

Congress of the United States

Washington, DC 20515

March 30, 2007

The Honorable Ricardo H. Hinojosa
Chairman
United States Sentencing Commission
One Columbus Circle, N.E.
Washington, DC 20002-8002

Dear Chairman Hinojosa and Commission Members:

We, the undersigned Members of Congress, believe it is important that the United States Sentencing Commission ("the Commission") understand that we support equalization of the penalties for crack and powder cocaine at the current penalty level of powder cocaine.

Under current federal law, mere possession of just 5 grams of crack cocaine requires a 5-year mandatory minimum federal prison sentence, while it takes distribution of at least 500 grams of powder cocaine before a 5-year sentence is required. This 100-to-1 disparity in penalties for crack versus powder may be the only instance in the code where mere possession of a small portion of a diluted form of a drug is punished much more severely than trafficking in a much higher quantity of a purer form of the drug. For example, trafficking in "ICE", a purer form of methamphetamine, is punished more severely than trafficking in meth mixture, a less pure form of the drug. The crack/powder penalty disparity is certainly the only instance where the racial impact of trafficking in variations of the same drug is so severe.

Between 1994 and 1995, the Commission conducted an extensive study of the pharmacological, sociological, marketing and other aspects attendant to these two variations of the same drug. The Commission found no pharmacological differences in these variations, but found substantial differences in the sociological impact and the marketing process associated with the two forms. The Commission also found a severe racial impact in the sentencing of crack versus powder in that approximately 88% of offenders prosecuted and sentenced for crack offenses were Black with another 7% Hispanic, whereas with powder, most offenders were White and sentenced to much less for illegal involvement with the same amount of cocaine. Moreover, still today, while 95% of those held accountable for abuse of crack are Black and Hispanic, the evidence reveals that 2/3 of crack users are White.

As a result of the absence of a pharmacological distinction between crack and powder, the extreme racially disparate impact between the two variants of the same drug, and the fact that aggravations associated with either could be punished as add-ons on a case-by-case basis, the Commission recommended equal treatment of crack and powder at the outset of sentencing, adding any aggravating factors applicable. Although the recommendation was rejected for

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political reasons, the first rejection in the history of Commission recommendations, nothing of a more compelling scientific or policy rationale has been presented to the Congress since as a basis for addressing the disparity.

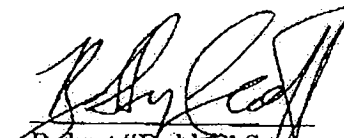
The great disparity in punishments for crack and powder was not reached on a reasoned and scientifically based foundation. Instead, it was based on political hysteria following the death of Maryland star basketball player, Len Bias, some 20 years ago, from what was then thought to be crack, but later shown to be powder, use.

It is clear that no one anticipated the severe racially disparate impact from punishing crack more severely than powder. Many of those who led the effort to create the penalty disparity now disavow the move, including current House Ways and Means Committee Chairman, Charles Rangel, who is a signatory to this letter.

Some suggest that the most politically feasible way out of what virtually all agree is the unreasonable and intolerable sentencing disparity between crack and powder is by a face-saving compromise solution lowering the disparity from 100 to 1 to some other disparate level such as 20 to 1. Given the lack of pharmacological differences in the two variations of the same drug, and the extreme, unintended racial impact from the disparate punishments between them, we believe that continuing any such disparate treatment is morally indefensible. If political realities recommend some compromise, that ought to be a legislative assessment. We rely on the Sentencing Commission for decisions based on research-based facts and evidence, and morally sound reasoning. A 20 to 1 sentencing disparity between crack and powder reflects neither. Unless there is a rational, informed, basis for changing the Sentencing Commission's original recommendation of a 1 to 1 ratio based on science and morality, we would expect the Commission's advice to remain the same.

Sincerely,

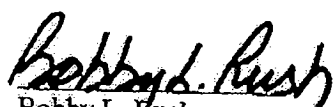

John Conyers, Jr.
Member of Congress


Robert "Bobby" Scott
Member of Congress


Charles B. Rangel
Member of Congress

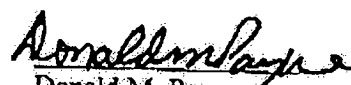
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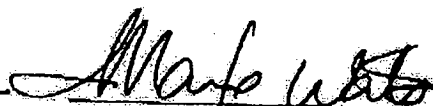

Sheila Jackson-Lee
Member of Congress


Bobby L. Rush
Member of Congress

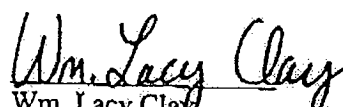

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