

067-94

NATIONAL
RAINBOW
COALITION

REVEREND JESSE L. JACKSON
TESTIMONY BEFORE THE U.S. SENTENCING COMMISSION
MARCH 24, 1994

INTRODUCTION

Mr. Chairman, Members of the Commission, ladies and gentleman, let me express my appreciation for the opportunity to testify today. I would like to share with you my grave concern about the discriminatory impact of mandatory minimum sentences and the disparity in sentencing between powder and crack cocaine. The impact of these laws and policies is so discriminatory that crime and criminal justice have become the preeminent civil rights issue of our time. As either victims or defendants, people of color are treated unjustly and inequitably in the American criminal justice system.

The current penalty for possession of crack cocaine in the federal system is one of the most blatant examples of this discrimination. I strongly believe in both preventing and punishing illegal drug distribution. However, I believe that the punishment should fit the crime and that those guilty of the same crime should be punished equitably. None of these tenets apply to the penalties for crack and powder cocaine.

Current federal narcotics law provides that first offenders convicted of possession of 5 grams of crack cocaine (the weight of two pennies) must serve a mandatory 5 years in prison. First offenders convicted of possessing the same amount of powder cocaine are eligible for probation. Those who possess powder cocaine serve a mandatory 5 year sentence only when they possess 100 times as much powder cocaine (500 grams). The discriminatory impact of this law becomes painfully clear when one considers that African-Americans comprise 91.3% of those sentenced for federal crack offenses and Whites comprise only 3%. These statistics become even more significant considering the fact that Whites comprise 64.4% of all crack users.

These statistics lead to some disturbing conclusions:

- 1) Although most crack users are White, most of the people in federal prisons for crack use are African American.

Reverend Jesse L. Jackson, President and Founder
Dennis Rivera, Chairman, Board of Directors

Francisco L. Borges, Treasurer
The Honorable Salima Siler Marriott, Secretary

2) - The penalty for crack cocaine possession is 100 times greater than the penalty for powder cocaine, and the vast majority of powder cocaine users are White.

There may be an amendment offered by Congressman William Hughes (D-NJ) to the crime bill being considered this week before the House of Representatives to equalize the sentences between crack and powder cocaine. The proposed legislation will equalize the penalties between crack and powder cocaine at the current sentencing levels set for powder cocaine offenses.

However, as you review the guidelines for crack versus powder cocaine sentencing disparity, I urge you to consider the racism inherent within them. There is absolutely no justification for this stark disparity in punishment for two different forms of the same drug. Crack is relatively inexpensive, readily available in poor communities, and used more openly. Powder cocaine is expensive, primarily used in white, affluent communities, and used more privately.

Both forms of the drug are dangerous and addictive, and there is no evidence that crack cocaine is more dangerous or addictive than powder cocaine. In fact, scientific studies show that there is no molecular difference in the two forms of the drug, and that powder may in fact be more addictive than crack.

Defenders of the disparity attempt to blame crack for the violence associated with the drug trade in poor communities of color. However, according to a 1991 Justice Department 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 drugs. In fact, the survey found that of the percentage of prisoners who used crack in the month before their offense, 33% were incarcerated for a violent offense, compared with 39% who used powder cocaine and 48% who used any other drug. The violence would exist whether the drug were crack, powder cocaine, heroin, or some other drug. The violence is associated with the nature of the drug trade, not the drug itself.

The black, the brown, the poor, tend to go for the cheap high from five grams of crack, and because of sentencing disparity, are punished overly severely. The rich, the slick, and those who can maneuver, get probation.

On March 9, Supreme Court Justice Anthony M. Kennedy assailed mandatory minimum sentencing before a House Appropriations Subcommittee on the Supreme Court budget and stated: " I simply do not see how Congress can be satisfied with the results of mandatory minimums for the possession of crack cocaine."

This statement follows two federal court decisions which recently held crack sentences unconstitutional. Senior Judge Louis Oberdorfer of the United States District Court for the District of Columbia declared on January 26 that the mandatory sentences applied to two defendants before him violated the Eighth Amendment's proscription against cruel and unusual punishment.

On February 11, Judge Clyde S. Cahill of the United States District Court in St. Louis, Missouri used the 14th Amendment's guarantee of equal protection under the law as grounds for holding the sentencing disparity unconstitutional.

The prisons are filled with young African-American men and women who are serving mandatory minimums for crack cocaine. Last month, the Washington Post reported that Derrick Curry, a twenty year old African-American male with a promising future, will spend as much time in prison as he has been alive for a non-violent first offense. The FBI admitted that Derrick was a "flunky" in the operation that was run by his friend. If the crack cocaine guideline ratio changes, Derrick will be eligible for a reduction in sentence to 78 months. However, because the mandatory minimum sentence trumps the guideline sentence, Derrick's sentence cannot go below 10 years.

Steven Cook is serving a 19 1/2 year sentence for a crack cocaine conspiracy involving 32 kilos. If the sentencing guidelines change for crack cocaine, Steven will be eligible for a reduction in sentence to 78 months. 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.

Terrol Spruell, a senior at Virginia State University, was caught with 5 ounces of crack in a shopping mall parking lot in October 1989. He had never been arrested before. The sentencing report said that Spruell had sold 8 kilograms of crack in his drug-dealing career. He was sentenced to 30 years without parole. He is scheduled to be released at age 54 in the year 2015. If he'd had powder cocaine, he would have gotten a 10-year sentence and been released in 1997.

Murderers, kidnappers, and rapists routinely spend between 4 and 10 times less time than do people who possess or distribute small quantities of crack. People who possess the same amount of powder cocaine get much less time. The disproportionate impact of mandatory minimums on the African-American and Latino communities and the issue of crack versus powder cocaine sentencing disparity are central to the crime debate.

Judges are required to mete out these harsh sentences as a result of the laws passed by Congress in the eighties requiring

mandatory minimum federal sentences for the possession of crack cocaine. Judges do not like these laws because there is no room for judicial discretion, and the sentences are arbitrary. U.S. District Court Judge Clyde Cahill of St. Louis last month refused to impose a minimum mandatory sentence on a small-time drug dealer, stating the following;

"This one provision, the crack statute, has been directly responsible for incarcerating nearly an entire generation of young black American men for very long periods...it has created a situation that reeks with inhumanity and injustice. The scales of justice have been turned topsy-turvy so that those masterminds, the kingpins of drug trafficking, escape detection while those whose role is minimal, even trivial, are hoisted on the spears of an enraged electorate and at the pinnacle of their youth are imprisoned for years while those most responsible for the evil of the day remain free."

Laws requiring mandatory minimums were passed during a wave of public outcry about crime in the eighties; drive-by shootings and an increase in inner-city crime. There is currently a similar public outcry around crime, with the attendant media and political posturing, resulting in the discussion of similar unreasoned responses, and pressure for immediate answers. We must be more rational and thoughtful in our approach this time. We must learn the lessons of our history.

We must move towards proactive, rather than reactive approaches to violence. We can no longer allow our communities to be unsafe, our children filled with fear, and our solutions to be ineffective. More jails are not the answer. Mandatory minimum sentences for non-violent offenders are not the answer.

Mandatory minimum sentences use cell space that would be better used to house violent criminals. Criminals with nothing to lose will resist arrest, demand trials, process appeals. Prison will become a greater jungle overrun with those who can never leave. And as we know, these laws will disproportionately affect African Americans and Latinos.

We, who are agents for political and social change must lead the way. The victims of neglect, oppression, and abandonment have the moral and practical imperative to go forward. We must use all of the resources that we have in our power. While political and economic resources are important, it is our moral authority that is our secret weapon.

Leadership must bring fairness and justice to a clearly unjust situation. Crack versus powder cocaine sentencing disparity is a racist response to the climate of fear which affects all of our communities. Sentencing disparity punishes people for their socio-economic status; the poor, the black and the brown use crack, and the wealthy and the white use powder.

We must support community leaders, parents, teachers, and judges with laws and policies that are just, and which address the scope of the problem with rational and fair solutions. We cannot allow another generation of talented young men and women to fall victim to unjust policies which do nothing to rehabilitate them, and which stand in the way of affecting the truly violent. The Sentencing Commission must use its power and authority to right this egregious wrong and correct this fundamental injustice.

We will not surrender to fear, we must move forward with hope. We will keep hope alive.