.

Faced with large numbers of offenders who use illegal drugs, criminal justice officials have been using drug testing as a tool for improving decisions and reducing criminal activity. Indeed, the President's 1991 National Drug Control Strategy emphasizes drug testing through urinalysis as a priority for identifying and monitoring the drug-involved offender and encourages all States to implement offender drug testing. Criminal justice is using drug testing at a number of stages: on arrest, during the pretrial release period, in jails and prisons, and during probation and parole.

Given the expanded use of drug testing in the criminal justice system, practitioners need comparative information about the use and accuracy of urinalysis technologies. Agencies implementing drug testing programs may have concerns about the relative accuracy of different tests and whether accuracy varies by type of drug. Practitioners may lack unbiased information about the different types and frequency of errors occurring in drug testing. In addition, drug testing technologies may vary in ease of use, suitability for use as a screening test, and relative costs.

This report summarizes the first study to compare four commonly used urine testing technologies using specimens gathered from a criminal justice population.¹ It assumes basic knowledge about

urine testing methods and procedures. For information about uses of urine tests for criminal justice populations, guidelines for conducting urine tests in criminal justice settings, and legal issues, see the list of publications at the end of this report.

Purpose of the study

The primary goal of this study is to give decisionmakers in the criminal justice system clear and concise information that will help them make informed decisions about available urinalysis technologies. The need for such information led the Bureau of Justice Assistance and the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, to formulate and jointly fund a study of the technologies used in criminal justice settings to detect illegal drugs in urine.

Urine specimens were obtained from parolees as part of ongoing supervision

¹ The full report, *A Comparison of Urinalysis Technologies for Drug Testing in Criminal Justice*, discusses the study design; describes the two basic types of urinalysis technologies, immunoassay and chromatography; presents extensive data from the study; summarizes the study's conclusions and policy recommendations; and includes references and a technical glossary.

MEMORANDUM

To: Dennis Burke and Leanne Shimabukuro
From: Erin Haley
Re: ONDCP Budget Review Meeting
Date: November 14, 1996

On November 14, 1996, the Office of National Drug Control Policy (ONDCP) met to discuss the planning of its Fiscal Year 1998 budget. Gen. Barry McCaffrey led the meeting and gave its opening remarks. The meeting lasted from 9:30am to 11:45am with one break for Gen. McCaffrey to take a brief phone call from Secretary of State Christopher. Here are the notes I was able to take from the meeting. Note-taking was particularly difficult at the end because the speakers were rushed due to lack of time.

Opening remarks

To create a coherent National Drug Strategy

- Do not anticipate political reactions from the start because that would cripple the budgetworkers bureaucratically. Will be unable to act for worrying about political repercussions.
- FY 96 was a failure and FY 97 was passed 2 days before the end of the FY. FY 97 appeared to be a success in numbers but where was the actual money? Hard to find evidence of expenditures that match with the plan.
- The National Drug Control Strategy of 1996 was written (by law) in 7 weeks. It was not nearly enough time and was amazing that it was as good as it was. Gen. McCaffrey want to change the law which requires that a new Strategy be written every year. He wants to create a 10-year Strategy along with a 5-year budget plan instead of yearly. This year's Strategy is due February 1, 1997. John Carnevale is in charge.

This year's budget

- Everybody's budget requests must achieve an "output function" (frequently used term) which accomplishes one of the "5 goals" of the Strategy.
- Trend in Congress towards lower budgets, more block grants, decentralized government - keep this in mind when creating ONDCP's budget.
- Don't look around to try and steal funds away from other departments for your own programs. "Watch your own lane!" Do not fall prey to Washington trickery.
- Fund programs that you know work. Don't focus on failures. Successful programs tend not to be able to be explained in numbers that make sense to taxpayers or cynical Congressmembers. Lets work on making the programs comprehensible so they will be funded.

5 year budgets

- Rolling budgets would simplify things immensely if each department was able to create them.
- They should only be written by experts with around 20 years of experience.
- This way arguments would only be about years 5, 4, and 3 and the next two years are taken care of.
- 5 year budgets can't be written in dollar amounts though. We need to create long term concepts that encompass necessary programs. Example: "By the year 2002 we want 20,000 border patrol customs agents to shield our air, land and sea frontiers from drugs."

Views of Dr. Frank Raines

- Says, "Justify your base."
- Warns that there won't be any sudden tax increases to magically fund every program. We will only be able to fund first priority missions such as education and prevention. There are tradeoffs; there will always be more money for prisons.
- There are also not going to be across the board 8% cuts. Some programs will stay completely intact.
- Some other priorities: Peru, educating the general population that drugs are bad (work with Jim Burke on that), and working on Puerto Rico and the Virgin Islands with Attorney General Janet Reno.
- Overall, be very careful with budgeting because someone will always be watching closely to unjustify the allocations. Be ethical in your thinking.

Passback is the Wednesday before Thanksgiving.

Education Department Presentation

- The Education Department's anti-drug strategy is mostly towards Safe and Drug Free Schools, which is requesting \$94 million, a 17% increase.
- The Safe and Drug Free School program has been in existence since 1986. Funds given go to governors, and then from the governors down to the local level, and then to schools.
- This program operates without a lot of guidance which is a blessing and a curse. Schools are able to customize their budgeting to fit their needs, but there is also trouble with linking resources. Some schools get a lot of money and other schools get only a few hundred dollars.
- Goals for 97 and 98 are to develop more effective programs, have better communication with parents, work to change the behavior of parents and children when it comes to drugs, and to provide schools with better material. The education department would like to get on the World Wide Web. They would also like to identify what is working and where it is. They would also like to work with other prevention agencies such

as Health and Human Services and Housing and Urban Development.

HHS presentation

- For FY 98 \$2.44 billion with \$1.74 billion for treatment. With such a large budget, the HHS efforts are central to fighting drugs.
- HHS has refocussed their efforts towards a youth, family, and community direction.
- They would like ONDCP support to help them get Congressional support for their efforts. They would like to expand their efforts to bring more adolescents into treatment. (SAMHSA)
- They believe that we must look for a balance between block grants and other discretionary measures.
- Something that ONDCP has never explored is Research and Development (R&D). Most research is done by the National Institute but HHS would like to set up ONDCP R&D. (Gen. McCaffrey agreed that R&D is very important and something that should be looked into.
- Another point made is that we don't have any treatment programs focussing only on adolescents. Only if the juvenile commits a crime to they get referred to treatment.

Justice presentation

- FY 98 \$8 billion for drug policy of which \$2 billion is to build new prisons. DEA gets the next largest chunk of money.
- Justice has had a problem with different departments interpreting the "5 goals" differently and thus major areas of drug problems have been neglected. Example: The DEA gave over no funds to Goal 4 which is shielding our land, air and sea frontiers from drugs because they interpreted it to not apply to them.
- A very current and important issue is border patrol. The Attorney General would like there to be 7000 agents by 1998 and there are currently 5700. This would help to lessen harm to citizens from drugs, which is an important goal of the Justice Department. This also helps in cracking down on traffickers which is another goal. The current focus is on the Southwest border, but there is work to expand to the east coast too. One way the DoJ is working to stop drugs from coming into our country is by working with the source nations.
- The Justice Department is also focussing on apprehending offenders in the United States so they can be prosecuted and convicted here. Of course the Justice Department is always working on investigations and prosecutions. They are working on ensuring that there are no gaps in our drug laws.
- There has been a recent building up of an Anti-Violence effort. The FBI has a program called Safe Streets.
- The Attorney General is a big supporter of education

and prevention. The Justice Department is very proud of their drug courts program.

- A new project is prison drug testing.
- Some new areas of crime to watch out for are the drugs crack and methamphetamine and the illicit diversion of pharmaceuticals.

Treasury presentation

- The Bureau of Alcohol, Tobacco and Firearms (ATF), Customs, the Secret Service and the Internal Revenue Service (IRS) are all departments of the Treasury Department which are involved in the counter narcotics effort. They like to focus on "Goals" 2, 4, and 5.
- One program is "agents in classrooms," (which sounds like the D.A.R.E. program).
- Operation Hardline is the Treasury effort of patrol the Southwest border. Operation Gateway is the patrolling of the Caribbean. They would like to bridge the gap between the Southwest and the Caribbean.
- To the Treasury Department Goal 5 means money laundering, and by implication, drug trafficking. They would like to take the profit away from drug trafficking.
- There is a \$1 billion budget for their anti-drug effort.

State presentation

- The State Department only receives \$230 million towards fighting drugs.
- Allocates resources mostly towards Goal 5 with some 4. Their main project is to work with the source countries and our allies to end the supply of drugs entering our borders.
- The State Department's budget document is a political document. If we are unhappy with a particular country we show it in how much attention they get from our budget.
- Colombia gets a lot of attention, as does Bolivia. Currently Peru gets little attention and hopefully this will change in the future.
- They support interdiction.
- \$8 million supports Mexico. They are working on law enforcement initiatives.

Defense presentation

- \$790 - \$850 million over the next few years.
- They have 2 more programs coming on line for interdiction in source nations.
- They also help support Mexico.
- They give \$250 million in state and local assistance.
- There are currently drug testing programs in the military and they are working on civilian drug testing programs.
- They, too, want more Research and Development programs.

Transportation presentation

- Their efforts against drugs are mainly in the area of the Coast Guard, but they have recently reprioritized funds towards the drug effort.
- Staffing is up 16%, mainly in the Coast Guard.
- In the FAA, they are working on interdiction and registering all planes so smuggling will be harder.
- The Coast Guard addresses Goals 4 and 5. They are focussing efforts on Puerto Rico and the Virgin Islands. They want to be able to go where the trafficker goes so they can cut off the routes. "Operation Steel Web."

**The Clinton Administration Prisoner
and Parolee Drug Testing Initiative
March 1, 1997**

Questions and Answers

Q. What is today's announcement?

Today, the President sent a letter to all 50 Governors informing them they have one year from today to provide the Attorney General -- for her approval -- a comprehensive plan that will implement drug testing, intervention, and sanctions for prisoners and parolees in their respective states. States must then implement an approved plan by September 1, 1998.

States that do not meet these deadlines will no longer be eligible for federal prison grants. The letter also offers assistance from his Administration to insure that states are prepared to meet this deadline.

One of the top priorities of President Clinton's *1997 National Drug Control Strategy* released earlier this week is to reduce the level of crime and violence resulting from drugs. This goal cannot be reached unless we rid our state prison and criminal justice systems of drugs.

Q. Is this letter just an effort to cover the Administration's decision to certify Mexico?

No. Over the last four years, the Clinton Administration has instituted several effective policies and programs to help break the cycle of crime and drugs. In addition to President's Prisoner and Parolee Drug Testing initiative, other measures include creating a Drug Court grant program, instituting drug testing for Federal arrestees, and enacting tougher penalties for drug dealers and seeking the largest anti-drug budgets ever to combat drug abuse and its devastating impact on America.

Q. Where did this initiative come from?

Last year, the President urged Congress to pass a provision requiring states to drug test prisoners and parolees as a condition for receiving funding from the \$7.9 billion state prison grant program created in the 1994 Clinton Crime Bill.

The provision became law and it requires states to develop and implement

comprehensive programs of drug testing, intervention and sanctions for prisoners and parolees. In December, the President announced Justice Department guidelines to assist states in meeting the requirements of the his prisoner and parolee drug testing initiative.

Q. How much funding is at stake for states that fail to meet the drug testing requirement?

States risk losing their share of the \$7.9 billion in Federal prison funds, which they can use to build or expand their correctional facilities. The drug testing initiative is a condition of funding to the states, which means that if states want Federal money to build their prisons, they must adopt and implement comprehensive drug testing programs to rid their prisons of drugs and keep parolees drug-free.

Q. What is the point of this initiative?

Illegal drugs are an enormous factor behind the level of crime and violence in America. Recent research shows that three out of every four prisoners and over half of those in jails or on probation are in need of some type of substance abuse treatment or intervention (Department of Justice). Drug addicts are involved in approximately 3 to 5 times the number of criminal incidents as arrestees who do not use drugs (Department of Justice).

Moreover, it has been estimated that 60% of the cocaine and heroin sold in this country is sold to people under the supervision of the criminal justice system (Professor Mark Kleiman, UCLA). Drug addicts are involved in approximately 3 to 5 times the number of criminal incidents as arrestees who do not use drugs. President Clinton's initiative will help us to break this destructive cycle of crime and drugs.

Q. What exactly will States have to do?

For the first time -- under these guidelines -- States will be required to have in place a program of controlled substance testing in order to receive federal grants for prison construction. If a State already has a drug testing program, it will be required to implement a program of:

Post-conviction controlled substance testing for adult offenders, both while incarcerated and following release (e.g., during supervised release or parole);

Intervention (e.g., detoxification, treatment, counseling, coerced abstinence, cognitive restructuring, therapeutic community, etc.), including criteria for referral, procedures for placement, and the duration of the intervention programs; and

escalating sanctions for drug use, including denial or revocation or release.

Q. Is this an unfunded mandate?

No. This is a condition on funding to the States. The point is clear and simple -- if States want Federal money to build prisons, then they have to adopt comprehensive drug testing programs to rid their prisons of drugs and keep parolees drug-free.

In addition, there are other Federal funds available to help States implement this initiative including: \$30 million for Residential Substance Abuse Treatment for State Prisoners in Fiscal Year 1997 alone, and a \$25 million increase in Fiscal Year 1997 for the Edward Byrne Memorial State and Local Law Enforcement Assistant Formula Grant Program, which States can use for drug testing and treatment.

Q. How do you know this program will reduce recidivism?

Recent research and evaluations show consistent reductions in recidivism rates for offenders completing drug testing and treatment programs.

Offenders in a Delaware program, who completed the in-prison treatment and the after-prison work release programs, 75% were drug free and 70% were arrest-free after 18 months. Compared to these startling figures, only 17% of a control group, who did not receive services, were drug-free and only 36% were arrest-free (National Institute of Justice, Department of Justice).

In 1992, Texas initiated its In-Prison Therapeutic Community program for inmates with substance abuse problems. Texas recently evaluated its program, and found that only 7% of the inmates who completed the program were incarcerated after their release compared to 19% of the inmates who dropped out of the program (National Institute of Justice, Department of Justice).

A study initiated in 1984 of the Stay'n Out drug treatment program in New York tracked hard-core felons, who committed an average of 321 offenses. 70% had committed at least one violent crime. At the end of one year of parole, almost two-thirds (63%) of a control group that received no treatment was reincarcerated. Fewer than one-half (43%) of the ex-offenders who received in-prison drug treatment were reincarcerated. But when drug treatment was combined with aftercare, only 26% were reincarcerated (National Institute of Justice, Department of Justice).

New Tools to Combat Witness Intimidation In addition, the President will send legislation to Congress to specifically address the problem of witness intimidation including:

- expanding detention of individuals accused of gang and other violent crimes pending trial;
- making conspiracy to intimidate or retaliate against a witness punishable by the same penalties for the underlying crimes; and
- creating stiff penalties for those who travel in interstate commerce with the intent to intimidate or retaliate against a witness in a state or federal criminal prosecution

The President is also directing the Attorney General and other members of his Cabinet to review the issue of witness intimidation and develop new strategies and better utilize existing resources.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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

Dear Mr. Speaker:

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

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

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

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



Sincerely,

Kent R. Markus
Acting Assistant Attorney General

Enclosure

A BILL

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

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

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

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

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

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

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

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

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

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

ANALYSIS

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

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

The sentencing guideline amendments relating to cocaine base (usually known as "crack"), which were adopted by a 4-3 vote of the Commission, would drastically reduce crack penalties without

recognizing the significant differences between crack and cocaine hydrochloride (cocaine powder). Crack is a more dangerous and harmful substance than cocaine powder for a number of reasons. The most common routes of administration of the two drugs cause crack to be the more psychologically addictive of the substances, particularly because smoking crack produces quicker, more intense, and shorter-lasting effects than snorting cocaine powder. Identifiable social and behavioral changes occur much more quickly with the use of crack than with the use of cocaine powder. Crack can also be broken down and packaged into very small and inexpensive quantities for distribution and is thereby marketed to the most vulnerable members of society, including those of lower socioeconomic status and youth. Additionally, the open-air street markets and crack houses used for the distribution of crack contribute heavily to the deterioration of neighborhoods and communities. Finally, the present crack market is associated with violent crime to a greater extent than that of cocaine powder.

Despite these realities, the Sentencing Commission has taken two steps to lower crack penalties to precariously low levels. First, the Commission has recommended that Congress eliminate the differential treatment of crack and cocaine powder in the mandatory minimum penalties currently provided by statute. In addition, the Commission has submitted an amendment of the sentencing guidelines to treat crack and cocaine powder alike under the guidelines, regardless of whether Congress first

revises the statutory minimum penalties. As a result, an offender convicted of distributing 50 grams of crack (about 500 doses), for whom the relevant statute imposes a mandatory minimum 10-year term of imprisonment, would face a guideline sentence of just 21-27 months of imprisonment. If such an offender accepted responsibility for his or her offense, the sentencing guideline range would be 12-18 months of imprisonment. If the court found that such an offender had also played a minimal role in the offense, the sentencing guideline range would be just 4-10 months of imprisonment, which could be satisfied by probation with conditions of confinement, such as home detention. Offenses now subject to a 5-year mandatory minimum prison term (involving at least 5 grams of crack) would potentially be subject to a sentencing guideline range of just 0-6 months of imprisonment if the defendant accepted responsibility for the offense and were a minor player.

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

Even if Congress does not adopt the Commission's recommendation as to mandatory minimum penalties for crack, the sentencing guideline amendments the Commission has submitted create serious problems. The low guideline sentences bring about

inconsistency between the guidelines and the current statutory scheme, with the result that mandatory minimum sentences will override many guideline sentences and produce sharp cliffs in sentencing, as well as resentment among those subject to the statutory penalties. The sentencing guidelines should work in concert with, rather than in opposition to, mandatory minimum sentences. Moreover, the low guideline sentences will prevail in the case of crack offenders subject to the "safety-valve" exemption from mandatory minimum sentences, 18 U.S.C. §3553(f). The implementation of these low sentences for "safety-valve" defendants may also violate the statutory requirement that guidelines implementing the "safety-valve" must provide a guideline range in which the lowest term of imprisonment is at least 24 months for defendants who would have been subject to a mandatory minimum 5-year sentence. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §80001(b)(1)(B). The drastic reduction in guideline sentences for crack will result in safety-valve sentences under §5C1.2 of the sentencing guidelines lower than 24 months in certain cases, as described above.

For the reasons set forth, Congress should disapprove the equalization of crack and cocaine powder sentences in the sentencing guidelines, as provided in section 1 of the proposed legislation. While Section 1 would result in the disapproval of those portions of sentencing guideline amendment number 5 that would equalize crack and cocaine powder trafficking penalties, it

would not affect other portions of the amendment. For example, the legislative proposal would not affect the portions of the amendment that provide enhanced sentences for the use or possession of a weapon in the case of any drug trafficking offense or that delete the definition of "cocaine base." Nor would the legislative proposal affect the amended guidelines' treatment of simple possession of crack in the same manner as simple possession of cocaine powder. (Of course, current mandatory minimum penalties pertaining to the simple possession of certain quantities of crack would continue to apply unless repealed by Congress.)

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

Section 2 of the proposed legislation addresses sentencing guideline amendments submitted by the Sentencing Commission to Congress relating to money laundering and transactions in property derived from unlawful activity. The amendments were the product of intense lobbying by the white-collar defense bar to lower penalties for money laundering and related activity. The guideline amendments are sweeping in nature and would substantially lower the penalties for many serious money laundering offenses even though Congress has determined money

laundering to be a significant offense subject to 10- or 20-year maximum penalties (depending upon the offender's intent).

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

The Commission's guideline changes appear to respond in part to the class of money laundering cases in which the money laundering activity is not extensive, including "receipt and deposit" cases -- those in which the money laundering conduct is limited to depositing the proceeds of unlawful activity in a financial institution account identifiable to the person who committed the underlying offense. While the application of the current guidelines to receipt-and-deposit cases, as well as to

certain other cases that do not involve aggravated money laundering activity, may be problematic -- and the Department of Justice proposed to the Sentencing Commission a sentencing guideline amendment that would have addressed this problem while preserving appropriately tough sentences for serious money laundering activities -- past sentencing anomalies arising from relatively few cases do not justify a sweeping downward adjustment in the money laundering guidelines.

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

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Louis P. Weiss
James A. Wyatt
David L. Wolper

TOPICS FOR DISCUSSION

Meeting: November 27, 1996
White House Domestic Policy Office

Brief Overview of Entertainment Industries Council, Inc.

Past and current relationships with Office of National Drug Control Policy;
National Institute on Drug Abuse; Center for Substance Abuse Prevention; and Office of the Secretary, Health and Human Services

EIC Interface And Current Entertainment Industries Council, Inc. In-kind Services

Barriers to progress;
Medical marijuana legalization issues;
New concepts:
IMMEDIA
Depiction tracking systems
Recognition events

Other Topics

LEGAL COUNSEL

Kaye, Scholer, Fierman,
Hays and Handler

Entertainment Industries Council, Inc.

A non-profit organization

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Life

THURSDAY, NOVEMBER 7, 1996

No waiting to inhale: Cigarettes light up movies

By Karen Thomas
USA TODAY

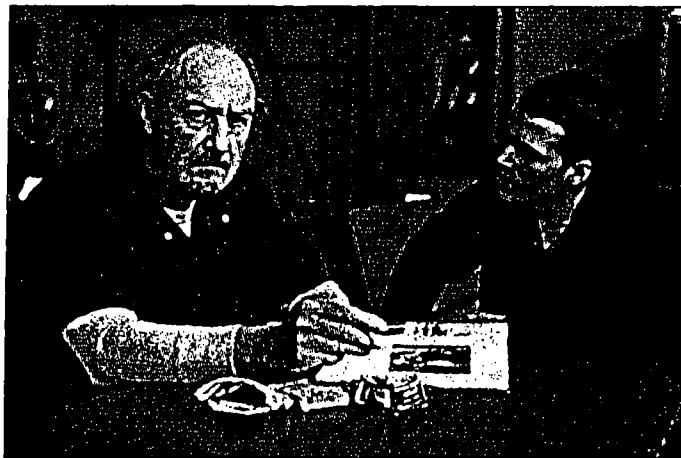
O Romeo, Romeo...
What are you doing with a cigarette at your lips?

In the new Hollywood incarnation of *Romeo & Juliet*, Shakespeare's tragic teen hero broods about his fated love while smoking.

Few films these days are smoke-free. The American Lung Association studied 133 movies released in 1994-95 and found 77% showed tobacco use. It said moviegoers are five times more likely to encounter onscreen tobacco than folks watching TV.

USA TODAY surveyed 18 current films, including this week's 10 top-grossing movies. Only one was smokeless: Disney's *D3: The Mighty Ducks*.

"What you're showing may



By Francois Duhamel, Universal City Studios

Ashes to ashes: Gene Hackman flicks his cigarette while talking to Chris O'Donnell, who plays his lawyer-grandson in 'The Chamber.'

indeed show a trend suggesting that there's going to be more tobacco" in movies, says Curtis Mekemson, project consultant

on the Lung Association study. Since 1991, it has "gotten much worse," agrees University of California-San Francisco

professor Stanton Glantz, whose study of films from 1960-1990 shows tobacco use remained steady.

Larry Deutchman of the Entertainment Industries Council Inc., a group that advises Hollywood on social issues, is equally surprised by the high level of smoking in current films.

He says the politically correct Hollywood of the early '90s is passé. The success of smoke-filled independent films has created a new buzzword: Today's Hollywood aims to be "edgy." More movies will be dark and dangerous, he says. "Smoking has become part of the definition of edginess. And edginess is in."

But anti-smoking activists say movies are portraying widespread puffing, "despite the fact that tobacco use among the population as whole

dropped dramatically," Gantz says. Also: Smokers in movies tend to be powerful and in control, an image that echoes tobacco industry advertising.

Celluloid smoking "is not an insidious marketing ploy," says Tom Lauria, spokesman for the Tobacco Institute. "It's up to the creative factors to appropriate the right message."

And Romeo's vice? The film's director declined to be interviewed, but the explanation could lie in actor Leonardo DiCaprio's own smoking habit, suggests Deutchman.

"There's a suicide in *Romeo & Juliet*, too," Lauria says. "Do we think William Shakespeare is in bed with Jack Kevorkian to promote suicide? It's gone too far."

► Top 10 films puff-by-puff, Celluloid cigar chic, 6D

Lighting up:

SMOKE SCREEN

Tobacco has a role in most movies

Recent studies show surprising levels of smoking in films, despite a decline in the habit among the general population.

USA TODAY's Karen Thomas reports on the trend: The smoke appears to be getting thicker.



By Butch Belair Miramax

Swinging in the clouds: Smoldering cigarettes are part of the cocktail lounge scenery for Patrick Van Horn, left, Vince Vaughn, Jon Favreau, Ron Livingston and Alex Desert in 'Swingers.'



By Naomi Kertman

Smoke gets in their eyes: Bronson Dudley, left, and Steve Buscemi in 'Trees Lounge,' a film with more than 40 incidences of smoking.

Lighting up:

SMOKE SCREEN

Tobacco has a role in most movies

USA TODAY surveyed 18 movies currently playing in theaters nationwide, including this week's 10 top-grossing movies. Fifteen of them included at least one incident of smoking; 11 featured more than 15 smoking scenes. All of the top-grossing films featured tobacco use:

1. *William Shakespeare's Romeo & Juliet* (PG-13): 16 smoking incidents. Two major characters, Romeo and Tybalt, smoke throughout the film.

2. *Sleepers* (R): 24. Most of the characters (all male) smoke cigarettes, and one minor role features cigar-smoking. Camel and Winston brands are shown.

3. *High School High* (PG-13): 26. Smoking is usually shown during group scenes; only the villainous characters smoke.

4. *Larger Than Life* (PG): 17. Most smoking scenes involve extras, though one of the film's villains, played by Matthew McConaughey, is portrayed as a smoker in one scene. No heroes smoke.

5. *The Ghost and the Darkness* (R): One. A minor character smokes early in the film.

6. *Stephen King's Thinner* (R): Two. A mobster character smokes a cigar; another incident takes place in a bar.

7. *The First Wives Club* (PG): 10. The primary smoker is Goldie Hawn's character, an actress. One minor female character smokes, and one of the husbands holds a cigar.

8. *Dear God* (PG): 25. Near-



Cigars make the man: Tim Daly puffs on a stogie in 'The Associate,' in which Whoopi Goldberg, left, holds a cigar, too.

Setting scene for success? Have a cigar

Nothing beats a cigar to signal success.

That's the message at the movies, according to a study by the American Lung Association that found 52% of U.S. films feature cigar smoking. That drumbeat is getting stronger, based on a USA TODAY survey of 18 movies currently in theaters. Ten of them — or 56% — include cigar smoking.

A prime example: *The Associate*, a corporate comedy that prominently features stogie smoking among the very monied, very powerful executives. Eventually, star Whoopi Goldberg picks up the habit. Negative characters, on the other hand, smoke cigarettes.

In *The First Wives Club*, the three female leads never pick up cigars, but ads and posters for the current box office hit feature the trio with stogies. Paramount refused to send the poster to USA TODAY, saying the studio didn't want to be part of this story.

The predominance of celluloid cigars in

the Lung Association study of 133 films in '94-'95 is one of the most startling findings, says project consultant Curtis Mekemson, who cites this summer's *Independence Day* as a prime example. "The cigar becomes the symbol of freedom with a powerful message: If you're a hero, what does a hero do? He smokes a cigar."

The Lung Association estimates 3.5% of U.S. men smoked cigars in 1991. The Cigar Association of America estimates 10 million-12 million U.S. men and women (3.8%-4.5% of the population) now smoke cigars. Ten percent of films with tobacco use featured only cigars, the Lung Association study found.

And while the entertainment community argues that films reflect what's going on among the population, Curtis says the "strong correlation" is that movie smoking is "driving the increase in cigar smoking among the general population."

ly all incidents are in a handful of scenes at the company smoking area. One major character, the postal service boss, is a pipe smoker.

9. *The Associate* (PG-13): 30. While several negative characters of both sexes are shown smoking cigarettes, the film's main characters (successful business executives) are heavy cigar smokers. Kool cigarettes are shown on a bill-

board. Also: one pipe-smoking incident.

10. *The Long Kiss Goodnight* (R): 14. Most of the examples feature the film's main character, played by Geena Davis, who transforms from a dowdy woman to a rough, tough gal. Also, the film includes examples of kids sneaking cigarettes.

Other films reviewed:

► *D3: The Mighty Ducks*.

(PG): 0.

► *To Gillian on Her 37th Birthday* (PG-13): Three. One major player smokes a cigar twice. An extra in one party scene smokes.

► *Get on the Bus* (R): Three. The villain is a cigar-smoker.

► *That Thing You Do!* (PG): 16. None of the main players smoke. Two minor characters do, including a jazz great and a

woman that one band member falls for. Smoking generally takes place in bars. A DJ smokes a cigar.

► *The Chamber* (R): 16. Most smoking scenes feature the film's villain, played by Gene Hackman. One female lead character also smokes, and at least four extras are shown smoking. One cigar.

► *Swingers* (R): 22. Marlboro is prominently featured,

and one of four cigar scenes features a woman smoking.

► *Michael Collins* (R): Among smokers: The two main characters, played by Liam Neeson and Aidan Quinn.

► *The Big Night* (R): Smoking occurs among both men and women who portrayed positive characters.

► *Trees Lounge* (R): This look at denizens of a bar the week's top smoking film

<http://www.usatoday.com>



Life

THURSDAY, NOVEMBER 7, 1996

Hollywood's cigarette break of sorts

When it comes to movies, the Marlboro Man reigns.

Fewer specific brands are showing up in movies, but the cigarette of choice is a Marlboro.

Only 20% of 103 films that feature tobacco show specific brands, according to a study of 1994-95 movies by the American Lung Association. Half of those films mentioned Marlboro, including kid-targeted *Angels in the Outfield* and *Milk Money*. Marlboro is also the brand most frequently shown in 18 current films surveyed by USA TODAY.

"Considering Marlboro has 50% of the market, it's in sync with the real world," says Tom Lauria of the Tobacco Institute.

While firms in the past placed their cigarettes in films, Lauria says, today "there is no brand placement" and hasn't been since 1990, when it became an industry policy. In fact, the Lung Association expected to see more brands.

Even anti-tobacco activist Stanton Glantz (*The Cigarette Papers*), who studied 30 years of film, says today's movies focus on portraying general tobacco use, not brands. "Marlboro was the most aggressive historically with product placement," he says, "but the industry got its fingers burned."

Still, he says, "I cannot believe that people aren't being paid off and it's hidden very deep."

"We've been told (brand placement) stopped because of the health warnings required," says Larry Deutchman, vice president of Entertainment Industries Council Inc., which works with the entertainment industry on social issues. "It's not worth the negative publicity or the grief."

Drug czar at EIC meeting

By Donna Parker

Drug czar Lee Brown and other federal officials involved in the nationwide fight against drugs and violence have agreed to meet with Hollywood's creative community at an Oct. 19 symposium presented by the Entertainment Industries Council.

The day-long symposium on drugs and violence in the movies and on television will be held at the Universal Sheraton Hotel in North Hollywood.

The meeting will be co-sponsored by 14 entertainment industry organizations, the EIC said.

Other federal officials scheduled to attend include Dr. Elaine Johnson, director of the U.S. Center for

Substance Abuse Prevention; Dr. Alan Leshner, director of the National Institute on Drug Abuse; and Robert Valdez, appointed chairman to Department of Health and Human Services secretary Donna Shalala's Task Force on Violence.

The entertainment industry contingent is headed by EIC president-CEO Bryan Dyak and NBC Enterprises president John Agolia.

Symposium co-sponsors announced Wednesday by the EIC include the Screen Actors Guild, the Writers Guild of America West, and the American Federation of Television and Radio Artists. □

L.A. Times

F2

THURSDAY, SEPTEMBER 14, 1995

MORNING REPORT

Arts and entertainment reports from The Times, national and international news services and the nation's press.

PEOPLE

Deglamorizing Drugs and Violence: The Entertainment Industries Council Inc., established in 1983, announced Wednesday that it will host "the most comprehensive industry symposium ever held on the subjects of violence and drug use in films, on television and in the recording/music video industries" on Oct. 19, probably at a major studio still to be selected. Titled "Drugs, Violence and Youth: Tragedies and Truth," the symposium will be co-sponsored by a wide spectrum of entertainment organizations including the Screen Actors Guild, Writers Guild of America West, Producers Guild of America and AFTRA. The symposium is EIC's first step in response to its recent poll of more than 100 top executives on the industry's role in drug prevention and the relationship between drug use and violence. The poll found that 71% believe drugs and violence are the No. 1 priority area on which to focus attention. The symposium is partly funded by the U.S. Center for Substance Abuse Prevention.

Wednesday, March 6, 1996

Report calls for drug panels

Conferences, committees and public events are the remedy to the issues of drug use and violence, according to a report published by the Entertainment Industry Council.

The report, which is being sent to politicians, federal agencies and entertainment industry leaders, contains the findings developed during the EIC's "Drugs, Violence and Youth: Tragedies and Truth" symposium in Universal City last year (HR 10/20).

Among the recommendations from the EIC is a call for conferences on the issues of drugs and violence to be held in New York and Orlando — due to the significant entertainment production in

those cities.

The organization also favors an industry-wide working committee that would develop an "action plan" and develop a timetable for its implementation.

National events that highlight the cooperation between the government and public interest groups would also further the cause, according to the EIC. Such events would require non-entertainment industry endorsement, the authors of the report concluded.

They also pointed out the need to follow up national events with local campaigns.

The success of the recommendations is contingent upon developing a reliable funding source. The money should come from government and the entertainment industry as well as businesses and non-profit organizations. □

901 N. Pitt Street, Suite 300 • Alexandria, VA 22314

February 26, 1997 (703) 706-0576 • (703) 706-0565 FAX

Leanne Shimabukuro
Domestic Policy Council
Executive Office of the President
Washington DC 20500

Dear Leanne:

The National Association of Drug Court Professionals (NADCP) and the Department of Justice, Office of Community Oriented Policing Services (COPS) are pleased to invite you to be an audience participant in a focus group entitled, "Community Policing/Community Court Collaborations" on March 14 and 15 at the Madison Hotel in Washington, DC.

This focus group will provide the framework for the development of a national strategy on institutionalizing linkages between Community Policing, Drug Courts, as well as other Community Courts. Additionally, ideas and materials generated from this meeting will be used to develop a training curricula that will be implemented by NADCP to assist jurisdictions in coordinating and strengthening such linkages.

This event will be an interactive process involving both the panelists and audience participants. Consistent with NADCP's philosophy of utilizing practitioners to deliver hands on training and technical assistance, the composition of the panel includes twenty-seven practitioners representing nine jurisdictions across the country.

The audience participants will include representatives from the Department of Justice, Office of Community Oriented Policing Services, The Community Policing Consortium and Drug Courts, as well as other law enforcement agencies and national organizations.

Ben Tucker, Deputy Director of the Department of Justice, COPS will be the luncheon speaker on Friday, March 14.

There is no charge to participate; however, space is limited. Please contact Lolita R. Curtis at (703) 706-0576 to RSVP your attendance at this important event.

Sincerely,

Jeff Tauber
Judge Jeffrey Tauber
President NADCP

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Program Administrator,
Division of Parole and
Probation, Baltimore, MD

Judge Jeffrey Tauber
President, NADCP
Alexandria, VA

Dennis Burke

Domestic Policy Council /Executive Office of the President
1600 Pennsylvania Ave., NW
Washington DC 20500

Dear Dennis:

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Sincerely,

Jeff Tauber

Judge Jeffrey Tauber
President NADCP

Affiliated with
Community Anti-Drug
Coalitions of America



NATIONAL INSTITUTE OF JUSTICE



Keynote Speaker

Peter Reuter is Professor in the School of Public Affairs and the Department of Criminology at the University of Maryland.

From 1981 to 1993, he was a senior economist in the Washington office of the RAND Corporation, where he founded and directed RAND's Drug Policy Research Center. His early research focused on the organization of illegal markets and resulted in the publication of *Disorganized Crime: The Economics of the Visible Hand* (M.I.T. Press, 1983).

Since 1985, most of his research has dealt with alternative approaches to controlling drug problems, both in the United States and Western Europe. He was a member of the Institute of Medicine Committee on the Federal Regulation of Methadone and is a director of the College on Problems of Drug Dependence. He has testified frequently before Congress.

Dr. Reuter received his Ph.D. in Economics at Yale University.

About the National Institute of Justice

The National Institute of Justice, a component of the Office of Justice Programs, is the research and development agency of the U.S. Department of Justice. NIJ was established to prevent and reduce crime and to improve the criminal justice system. Specific mandates established by Congress in the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Anti-Drug Abuse Act of 1988 direct the National Institute of Justice to:

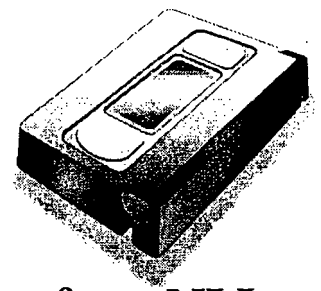
- *Sponsor special projects and research and development programs* that will improve and strengthen the criminal justice system and reduce or prevent crime.
- *Conduct national demonstration projects* that employ innovative or promising approaches for improving criminal justice.
- *Develop new technologies* to fight crime and improve criminal justice.
- *Evaluate the effectiveness of criminal justice programs* and identify programs that promise to be successful if continued or repeated.
- *Recommend actions* that can be taken by Federal, State, and local governments as well as private organizations to improve criminal justice.
- *Carry out research on criminal behavior.*
- *Develop new methods of crime prevention* and reduction of crime and delinquency.

The National Institute of Justice has a long history of accomplishments, including the following:

- Basic research on career criminals that led to development of special police and prosecutor units to deal with repeat offenders.
- Research that confirmed the link between drugs and crime.
- The research and development program that resulted in the creation of police body armor that has meant the difference between life and death to hundreds of police officers.
- Pioneering scientific advances such as the research and development of DNA analysis to positively identify suspects and eliminate the innocent from suspicion.
- The evaluation of innovative justice programs to determine what works, including drug enforcement, community policing, community anti-drug initiatives, prosecution of complex drug cases, drug testing throughout the criminal justice system, and user accountability programs.
- Creation of a corrections information-sharing system that enables State and local officials to exchange more efficient and cost-effective concepts and techniques for planning, financing, and constructing new prisons and jails.
- Operation of the world's largest criminal justice information clearinghouse, a resource used by State and local officials across the Nation and by criminal justice agencies in foreign countries.

The Institute Director, who is appointed by the President and confirmed by the Senate, establishes the Institute's objectives, guided by the priorities of the Office of Justice Programs, the Department of Justice and the needs of the criminal justice field. The Institute actively solicits the views of criminal justice professionals to identify their most critical problems. Dedicated to the priorities of Federal, State, and local criminal justice agencies, research and development at the National Institute of Justice continues to search for answers to what works and why in the Nation's war on drugs and crime.

Perspectives on Crime and Justice



Breakfast Lecture Series Available on Videotape from NIJ

The Nation's foremost criminal justice thinkers examine the challenges of crime and justice in a five-part breakfast lecture series available on videotape from NIJ. Each videotape is approximately 60 minutes in length and presents a prominent scholar discussing empirical research and policy issues. The lecture series includes the following presentations:

NCJ 164375— James Q. Wilson, Professor, University of California at Los Angeles. *What, If Anything, Can the Federal Government Do About Crime?* Now available.

NCJ 164376— Peter Reuter, Professor, University of Maryland. *Can We Make Prohibition Work Better? An Assessment of American Drug Policy.* Available March 1997.

NCJ 164504— Mark H. Moore, Professor, Kennedy School of Government, Harvard University. *The Legitimation of Criminal Justice Policies and Practices.* Available April 1997.

NCJ 164505— Cathy Spatz Widom, Professor, State University of New York at Albany. *Child Victims: In Search of Opportunities for Breaking the Cycle of Violence.* Available May 1997.

NCJ 164506— Norval Morris, Professor Emeritus, University of Chicago Law School. *Crime, the Media, and Our Public Discourse.* Available June 1997.

To order any of these tapes, please complete and return this form with your payment (\$29.50, includes postage and handling) to National Criminal Justice Reference Service, P.O. Box 6000, Rockville, MD 20849-6000. Call 800-851-3420, or e-mail askncjrs@ncjrs.org if you have any questions.

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