



MAINE CIVIL LIBERTIES UNION

March 30, 2007

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500
Washington, DC 20002-8002

Dear Chairman Hinojosa and Commissioners:

The Maine Civil Liberties Union (MCLU) appreciates this opportunity to file comments with the United States Sentencing Commission, in accordance with notice in the Federal Register seeking recommendations concerning sentencing laws for crack and powder cocaine offenses. The MCLU urges the Commission to strongly recommend sentencing reform in order to reduce the severity of penalties for crack offenses to the level of penalties currently prescribed for offenses relating to powder cocaine.

In 18 U.S.C. § 3553(a), Congress instructed the courts to impose a sentence sufficient, but not greater than necessary to meet the following purposes:

- (1) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (2) to afford adequate deterrence to criminal conduct;
- (3) to protect the public from further crimes of the defendant; and
- (4) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

In determining specific sentences, Congress has instructed courts to consider the following factors in imposing a reasonable sentence:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the kinds of sentences available;

Crack and Powder Cocaine are Substantially the Same Substance and Have Identical Effects on the Brain

As the Commission knows, powder cocaine is made from coca paste, which is derived from the leaves of the coca plant. Crack cocaine is simply made by taking powder cocaine and cooking it with baking soda and water until it forms a hard rocky substance. These "rocks" are then broken into pieces and sold in small quantities¹. Apparently, Congress believed, at the time of the legislation creating the enormous crack/powder sentencing disparity, that crack was fifty times more addictive than powder cocaine². However, two decades later, there is little controversy about the falseness of that assumption and there is no legislative history that demonstrates that Congress used any rational basis to arrive at a 100: 1 sentencing ratio. Certainly, given what is known today, there can be no rational basis for adhering to the current policy³.

The Increased Violence Associated with Crack's Appearance on the Drug Market Was Not Associated With Inherent Properties of the Drug

To the extent that an increase in crime in the 1980s was associated with the widespread distribution of the crack form of cocaine, that increased violence was related to the lower price of crack and the nature and geography of its market, rather than any relationship with the properties of the substance itself or to any differential effects on the brain⁴. As in any market, the lower price of the product increased the demand for it in neighborhoods that were already associated with higher crime rates. Moreover, the increased violence is now widely seen as a function of a nascent market for crack, as new dealers competed for street distribution territory. However this violence has since subsided and therefore, can no longer represent even a pretense that would support the current sentencing disparity.⁵

Two Decades of Experience Reveals Unacceptable and Perverse Racial Effects Under Current Crack Sentencing Policy

Regardless of the presumed race-neutral intent of drug legislation creating the crack/powder sentencing disparity, the result has been an unambiguous and

¹ United States Sentencing Commission, *Report to Congress: Cocaine and Federal Sentencing Policy*, May 2002.

² For example, a 1996 study published in the *Journal of the American Medical Association* finds analogous effects on the body for both crack cocaine and powder cocaine. Similarly, Charles Schuster, former Director of the National Institute on Drug Abuse and Professor of Psychiatry and Behavioral Sciences, found that once cocaine is absorbed into the bloodstream and reaches the brain, its effects on brain chemistry are identical regardless of whether it is crack or powder.

³ As the ACLU stated in *Cracks in the System, Twenty Years of the Unjust Federal Crack Cocaine Law*, despite the hyped media reports of the death of Len Bias (which triggered a huge media-based anti-drug campaign and helped to motivate Congress to enact the new harsh crack penalties), "The ultimate irony of this anniversary is that Len Bias did not die of a crack overdose, but rather from snorting powder cocaine and alcohol" (October, 2006).

⁴ This Commission, in 2002, has already reported that the adoption of the current penalties for crack offenses were based on inaccurate beliefs concerning the association between crack and violence.

⁵ See Coyle, *Race and Class Penalties in Crack Cocaine Sentencing*, and *Federal Crack Cocaine Sentencing*, The Sentencing Project, February, 2007

serving unjustifiably long sentences. Finally, the large increase in the incarceration rates of non-white women as a result of harsh crack sentences, has resulted in substantial harm to children and families, especially in minority communities.

A legitimate goal of harsh sentencing would be to target large violent drug distributors. In order to accomplish that, the Commission should urge Congress to enact laws with a much sharper focus, replacing the current large net that results in long sentences for low-level offenders and tangential participants in drug offenses. A good start would be to reduce the penalty for crack offenses to the level prescribed for powder cocaine offenses.

Respectfully submitted,
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