



March 30, 2007

Honorable Ricardo H. Hinojosa
Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: Issue for Comment: Cocaine Sentencing Policy

Dear Judge Hinojosa:

We write on behalf of the board and members of Families Against Mandatory Minimums (FAMM). For twenty years the 100:1 ratio has punished low-level crack offenders, many of whom are first-time offenders, far more severely than their wholesale drug suppliers who provide the powdered cocaine from which crack is produced. Of all drug defendants, crack defendants are most likely to receive a sentence of imprisonment as well as the longest average period of incarceration. The Commission has reported that local street-level crack offenders receive average sentences comparable to intrastate and interstate powder cocaine dealers, and both intra- and interstate crack sellers receive average sentences longer than international powder cocaine traffickers¹. Despite the enormous cost to taxpayers and society, the crack-powder ratio has resulted in no appreciable impact on the cocaine trade. Results such as these are surely not what The Sentencing Reform Act of 1984 intended to stem the tide of crack cocaine abuse.

We recognize that two decades ago little was known about crack other than vague perceptions that this new derivative form of cocaine was more dangerous than its original powder form, would significantly threaten public health, and greatly increase drug-related violence. Since that time, copious documentation and analysis by the Commission have revealed that many assertions were not supported by sound data and, in retrospect, were exaggerated or simply incorrect. Four previous inquiries, reaching back to 1995, produced research and findings from diverse fields. You have heard, repeatedly and most recently in November 2006, from psychologists, criminologists, law enforcement personnel, pharmacologists, treatment providers, defense and prosecuting attorneys, prisoners' families, and interest groups such as ours. For the most part they do not support the current penalty structure. Your reports, most recently the 2002 Report to Congress: Cocaine and Federal Sentencing Policy, exhaustively detail their findings and in all your reports you have reached the same conclusion "the harms associated with crack cocaine do not justify its substantially harsher treatment compared to powder cocaine."²

¹ U.S. Sentencing Commission, 104th Congress, 2nd Session, Special Report to Congress: Cocaine and Federal Sentencing Policy (1995) at 175-77 (Figures 10 & 11).

² U.S. Sentencing Commission, Fifteen Years of Guideline Sentencing 132 (2004).

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The documentation could not be more complete. That opposition to the unbalanced penalty structure for crack cocaine is widespread and unsurprising; your work has done so much to demonstrate that the penalty structure is unconscionable, unsupportable and its demise is years overdue.

And yet, year after year, the Commission and all of us who struggle to dismantle the crack penalty structure, have failed. We have failed because ultimately, amending the crack guideline rests in the hands of Congress. The Sentencing Reform Act of 1984 provided that amendments sent it by the Commission would become law unless disapproved by an Act of Congress.³ In 1995 the Commission proposed to raise the crack penalty triggers to correspond with those for powder cocaine. Congress exercised its §994(p) option and disapproved the amendment.⁴ In that Act, Congress directed the Commission to report on the crack cocaine penalty and address a series of considerations. The ensuing research resulted in the April 1997 report to Congress that included recommendations in lieu of a proposed amendment.⁵ That report and the one from 2002 were met by a deafening silence on the Hill.

But today, it might have a chance. The new leaders of the House and Senate Judiciary Committees oppose mandatory minimum sentences. You have built an impressive battery of evidence to support an amendment. And, we believe you could gain bi-partisan support for amending the crack penalty. We are not naïve enough to think that a Congress controlled by Democrats is the panacea for a broken sentencing system. We do believe however that there is a fresh opportunity to develop bi-partisan support on the Hill for a new look at one of the most broken penalty structures. And we think the Commission is best suited to lead off with a proposed guideline.

FAMM supports an end to the sentencing disparity between crack and powder cocaine. We believe that the penalty structure for crack cocaine should not differ from the penalty structure for powder cocaine. The overwhelming impact of the evidence points to the correctness of parity indexed at the current powder cocaine penalty structure.

We urge you to propose an amendment that promises genuine relief, promotes justice and brings an end to the unconscionable results produced by the current penalty structure. If you do so, you will not be alone going to the Hill. Given the right amendment, you could be joined by many of the groups that have written and testified and conducted research and come to Commission meetings and sat through congressional debates year after year.

Thank you for considering our views.

³ 28 U.S.C. § 994(p).

⁴ See Pub. L. No. 104-38, 109 Stat. 334 (Oct. 30, 1995).

⁵ See Special Report to Congress: Cocaine and Federal Sentencing Policy – April 29, 1997.

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Sincerely,

Julie Stewart
President

Mary Price
Vice President and General Counsel

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