



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20500

033-95

The Honorable Richard P. Conaboy
Chairman
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, DC 20002-8022

Dear Mr. Chairman:

I write in response to amendments proposed to the drug offense guidelines issued in January 1995 by the United States Sentencing Commission.

The Office of National Drug Control Policy (ONDCP) was established by Congress in 1988 to develop counternarcotics policy for the President. The recently released 1995 *National Drug Control Strategy* identifies the President's priorities for addressing this Nation's continuing drug problem. The 1995 Strategy also develops plans for reducing illegal drug use, drug trafficking and availability, crime, and violence. The accomplishment of this goal depends upon an aggressive and coordinated law enforcement effort as well as certainty and appropriateness of punishment for all drug offenders.

I find that the proposed amendments to the drug offense guidelines are generally consistent with the Administration's goal of ensuring swiftness and certainty of punishment. The Commission is to be lauded for its attempt to solve the problems of fairness and proportionality with changed guidelines.

As I indicated in my January 19, 1995, letter to you regarding the U.S. Sentencing Commission's *Special Report to the Congress: Cocaine and Federal Sentencing Policy* on powder and crack cocaine, the differential between the impact on "low end" users and traffickers versus "high end" users and kingpins, and the enormous impact on the African American community is of great concern to ONDCP. It is clear to me that the impact of crack cocaine in primarily poor, urban, African American neighborhoods has been devastating; and it is also clear that African-Americans have been disproportionately affected by the sentencing for powder and crack cocaine.

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One of the goals of sentencing policy in general should be to eliminate race-based differentials in sentencing. However, as the Commission's report demonstrates, the research does not clearly support elimination of the sentencing differential for powder versus crack cocaine. In fact, the greater availability of crack cocaine, the greater degree of addictiveness of crack cocaine, the impact on many inner city communities, and the greater systemic violence which surrounds the crack trade indicate that some differential may be warranted.

As your research shows, African Americans accounted for 88.3 percent of federal crack cocaine distribution convictions in 1993, compared to 7 percent for Hispanics, and 4.1 percent for whites. Those individuals convicted of selling crack are overwhelmingly the low-level street dealers; yet they receive longer sentences than many individuals convicted of higher-level sales of powder cocaine.

I strongly believe that swift and certain punishment is key to an effective criminal justice policy. However, the Commission's data indicate that the present sentencing process disproportionately affects one segment of the population. Recently, a Federal appeals court in California upheld the dismissal of crack cocaine trafficking charges against five African Americans after they made a "colorable" showing of selective prosecution because a study revealed that all the defendants in 24 crack trafficking cases concluded by the Los Angeles Federal public defender's office in 1991 had been black.

I agree with your recommendation, "that Congress's objectives with regard to punishing crack cocaine trafficking can be achieved more effectively without relying on the current Federal sentencing scheme for crack cocaine offenses that includes the 100-to-1 quantity ratio," and that the "current sentencing scheme, therefore, should be amended to account for and punish more fully and appropriately for the dangers associated with both crack and powder cocaine."

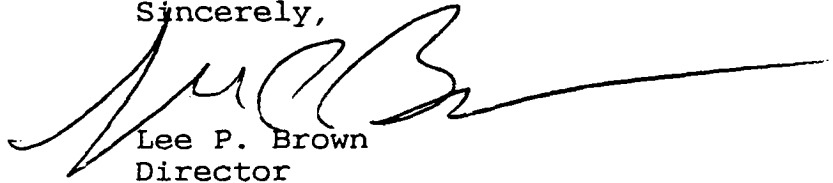
I feel that it is imperative upon the Sentencing Commission to recommend a way to account for both forms of this dangerous drug in sentencing in a fair and equitable manner. For example, further examination should be given to the level of violence and other external results of these illegal transactions in relation to the severity of the sentence. A change in the primary focus from quantity of drugs to offender characteristics, including but

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not limited to, use and possession of weapons, related violence, defendant culpability, and role within the trafficking structure might then make it possible to severely punish the violent act and "high end" dealers regardless of whether they are trafficking in powder or crack.

Thank you for the opportunity to contribute to this important debate.

Sincerely,

A handwritten signature in dark ink, appearing to be 'LPB', with a long horizontal line extending to the right.

Lee P. Brown
Director