

***LETTER FROM LAW SCHOOL PROFESSORS REGARDING
REFORM OF THE 100:1 CRACK AND POWDER COCAINE
FEDERAL SENTENCING DISPARITY***

March 30, 2007

VIA EMAIL

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

Dear Commissioners:

Re: USSC Federal Register notice requesting public comments, January 30, 2007

We, the undersigned law school professors, write to express our deep concern with the current 100:1 federal sentencing disparity between crack and powder cocaine. Distribution of just 5 grams of crack carries a minimum 5-year federal prison sentence, while distribution of 500 grams of powder cocaine—100 times the amount of crack cocaine—carries the same sentence. October 2006 marked the twentieth anniversary of the Anti-Drug Abuse Act of 1986, the law establishing much tougher sentences for crack cocaine offenses than for powder cocaine offenses. During the last two decades this law has had a disparate impact on minorities and women. In addition, over the past twenty years, experts have established that there is no penological or scientific rationale for such vastly different treatment under law for the two forms of the drug. We urge the United States Sentencing Commission (USSC) to make a formal recommendation to Congress that equalizes the trigger for federal prosecution of crack offenses at the current levels for powder cocaine.

The current 100:1 drug quantity ratio promotes unwarranted racial disparities in sentencing. African Americans comprise the overwhelming majority of those convicted for crack cocaine offense, while the majority of those convicted for powder cocaine offenses are white.¹ This is startling given that whites and Hispanics make up the majority of crack users in the country. For example, in 2003 whites represented 7.8% and African Americans represented more than 80% of the defendants sentenced under the harsh federal crack cocaine laws, despite the fact that more than 66% of crack cocaine users in the United States are white or Hispanic.² The 100:1 disparity between crack and

¹ Nkechi Taifa, *The "Crack/Powder" Disparity: Can the International Race Convention Provide a Basis for Relief?* (American Constitution Society for Law and Policy, May 2006).

² U.S. Sentencing Commission, 2003 Sourcebook of Federal Sentencing, Table 34(2003), available at <http://www.ussc.gov/ANNRPT/2003/table34.pdf>.

powder cocaine has resulted in African Americans serving considerably longer prison terms than whites for drug offenses. The average sentence for a crack cocaine offense in 2003 was 123 months, 3.5 years longer than the average sentence of 81 months for an offense involving the powder form of the drug.³ African Americans now serve virtually as much time in prison for a drug offense at 58.7 months, as whites do for a violent offense at 61.7 months.⁴

Judges, federal prosecutors, medical professionals, and other experts have all joined the USSC in calling for a reassessment of the current standards. Recently, federal judges across the country in roughly two dozen district courts have issued lower sentences than those suggested by the 100:1 ratio, thus questioning the wisdom of the sentencing guidelines set forth by this Commission.

During the November 2006 Sentencing Commission hearing, witnesses testified that there is no rational basis for the crack and powder cocaine sentencing disparity, which continues to produce racially disparate levels of incarceration. The quantities of crack cocaine that trigger federal prosecution and sentencing should be equalized with and increased to the current levels for powder cocaine. Thank you for your time and attention to this very important matter.

Sincerely,

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³ Bureau of Justice Statistics, Compendium of Federal Justice Statistics, 1994, Table 6.11, at 85 (1998); Bureau of Justice Statistics, Compendium of Federal Justice Statistics, 2003, Table 7.16, at 112 (2004).

⁴ Bureau of Justice Statistics, Compendium of Federal Justice Statistics, 2003, Table 7.16, at 112 (2004).

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***LETTER FROM UNIVERSITY PROFESSORS AND SCHOLARS
REGARDING REFORM OF THE 100:1 CRACK AND POWDER
COCAINE FEDERAL SENTENCING DISPARITY***

March 30, 2007

VIA EMAIL

United States Sentencing Commission
One Columbus Circle, NE
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Attention: Public Affairs

Dear Commissioners:

Re: USSC Federal Register request for public comment, January 30, 2007

We the undersigned professors and scholars, representing a variety of disciplines, join to express our concern with the current federal crack and powder cocaine sentencing disparity enacted in the Anti-Drug Abuse Act of 1986. We are writing to you to support efforts to equalize sentencing for crack and powder cocaine at the current level of powder cocaine.

Currently under federal law, distribution of 5 grams of crack carries a minimum 5-year federal prison sentence, while distribution of 500 grams of powder cocaine carries the same sentence. It takes 5000 grams of powder cocaine—about 11 pounds—to trigger a 10-year sentence, while it takes only 50 grams of crack to get the same.

This disparity creates the false implication that crack is 100 times more dangerous and destructive than the powder form of the drug. Two decades of research, however, has uncovered that the effects of the two forms of cocaine are the same. A 1996 study in the *Journal of the American Medical Association* found that "the physiological and psychoactive effects of cocaine are similar regardless" of its form.¹

The myths of crack babies, instant addiction, and super-violent users and traffickers—which in great part led to the 1986 Act—have been dispelled. Researchers have found that the negative effects of prenatal crack cocaine exposure are identical to the negative effects of prenatal powder cocaine exposure. Recent data also indicates that significantly less trafficking-related violence is associated with crack than was previously assumed.

¹ D. K. Hatsukami & M. W. Fischman, *Crack Cocaine and Cocaine Hydrochloride. Are The Differences Myth or Reality?*, 279 *Journal Of American Medicine*, No. 19, Nov. 1996, at 1580.

For example, in 2000 only 2.3% of crack offenders actively used a weapon.² As the Commission has established over the last 13 years, there is little rationale for disparate treatment of two forms the same drug, and no rational basis for that treatment to differ by 100 times.

The crack and powder cocaine sentencing disparity has resulted in alarmingly disproportionate incarceration rates for African Americans. African Americans comprise the overwhelming majority of those convicted for crack offenses, while the majority of those convicted for powder offenses are white.³ This is disturbing given that whites and Hispanics make up the majority of crack users in the country. Indeed, in 2003 whites represented only 7.8% and African Americans represented more than 80% of defendants sentenced under the federal crack cocaine laws, despite the fact that more than 66% of crack cocaine users in the United States are white or Hispanic.⁴

Drug sentencing laws have also resulted in drastic increases in the number of women in federal prison. In 2003, more than half of the women in federal prison were there for drug offenses. African American women's incarceration rates for all crimes, largely driven by drug convictions, has increased by 800% from 1986, compared to an increase of 400% for women of all races for the same period.⁵ Mandatory sentencing laws prohibit judges from considering the many reasons women are involved in or remain silent about a partner or family member's drug activity, such as domestic violence and financial dependency.

The effect of mandatory minimums, especially in the instance of simple possession or low-level involvement with crack cocaine, is devastating, not just for the accused, but for their entire family. Mandatory minimums, such as the federal crack cocaine sentencing law, result in the deterioration of communities by incarcerating parents for minor possession crimes and separating them from their children. Felony convictions prohibit previously incarcerated people from receiving social services such as welfare, food stamps,⁶ and access to public housing⁷ that are vital to their ability to support their families.

Felony convictions have also resulted in massive disfranchisement. Approximately 1.4 million African American males—13% of all adult African American men—are

² See U.S. Sentencing Commission, Report to the Congress: Cocaine and Federal Sentencing Policy 102-103 (2002), at 54, 100, Table 17.

³ Nkechi Taifa, *The "Crack/Powder" Disparity: Can the International Race Convention Provide a Basis for Relief?* (American Constitution Society for Law and Policy, May 2006).

⁴ U.S. Sentencing Commission, 2003 Sourcebook of Federal Sentencing, Table 34 (2003), available at <http://www.ussc.gov/ANNRPT/2003/table34.pdf>.

⁵ ACLU Et Al., *Caught In The Net: The Impact of Drug Policies on Women and Families* 17 (2005) (Citing Susan Boyd, *From Witches To Crack Moms: Women, Drug Law, And Policy* 208-09 (2004)).

⁶ P.L. 104-193, sec.115, 42 USC 862a.

⁷ P.L. 100-690, sec. 5101, 102 Stat. 4300.

disfranchised because of felony convictions. This represents 33% of the total disfranchised population and a rate of disfranchisement that is 7 times the national average.⁸

Perhaps most jarring of all, in 2000, there were more African American men in prison and jails in this country than there were in colleges and universities across the country.⁹ Standing alone, this comparison of incarceration and education reasonably leads to the conclusion that the criminal justice system is a major contributor to the disruption of the African American family and community.

During the November 2006 Commission hearing, many witnesses testified that there is no rational basis for the crack and powder cocaine sentencing disparity which continues to produce a racially disparate incidence of incarceration. The quantities of crack cocaine that trigger federal sentencing should be increased to equal the current levels for powder cocaine.

Sincerely,

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⁸ Human Rights Watch & The Sentencing Project, *Losing The Vote: The Impact of Felony Disenfranchisement Laws in the United States* 8 (1998).

⁹ Justice Policy Institute, *Cellblocks or Classrooms?: The Funding of Higher Education and Corrections and its Impact on African American Men* 10 (2002).

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