

COMMENT ON U.S. SENTENCING GUIDELINE PROPOSALS
March 24, 1994

Amendment 33: Drug Trafficking (Sec. 2D1.1)

33(B). Changing the marijuana ratio from 1000 grams per plant.

Families Against Mandatory Minimums (FAMM) urges the Sentencing Commission to adopt the weight of 100 grams per marijuana plant regardless of number, eliminate the inclusion of male plants, and make both changes retroactive.

Historical precedence

In its original sentencing scheme, the U.S. Sentencing Commission recognized that marijuana plants should be treated separately from harvested marijuana for sentencing purposes. The 1987 Sentencing Commentaries Drug Quantity Table shows that marijuana plants were ascribed a weight of 100 grams each. (See attached copy.) Under the 1987 guidelines, a defendant convicted of growing 200-399 plants received the same sentence as a defendant convicted of possessing 20-39 kilos of harvested marijuana. Both defendants were sentenced at level 18. In other words, it was understood that marijuana plant yield is one tenth the weight of a kilo of harvested marijuana.

By 1989, the U.S. Sentencing Guideline tables reflect the change in sentencing that the Commission adopted to correspond to the statutory sentencing change of 1,000 grams per plant. The change undermined the honesty in sentencing sought by the Commission and introduced a number of new disparities into the sentencing guidelines.

Scientific evidence

The best-known expert in marijuana yield is professor Mahmoud ElSohly from the University of Tennessee, who grows marijuana for the government. Dr. ElSohly's research since 1975 proves that it is impossible to grow a marijuana plant that produces 1000 grams of useable product.

In his most recent research done between 1990-91, Dr. ElSohly's 24 marijuana plants averaged a yield of 222.37 for one type of marijuana and 273.7 grams for another. Dr. ElSohly's plants were grown outside and situated three feet apart. His research showed that the farther apart the marijuana was planted, the greater the yield.

Dr. ElSohly also found that the average weight of all dry leaves (the smokeable product) amounted to 27 percent of the weight of a dry plant. The rest of the weight is stems and stalk, which are not consumed.

Dr. ElSohly does not grow male marijuana plants. His most recent report makes it clear that male marijuana plants are inconsequential to marijuana cultivation: "At approximately ten weeks from planting, male plants began to appear in the field and were removed *as a matter of routine.*" (emphasis added)

Dr. ElSohly has testified for the government in a number of drug cases, and has testified for the defense in 4-5 cases. In one of those cases, (U.S. v. Osborn 2:90 CR-13-WCO) Dr. ElSohly testified that he had never seen or grown a marijuana plant that produced one kilogram. The biggest single plant he grew produced about 2 pounds. But even under ideal conditions, ElSohly testified that he would not expect to get an average yield of 1 kilogram of marijuana per plant because that would mean some plants would weigh as much as 5 pounds which, he concluded, is not possible.

At the Osborn trial, ElSohly stated that "a sentencing scheme based on 100 grams per plant would be reasonable, but a scheme based on one kilogram or 1,000 grams per plant would be very unreasonable."

Marijuana cultivation

There are a number of ways to grow marijuana that result in varying yields. The yield of a plant is increased by the amount of growing room it has and the individual attention it receives. It is also effected by the type of seed used, the length of the growing season, and whether it is grown indoors or outdoors. The goal of the grower is to cultivate female plants with flowering tops, known as "buds." At harvest, the buds and the leaves are collected and dried, to be smoked.

Female marijuana plants are genetically programmed to fruit, or bud, when the amount of daily light falls below 12 hours, which in nature occurs in the autumn. Indoors, the budding process can be initiated early, or delayed, by artificially altering the duration of the light. If a plant receives 18 hours or more of light per day, it continues to grow but does not bud. In this way, a grower can keep his plants in the vegetative state until the plants become quite large, before reducing the duration of light to initiate the budding process. Conversely, a grower can initiate the budding process while the plants are still relatively small, simply by reducing the amount of light the plants receive.

The budding process begins after the plants have grown large enough to exhibit their sex, roughly 4-6 weeks after planting.

At that point the males plants are discarded, and the female plants are either encouraged to grow taller or to bud. Depending on the method of cultivation, a plant may be anywhere from a few weeks old and 6 inches tall, to 12-16 weeks old and 6 feet tall, before the budding process is initiated by the grower. The budding process takes between 7 and 10 weeks to produce harvestable yield.

Some growers "clone" their female marijuana plants to reach the budding stage more quickly. The clone is a leafy stem of the female marijuana plant that is stuck into a growing medium (often rock wool) that quickly roots and begins to bud. Although the clones bud more quickly than plants grown from seeds, they remain small and the total yield from cloned plants is significantly less than that from seeded plants.

Disparity caused by 1,000 gram weight

Assigning a weight of one kilogram to each marijuana plant over the number 49, introduces unintended disparity into the sentencing guidelines.

The most obvious disparity caused by the 1 kilo/1 plant ratio affects the defendant who is arrested with 50 plants and is subject to a 33 month sentence, at level 20. If he had had one plant less, he would have received a sentence of 10 months, at level 12. Should one marijuana plant be responsible for a 23 month difference in sentence? This kind of sentencing "cliff" is exactly what the Commission has tried to avoid in it's calibrated sentencing grid. The Commission has criticized a similar cliff caused by the 5 year mandatory minimum for 5 grams of crack cocaine, where 1/100 of a gram less results in a sentence of one year.

Another unintended disparity caused by the unrealistic weight of 1,000 grams per plant, occurs because of the timing of the arrest. If John is growing 102 marijuana plants in his garden when he is arrested, he is subject to a 63 month guideline sentence, at level 26. However, if John is arrested one week after harvesting his marijuana, with a total yield of 11 kilograms of dried marijuana, he is subject to a 21 month sentence, at level 16. The Commission could not have intended the timing of an arrest to be a determining factor in the defendant's sentence.

Nor could the Commission have intended to punish growers ten times more harshly than possessors of harvested marijuana. If Mary is growing 75 marijuana plants for her own use and is arrested, she can be sentenced to 51 months, at level 24. The total realistic yield of her marijuana patch (assuming all plants were female) could be 8 kilos of marijuana. If Bill is arrested with 75 kilos of packaged marijuana in his trunk, he can receive the same 51 month sentence, even though his actual yield was 67

kilos greater than Mary's.

The one kilo per plant ratio also exaggerates the disparity in sentence for growers who employ different methods of cultivation. For instance, Bob might use the "sea of green" method that involves growing 1,000 little plants or clones that will yield 25 grams per plant, for a total of 25 kilos. Dave may grow 300 larger plants that yield 100 grams per plant, for a total of 30 kilos. Bob's sentence will be 121 months, while Dave's sentence will be 63 months, even though Dave's plants would have produced more useable yield than Bob's. This problem would not be eliminated by changing the ratio because Bob still grew more plants, but the difference in their sentences would be narrower.

SOLUTIONS

The U.S. Sentencing Commission can address the disparities outlined above by adopting the 100 gram uniform weight for all marijuana plants regardless of number. The 100 gram weight continues the existing guideline structure for 49 plants or less which, as the Commission recognized in 1987, is a more realistic estimate of actual marijuana plant yield.

The Commission can also exclude male marijuana plants from the total count, because male plants are never used. If the marijuana is in seedling stage at the time of arrest and the sex cannot be determined, 50 percent of the plants should be excluded.

The rationale behind excluding male plants is the same as for excluding the waste water from the total weight of the methamphetamine, for sentencing purposes. The Commission recognized that the defendant should not be sentenced for a non-consumable by-product of the drug. The same is true of the male marijuana plants. No one grows male plants to harvest and smoke. Dr. ElSohly stated that "as a matter of routine" the male plants were weeded out. Yet, growers who are arrested before the plant sex has been determined, are sentenced for a by-product of the drug that is not consumed.

Lastly, the Commission should make these changes retroactive to effect defendants currently serving guideline sentences based on the unrealistic and unfair sentencing ratio of one plant equals one kilo, after plant number 49.

The retroactivity of last year's LSD amendment did not overwhelm the courts, nor did it release from prison anyone who is a danger to society. The same would be true of the retroactive application of a change in the marijuana guidelines. Many of the people serving marijuana sentences are restricted by the mandatory minimum sentence and would not be eligible for a reduction in any case.

SENTENCING COMMENTARIES

DRUG QUANTITY TABLE

Controlled Substances and Quantity*

Base Offense Level

10 KG Heroin or equivalent Schedule I or II Opiates, 50 KG Cocaine or equivalent Schedule I or II Stimulants, 500 G Cocaine Base, 10 KG PCP or 1 KG Pure PCP, 100 G LSD or equivalent Schedule I or II Hallucinogens, 4 KG Fentanyl or 1 KG Fentanyl Analogue, 10,000 KG Marihuana, 100,000 Marihuana Plants, 2000 KG Hashish, 200 KG Hashish Oil (or more of any of the above)

Level 36

3-9.9 KG Heroin or equivalent Schedule I or II Opiates, 15-49.9 KG Cocaine or equivalent Schedule I or II Stimulants, 150-499 G Cocaine Base, 3-9.9 KG PCP or 300-999 G Pure PCP, 30-99 G LSD or equivalent Schedule I or II Hallucinogens, 1.2-3.9 KG Fentanyl or 300-999 G Fentanyl Analogue, 3000-9999 KG Marihuana, 30,000-99,999 Marihuana Plants, 600-1999 KG Hashish, 60-199 KG Hashish Oil

Level 34

1-2.9 KG Heroin or equivalent Schedule I or II Opiates, 5-14.9 KG Cocaine or equivalent Schedule I or II Stimulants, 50-149 G Cocaine Base, 1-2.9 KG PCP or 100-299 G Pure PCP, 10-29 G LSD or equivalent Schedule I or II Hallucinogens, 4-1.1 KG Fentanyl or 100-299 G Fentanyl Analogue, 1000-2999 KG Marihuana, 10,000-29,999 Marihuana Plants, 200-599 KG Hashish, 20-59.9 KG Hashish Oil

Level 32**

700-999 G Heroin or equivalent Schedule I or II Opiates, 3.5-4.9 KG Cocaine or equivalent Schedule I or II Stimulants, 35-49 G Cocaine Base, 700-999 G PCP or 70-99 G Pure PCP, 7-9.9 G LSD or equivalent Schedule I or II Hallucinogens, 280-399 G Fentanyl or 70-99 G Fentanyl Analogue, 700-999 KG Marihuana, 7000-9999 Marihuana Plants, 140-199 KG Hashish, 14-19.9 KG Hashish Oil

Level 30

400-699 G Heroin or equivalent Schedule I or II Opiates, 2-3.4 KG Cocaine or equivalent Schedule I or II Stimulants, 20-34.9 G Cocaine Base, 400-699 G PCP or 40-69 G Pure PCP, 4-6.9 G LSD or equivalent Schedule I or II Hallucinogens, 160-279 G Fentanyl or 40-69 G Fentanyl Analogue, 400-699 KG Marihuana, 4000-6999 Marihuana Plants, 80-139 KG Hashish, 8.0-13.9 KG Hashish Oil

Level 28

100-399 G Heroin or equivalent Schedule I or II Opiates, 5-1.9 KG Cocaine or equivalent Schedule I or II Stimulants, 5-19 G Cocaine Base, 100-399 G PCP or 10-39 G Pure PCP, 1-3.9 G LSD or equivalent Schedule I or II Hallucinogens, 40-159 G Fentanyl or 10-39 G Fentanyl Analogue, 100-399 KG Marihuana, 1000-3999 Marihuana Plants, 20-79 KG Hashish, 2.0-7.9 KG Hashish Oil

Level 26**

80-99 G Heroin or equivalent Schedule I or II Opiates, 400-499 G Cocaine or equivalent Schedule I or II Stimulants, 4-4.9 G Cocaine Base, 80-99 G PCP or 8-9.9 G Pure PCP, 800-999 MG LSD or equivalent Schedule I or II Hallucinogens, 32-39 G Fentanyl or 8-9.9 G Fentanyl Analogue, 80-99 KG Marihuana, 800-999 Marihuana Plants, 16-19.9 KG Hashish, 1.6-1.9 KG Hashish Oil

Level 24

60-79 G Heroin or equivalent Schedule I or II Opiates, 300-399 G Cocaine or equivalent Schedule I or II Stimulants, 3-3.9 G Cocaine Base, 60-79 G PCP or 6-7.9 G Pure PCP, 600 -799 MG LSD or equivalent Schedule I or II Hallucinogens, 24-31.9 G Fentanyl or 6-7.9 G Fentanyl Analogue, 60-79 KG Marihuana, 600-799 Marihuana Plants, 12-15.9 KG Hashish, 1.2-1.5 KG Hashish Oil

Level 22

40-59 G Heroin or equivalent Schedule I or II Opiates, 200-299 G Cocaine or equivalent Schedule I or II Stimulants, 2-2.9 G Cocaine Base, 40-59 G PCP or 4-5.9 G Pure PCP, 400-599 MG LSD or equivalent Schedule I or II Hallucinogens, 16-23.9 G Fentanyl or 4-5.9 G Fentanyl Analogue, 40-59 KG Marihuana, 400-599 Marihuana Plants, 8-11.9 KG Hashish, 8-1.1 KG Hashish Oil, 20 KG+ Schedule III or other Schedule I or II controlled substances

Level 20

GUIDELINES

20-39 G Heroin or equivalent Schedule I or II Opiates, 100-199 G Cocaine or equivalent Schedule I or II Stimulants, 1-1.9 G Cocaine Base, 20-39 G PCP or 2-3.9 G Pure PCP, 200-399 MG LSD or equivalent Schedule I or II Hallucinogens, 8-15.9 G Fentanyl or 2-3.9 G Fentanyl Analogue, 20-39 KG Marihuana, 200-399 Marihuana Plants, 5-7.9 KG Hashish, 500-799 G Hashish Oil, 10-19 KG Schedule III or other Schedule I or II controlled substances	Level 18
10-19 G Heroin or equivalent Schedule I or II Opiates, 50-99 G Cocaine or equivalent Schedule I or II Stimulants, 500-999 MG Cocaine Base, 10-19.9 G PCP or 1-1.9 G Pure PCP, 100-199 MG LSD or equivalent Schedule I or II Hallucinogens, 4-7.9 G Fentanyl or 1-1.9 G Fentanyl Analogue, 10-19 KG Marihuana, 100-199 Marihuana Plants, 2-4.9 KG Hashish, 200-499 G Hashish Oil, 5-9.9 KG Schedule III or other Schedule I or II controlled substances	Level 16
5-9.9 G Heroin or equivalent Schedule I or II Opiates, 25-49 G Cocaine or equivalent Schedule I or II Stimulants, 250-499 MG Cocaine Base, 5-9.9 G PCP or 500-999 MG Pure PCP, 50-99 MG LSD or equivalent Schedule I or II Hallucinogens, 2-3.9 G Fentanyl or 5-9 G Fentanyl Analogue, 5-9.9 KG Marihuana, 50-99 Marihuana Plants, 1-1.9 KG Hashish, 100-199 G Hashish Oil, 2.5-4.9 KG Schedule III or other Schedule I or II controlled substances	Level 14
Less than the following: 5 G Heroin or equivalent Schedule I or II Opiates, 25 G Cocaine or equivalent Schedule I or II Stimulants, 250 MG Cocaine Base, 5 G PCP or 500 MG Pure PCP, 50 MG LSD or equivalent Schedule I or II Hallucinogens, 2 G Fentanyl or 500 MG Fentanyl Analogue; 2.5-4.9 KG Marihuana, 25-49 Marihuana Plants, 500-999 G Hashish, 50-99 G Hashish Oil, 1.25-2.4 KG Schedule III or other Schedule I or II controlled substances, 20 KG+ Schedule IV	Level 12
1-2.4 KG Marihuana, 10-24 Marihuana Plants, 200-499 G Hashish, 20-49 G Hashish Oil, 50-1.24 KG Schedule III or other Schedule I or II controlled substances, 8-19 KG Schedule IV	Level 10
250-999 G Marihuana, 3-9 Marihuana Plants, 50-199 G Hashish, 10-19 G Hashish Oil, 125-449 G Schedule III or other Schedule I or II controlled substances, 2-7.9 KG Schedule IV, 20 KG+ Schedule V	Level 8
Less than the following: 250 G Marihuana, 3 Marihuana Plants, 50 G Hashish, 10 G Hashish Oil, 125 G Schedule III or other Schedule I or II controlled substances, 2 KG Schedule IV, 20 KG Schedule V	Level 6

* The scale amounts for all controlled substances refer to the total weight of the controlled substance. Consistent with the provisions of the Anti-Drug Abuse Act, if any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the most serious controlled substance shall determine the categorization of the entire quantity.

** Statute specifies a mandatory minimum sentence.

Commentary

Statutory Provisions: 21 U.S.C. §§ 841, 960.

Application Notes:

1. "Similar drug offense" as used in §2D1.1(a)(1) means a prior conviction as described in 21 U.S.C. §§ 841(b) or 962(b).



Families Against Mandatory Minimums

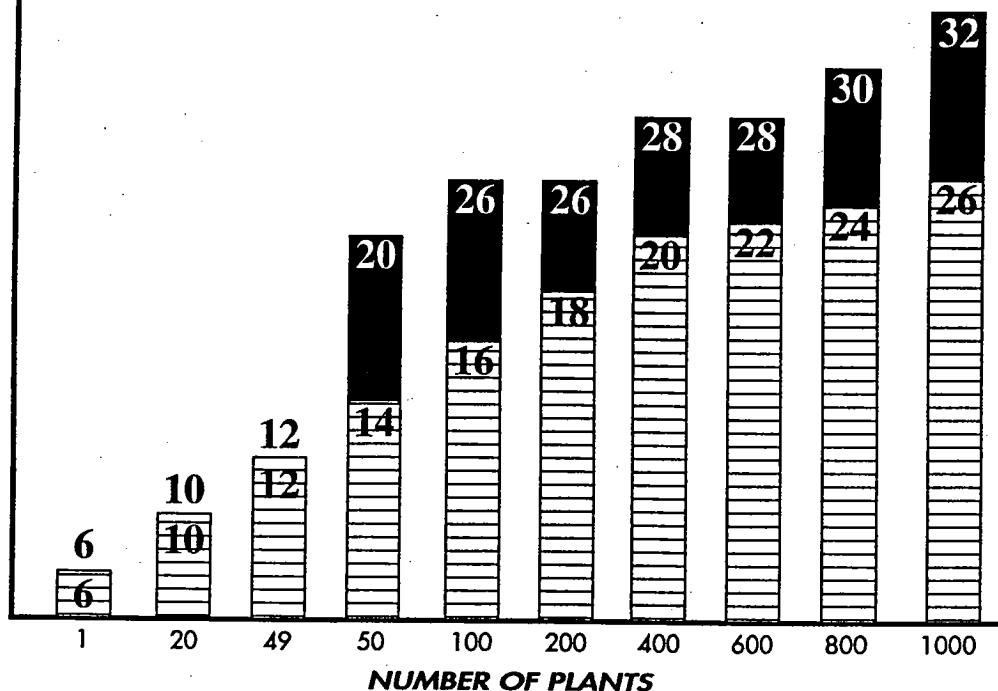
GUIDELINE CHANGES FOR MARIJUANA

SENTENCING GUIDELINES FOR CRIMINAL HISTORY CATEGORY 1

Sentence Range	Guideline Level
121-151 mos.	32
97-121 mos.	30
78-97 mos.	28
63-78 mos.	26
33-41 mos.	20
27-33 mos.	18
21-27 mos.	16
15-21 mos.	14
10-16 mos.	12
6-12 mos.	10
0-6 mos.	6

CURRENT SENTENCE
 1-49 plants = 100 grams per plant
 50+ plants = 1 Kilogram per plant

ALTERNATE SENTENCE
 All numbers of plants weighed at
 100 grams per plant



Comparison of Guideline Weights and Sentencing Ranges
for Selected Numbers of Marijuana Plants

Number of Plants	Current guideline weight	Current offense level	Current sentencing range	Proposed sentencing range
1	100 grams	6	0-6 mos	
10-20	1-2 kgs	10	6-12 mos	
40-49	4-4.9 kgs	12	10-16 mos	
50-59	50-59 kgs	20	33-41 mos	15-21 mos
80-99	80-99 kgs	24	51-63 mos	15-21 mos
100-399	100-399 kgs	26	63-78 mos	21-27 mos
400-699	400-699 kgs	28	78-97 mos	33-41 mos
700-999	700-999 kgs	30	97-121 mos	41-51 mos
1,000 to 3,000	1000 to 3,000 kgs	32	121-151 mos	63-78 mos

1001 Pennsylvania Avenue, N.W. • Suite 200 South • Washington, D.C. 20004 • (202) 457-5790 • Fax (202) 457-8564

San Francisco, CA Seattle, WA Miami, FL Atlanta, GA Cedar Rapids, IA Los Angeles, CA
 Indianapolis, IN Detroit, MI Austin, TX Portland, OR Greeley, CO Tucson, AZ Honolulu, HI

Marijuana Cases

Robert Evans was convicted for aiding and abetting the manufacture of 90 marijuana plants. Robert's sentence started at level 24, but was dropped to level 17 after factoring in acceptance of responsibility and minimal role deductions. He is now serving a 24 month sentence. If the marijuana guideline changes retroactively, Robert will be eligible for a reduction in sentence to probation. He is 30 years old, a first offender, and has a high school education.

Harold Prentzel was convicted for growing 80 marijuana plants in his home in Alaska. At sentencing, the judge followed the guidelines and sentenced him at level 22, to 50 months in prison. If the guidelines change to 100 grams per plant, Harold would be eligible to be resentenced to 15 months. Harold is 35 years old, married, and has a 7 month old baby. He attended college but did not graduate.

Dan Bolger plead guilty to growing 36 marijuana plants, but was convicted of growing 149 plants. On a motion from the government, the judge sentenced Dan at level 25, for 57 months in prison. If the guidelines change, Dan will be eligible for a reduction in sentence to 21 months. Dan is a 28 year old, first offender. Before his incarceration he taught music at the VA Hospital in Pennsylvania, was engaged, and had attended college for three years.

Donald Clark is serving a life sentence for a marijuana growing conspiracy involving 1 million plants. Of the 11 defendants charged in the case, he was the only one to take his case to trial. The others plead guilty and received between 3 and 11 years in prison. If the guideline ratio for marijuana plants changes, Donald will be eligible for a reduction in sentence to 24 years, at level 40. Donald is 52 years old. In 1985 he was arrested by the state of Florida for the same offense for which the federal government indicted him in 1990. He owned a watermelon farm in Myakka, Florida at the time of his arrest.

Amendment 33(A) Changing the crack cocaine/powder cocaine ratio.

Families Against Mandatory Minimums (FAMM) urges the Sentencing Commission to adopt a one to one ratio for crack and powder cocaine, retroactively. At a minimum, FAMM proposes that crack and powder cocaine sentences be addressed in the same manner as ice and methamphetamine. Because ice is a derivative form of methamphetamine, but arguably more potent, the guidelines require a two level increase for ice from the original sentence for methamphetamine. The same formula could easily be applied to crack cocaine sentencing.

Scientific evidence

The Commission has heard copious evidence from experts across the country about the pharmacological similarity between crack cocaine and powder cocaine. At the Sentencing Commission hearing on crack cocaine last year, a criminologist, a pharmacologist, and a D.C. narcotics officer all testified that crack is the same drug as cocaine. Other scientists in other forums have come to the same conclusion. The question is settled over whether powder cocaine and crack cocaine are the same drug.

Does crack create more violence?

Law enforcement agents argue that crack cocaine is a more dangerous drug, so it should be penalized more severely than powder cocaine. It is true that the neighborhoods in which crack cocaine is dealt are often more dangerous than the suburbs in which powder cocaine thrives. However, if the defendant is involved in a violent offense in conjunction with his crack offense, the sentencing guidelines provide ample enhancement to adequately punish him for his violent behavior.

Clearly, not all crack cocaine offenses involve violence. According to a Bureau of Justice Statistics 1991 survey of state prison inmates, prisoners who had used crack before their offense were less likely to be in prison for a violent offense than those who had used other drugs or no drug. The survey found that of the percentage of the prisoners who used crack in the month before their offense, 33 percent were incarcerated for a violent offense, compared with 39 percent who used powder cocaine, and 48 percent who used any other drug.

To use the 100 to 1 ratio for all defendants arrested for crack cocaine, because some of the defendants are violent, is to insist that the unjustness of a sentence in particular circumstances be ignored.

Racial disparity caused by application of 100 to 1 ratio

There is no doubt about the racial make-up of the defendants most often convicted of crack cocaine offenses. In 1992, 91.3 percent of those sentenced for crack offenses were African-American. Of the hundreds of crack cases that FAMM has on file, only four defendants are White.

In a nation in which the achievement of racial justice is not only a goal but a necessity, the evidence of sentencing disparity caused by the crack cocaine/powder cocaine ratio, is disconcerting and alarming. Although the Commissioners cannot correct the racial inequity of the statutory mandatory minimums for crack cocaine, they can alleviate the extreme disparity caused by the additional years the guidelines add to the defendants mandatory sentence.

Court decisions

Judges who recognized the inequity of the crack cocaine sentencing laws are trying to find ways to circumvent them. Two recent court decisions about crack cocaine held that the sentences were unconstitutional.

On January 26, 1994, Senior Judge Louis Oberdorfer of the U.S. District court for the District of Columbia declared that the mandatory crack sentences as applied to two defendants before him, violated the Eight Amendment's proscription against cruel and unusual punishment. On February 11, 1994, Judge Clyde S. Cahill of the U.S. District Court for the Eastern District of Missouri used the 14th Amendment's guarantee of equal protection under the law, as grounds for holding the sentencing disparity unconstitutional.

Two other judicial milestones occurred earlier when the Minnesota Supreme Court in 1991 held that the distinction in penalty between crack and powder cocaine violated that state's constitution on equal protection grounds. And on July 29, 1993, federal judge Lyle Strom from Omaha, Nebraska departed downwards from the sentencing guidelines on grounds that he did not deem Congress contemplated such a disparate impact of harsher sentences for Blacks.

It's clear that the courts are seeking means to bring crack cocaine sentences in line with the culpability of the defendant. The Commission can provide that tool for judges by changing the crack cocaine ratio under the guidelines.

Crack Cases

Derrick Curry is serving a 19 1/2 year sentence for a conspiracy involving two kilos of crack cocaine. The FBI admitted that Derrick was a "flunky" in the operation that was run by his friend. At his sentencing, Derrick was given a two-point reduction for being a "minor" participant and a two-point increase for obstruction of justice (the government argued that he perjured himself on the stand when he denied any involvement in the offense.) Derrick was sentenced at level 38. If the crack cocaine guideline ratio changes, Derrick will be eligible for a reduction in sentence to 78 months, at level 28. However, because the mandatory minimum sentence trumps the guideline sentence, Derrick's sentence cannot go below 10 years. The change would effectively reduce his sentence by 9 1/2 years. Derrick is 20 years old, a first offender, and was in college when arrested.

Joseph Felton is serving a 30 month sentence for distributing 1.2 grams of crack cocaine. Undercover agents purchased crack three times from Joseph before arresting him. If the guidelines for crack cocaine changes, Joseph will be eligible for a reduction in sentence to at least 10 months, at level 12, and likely he could go below that. Joseph is 52 years old, a first offender, and has an 8th grade education.

Steven Cook is serving a 19 1/2 year sentence for a crack cocaine conspiracy involving 32 kilos. Steven was responsible for between 500 grams and 1.5 kilos, and was sentenced at the top of the guideline range at level 36. Of his 32 codefendants, Steven was one of 10 who went to trial. If the sentencing guidelines change for crack cocaine, Steven will be eligible for a reduction in sentence to 78 months at level 26. However, the 10 year mandatory minimum sentence for 50 grams or more of crack cocaine will prevent Steven's sentence from dropping below 10 years. The change would effectively reduce his sentence by 9 1/2 years. Steven is 25 years old, a first offender, and was in college prior to his arrest.

Preston Gilyard is serving a 12 year, 7 month sentence for possession with intent to distribute 250 grams of crack cocaine. If the guideline sentence for crack changes, Preston will be eligible for a reduction in sentence to 33 months. However, the 10 year mandatory minimum sentence prevents him from receiving a sentence below 10 years. The change would effectively reduce his sentence by 2 years and 7 months. Preston is 27 years old, a first offender, and has a high school degree.

Amendment 16: Aging and Infirm Prisoners

Families Against Mandatory Minimums urges the Commission to include age and infirmity as extraordinary and compelling reasons to depart from the sentencing guidelines.

FAMM has received dozens of letters from inmates who are elderly or infirm who ask why they are required to die in prison. Many of them ask simply to die at home with their families. Human decency dictates that old and sick individuals who are not a threat to society, be sentenced to home confinement in lieu of incarceration. The Commission can show tremendous compassion and common sense by including age and infirmity in the list of compelling reasons for judges to depart from the guidelines.

Medical cases

Zodenta McCarter is a 65-year old, first offender, serving a sentence of 97 months for conspiracy to manufacture and distribute marijuana. Zodenta is illiterate and grew up in the back woods of Tennessee. She was convicted on the testimony of two informants who were arrested with the marijuana but received immunity for their testimony. Zodenta suffers from high blood pressure, arterial blockage, incipient diabetes, arthritis, and intermittent bleeding from a partial hysterectomy. She is also on medication for a recent exposure to tuberculosis in the prison.

James Dodd is a 66-year old, first offender serving a 24 year sentence for possession and importation of cocaine. James had open heart surgery in 1992 (before his incarceration) replacing his aortic valve with a St. Jude mechanical valve. He suffers from arthritis and other difficulties related to his surgery. James is a retired Pan Am pilot. He is incarcerated at FCI Ft. Worth.

Louis Nash is a 75-year old man serving a 21 year, 8 month sentence for a marijuana conspiracy. He has two prior offenses for loan-sharking and a state drug charge. He suffers from heart trouble, hyper-tension, hernias, an ulcer, and has had pneumonia since his incarceration. His hearing is extremely poor and he is confined to a wheelchair. His daughter is concerned at the lack of medical attention he receives in prison, "If the government is unwilling to provide this care, then release him to us to care for him." He is incarcerated at FCI Ft. Worth.

DeWayne Murphy is a 35-year old, first offender serving a 48 month sentence for possession with intent to distribute 500 grams of methamphetamine. At the time of his sentencing, DeWayne was on a heart transplant list. The BOP does not provide heart transplants as part of its medical program, so DeWayne's condition continues to deteriorate. He now spends 14 hours a day in the hospital wearing an oxygen mask. He has been denied a compassionate release. DeWayne is incarcerated at FMC Rochester.

Robert Lee Edward is a 53-year old, first offender serving a 97 month sentence for a cocaine conspiracy. In 1989 Robert had a heart attack and was on several different medications which he was unable to take during his initial three days of custody. Six days later, after he was released on bond, he had another heart attack, which required open-heart surgery and a double by-pass. Before his incarceration, Robert ran a junk yard and raised 9 kids. He is now incarcerated at FCI Talladega.

Hector Alvarez is a 64-year old inmate at FCI Talladega. His own words speak louder than FAMM's:

"On January 29, 1991, at about 2:30 p.m., as I had just finished performing my duty in the dining hall, I began feeling a bad pain in my chest, so I sat down and took a Nitrostat pill to relieve the pain from my heart which has given me the same problems for a long time.

I kept feeling bad so I took another pill with the hope that my pain would stop. Even so, the pain did not stop and I began feeling nausea and my head was spinning.

Although I had already performed my duty, the officer on duty ordered me to clean the cart covers. I told the lady officer that I was feeling bad, and as I was talking to her I reached in my pocket and showed her the doctor's written statement saying: 'Only light work.' (I am 64 years old and ill.)

The lady officer, without saying a word, she radioed through her walkie-talky to have some guards come get me and lock me up in segregation. But the other officer who was nearby, he realized I was really ill, so he got a wheelchair and rushed me to the institution hospital where, after ascertaining that I was feeling really bad, I was rushed to the 'citizen hospital' in down town Talladega where I had several tests and radio-cardiograms and where I was under close care.

On April 28th, 1991, I felt bad again because of my heart, so I was rushed to the 'citizen hospital' in Talladega where I went through lots of tests, radio-cardiograms, etc...where I was under intensive care for five days. In the ten months that I have been at Talladega, I went to the hospital four time for the same problems.

Some of the officers in the dining hall they keep telling me to do work I cannot do, and they stop such harassment only when they see me turning pale and falling down. How long can I last? At this point, I only hope in a 'miracle' from 'God,' since my fellow men seem so inclined to destroy me."

Members of the Sentencing Committee

My name is Peggy Edmundson, I live in rural southwest Missouri and most of my life in N.W. Arkansas. My husband, Eric, and I own 40 acres with an older home, to which we have done extensive remodeling on. Doing most of the work ourselves. The past 12 years we have worked diligently to establish a secure home and surround ourselves with the things we enjoy doing the most. Including, gaining the respect of our friends and neighbors. All of whom know they can call on us any time they need help. From pulling a calf at 3:00 A.M. to keeping watch on their home while they are away.

My husband, Eric, was a respected electronics and design engineer with Clarke Industries in Springdale AR making \$45,000. a year. Designing from the ground up Clarke's most profitable floor polishing machine to date, along with Clarke's main line of marble finishing and polishing machines. Being frugal by nature Eric devoted all his time and money into our future and our farm. Eric grew up in Boy Scouts and received the high rank of Life Scout. He has always maintained high morals. Honesty, helpfulness, and kindness were second nature to him.

In the Summer of 1993, it seemed everything was going our way. Eric was going to China to confirm a deal with a company to make handles for the machines he designed. I was able to stay home and care for the farm, working our garden, orchard, and honey bee's. Also, helping my mother care for my father who 5 years ago was disabled by a stroke which left him unable to speak or care for himself, and is now bed fast.

On the afternoon of August 18, 1993, our world was turned upside down. A confidential informant, for reasons we will never understand or know, gave information to local authorities that we grew marijuana. After 4 months of investigation with no results the DEA was called in with their thermal imaging technology. With this covert information and the information from their confidential informant a search warrant was obtained.

We were not home at the time the search warrant was served. Thanks to our good neighbors and friends, who informed us of what was going on and we were not arrested at the scene. We were unable to go home for two days, while we retained an attorney and arranged to turn ourselves in.

Local and State police and DEA agents, including helicopters, did an intensive search of our property. They discovered our wine cellar and behind it Eric's small (7x10) grow room in which 47 marijuana plants, in various stages of growth, were taken. Along with 4 plants that had been grown outside. A total of 51 marijuana plants. Why our case was selected for Federal prosecution was a question our attorney asked often, and has yet to hear an explanation. Despite repeated requests the U.S. Attorney declined to permit Eric and our attorney to examine the evidence

alleged to have been taken. We would have liked to know the actual weight since so many of the plants were very small with only 6-8 leaves. Because Eric cloned his plants he always had mature, adolescent , and infant plants.

Always having more infant plants due to mortality. This process seemed better than buying it on the street as Eric did not believe in buying or selling marijuana. He grew only for himself. Due to his very demanding and high stress job, Eric chose marijuana over alcohol and tobacco or going to doctors for legal drugs such as tranquilizers or sleeping pills.

Federal Sentencing Guide lines call for the infliction of mandatory prison terms for cultivation of 50 or more plants. Cultivation of 49 or fewer results in eligibility for probation and a lesser prison term. In Eric's case just two small plants were responsible for Eric receiving a sentence of 24 months in the U.S. Federal Penitentiary in Leavenworth Kansas. Two less plants he could have been sentenced to 10 months or less. Those two plants made a fourteen month difference in my husbands sentence. The guidelines should be changed so that all plants are weighted at 100 grams and this unfair cliff would be eliminated. Eric's sentence would have been no more than ten months. If all plants were weighted at 100 grams.

I personally don't choose to smoke marijuana or use any other drugs, which was proven through drug tests. However, I plead guilty to a misdemeanor charge of possession in a plea bargain agreement, because it was in my home. I, too, could have been sent to prison if I had not plea bargained for probation. I am now faced with living alone without Eric's income for the next 24 months, along with the financial burden of of a \$10,000 loan we borrowed to clear the criminal forfeiture that was brought against our property. Unfortunately the cost of upkeep, utilities, insurance, and taxes, did not go down along with our income. The closest neighbor is a quarter mile down the winding dirt road and I am left feeling alone and cheated by the judicial system.

Who has benefited from this? Society has lost a productive, intelligent, hard working individual and our overcrowded prison system has gained a non-violent marijuana grower, who grew for personal use only. The DEA and it's war on drugs along with local and state authorities lost 4 months of investigative time and money to stop one personal use marijuana grower. Please consider the lives of the real productive people, like Eric and myself, that your decisions affect. Please help to restore the principals of freedom and justice our country was founded on. Please explain to me why two small plants would make a 14 month difference in a sentence?

Thank You.