Special Report to the Congress:

Cocaine and Federal Sentencing Policy

(as directed by section two of Public Law 104-38)

UNITED STATES SENTENCING COMMISSION
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I. Introduction

Federal sentencing policy for cocaine offenses has come under extensive criticism during the past few years. Public officials, private citizens, criminal justice practitioners, researchers, and interest groups have all challenged the fairness and efficacy of the current approach to sentencing cocaine offenses. Critics have focused on the differences in federal penalty levels between the two principal forms of cocaine — powder (cocaine hydrochloride) and crack (cocaine base) — and on the disproportionate impact the more severe crack penalties have had on African-American defendants.

In 1994, these concerns led Congress, in the Violent Crime Control and Law Enforcement Act of 1994, to direct the Sentencing Commission to issue a report and recommendations on cocaine and federal sentencing policy. On February 28, 1995, the Commission issued a comprehensive report to Congress in which it unanimously recommended that changes be made to the current cocaine sentencing scheme, including a reduction in the 100-to-1 quantity ratio between powder cocaine and crack cocaine. The report indicated that the Commission would investigate ways to account for the harms associated with cocaine offenses in the sentencing guidelines and would then recommend appropriate enhancements and adjustments in the quantity ratio.

On May 1, 1995, by a 4-3 vote, the Commission sent to Congress proposed changes to the sentencing guidelines for cocaine offenses. The changes proposed by the majority would have made the starting point for determining sentences for powder and crack offenders the same by adopting a 1-to-1 quantity ratio at the powder cocaine level and would have provided sentencing enhancements for violence and other harms disproportionately associated with crack cocaine. *See* 60 Fed. Reg. 25074. The minority dissented based on an assessment that the recommended enhancements could not sufficiently account for the added harms associated with crack cocaine and thus did not warrant the total elimination of a differential between base sentences.

Pursuant to 28 U.S.C. § 994(p), Congress passed and the President signed legislation rejecting the Commission's proposed guideline changes. *See* Pub.L. No. 104-38, 109 Stat. 334 (Oct. 30, 1995). In the legislation, Congress effectively returned the issue to the Commission for further consideration and directed the Commission to submit to Congress new recommendations regarding changes to the statutes and sentencing guidelines for the unlawful manufacturing, importing,

exporting, and trafficking of cocaine. We submit this report in compliance with the 1995 congressional directive that "the sentence imposed for trafficking in a quantity of crack cocaine should generally exceed the sentence imposed for trafficking in a like quantity of powder cocaine."

In response to that directive, the Commission again has deliberated carefully over federal cocaine sentencing policy and has assessed the concerns raised by Congress, conducted new research, consulted with law enforcement and substance abuse experts, and reviewed all of the Commission's prior research and analysis. The Commission has accumulated a vast array of information about both powder and crack cocaine and about the changing markets for these drugs. Based on this work, the Commission is unanimous in reiterating its original core finding, outlined in its February 1995 report to Congress that, although research and public policy may support somewhat higher penalties for crack than for powder cocaine, a 100-to-1 quantity ratio cannot be justified. The Commission is firmly and unanimously in agreement that the current penalty differential for federal powder and crack cocaine cases should be reduced by changing the quantity levels that trigger mandatory minimum penalties for both powder and crack cocaine. Therefore, for powder cocaine, the Commission recommends that Congress reduce the current 500-gram trigger for the five-year mandatory minimum sentence to a level between 125 and 375 grams, and for crack cocaine, that Congress increase the current five-gram trigger to between 25 and 75 grams.

In Part II of this report, we summarize the current federal sentencing law for cocaine offenses. In Part III, we discuss the goals of federal drug sentencing policy adopted by Congress, recent administrations, and the Commission. We then evaluate current cocaine sentencing policy against these goals. Finally, in Part IV, we set forth our conclusions and recommendations for modifying federal cocaine sentencing policy.

II. The Current Law

The current sentencing structure for cocaine offenses is primarily the result of the Anti-Drug Abuse Act of 1986. The Act established mandatory minimum penalties for persons convicted of trafficking in a variety of controlled substances. The 1986 Act pegged the mandatory minimums to specific quantities of drugs distributed (based on a mixture or substance containing a detectable amount of the drug). The quantities triggering the Act's mandatory minimum penalties differed for various drugs and in some cases for different forms of the same drug. The Act treated powder cocaine differently than crack cocaine by establishing what has come to be known as the 100-to-1 quantity ratio between the two forms of cocaine. In other words, it takes one hundred times as much powder cocaine as crack cocaine to trigger the same mandatory penalties. Thus, a person convicted of selling 500

grams of powder cocaine is subject to the same five-year mandatory minimum sentences as a person selling 5 grams of crack cocaine, while a person convicted of selling 5,000 grams (5 kilograms) of powder is subject to the same ten-year mandatory minimum sentence as a person who sells 50 grams of crack.

In 1987, the Sentencing Commission used the drug quantity levels designated by Congress — including the quantity levels for cocaine offenses based on the 100-to-1 quantity ratio — in developing sentencing guidelines for drug offenses. Using the mandatory minimum statutes, which list only the quantities corresponding to the five- and ten-year mandatory minimum sentences, the sentencing guidelines set proportionate sentences for the full range of other powder and crack cocaine quantities.

Congress also distinguished crack cocaine from both powder cocaine and other controlled substances in the Anti-Drug Abuse Act of 1988 by creating a mandatory minimum penalty for its simple possession. This is the only federal mandatory minimum for a first offense of simple possession of a controlled substance. Under this law, possession of more than five grams of crack cocaine is punishable by a minimum five years in prison. Simple possession (without the intent to distribute) of any quantity of powder cocaine by first-time offenders is a misdemeanor punishable by no more than one year in prison.

III. The Goals of Federal Drug Sentencing Policy

In response to the 1995 legislative directive, the Commission has carefully considered each factor listed in the directive and has evaluated current federal cocaine sentencing policy in relation to congressional and administration goals for drug offense sentencing generally. These goals have been articulated in debates surrounding the Anti Drug Abuse Act of 1986 and other legislation, expressed in statements by officials of several administrations, and embraced generally by the Sentencing Commission. As we discuss below, these goals suggest that those who traffic in either powder or crack cocaine should be sentenced severely, but that the current penalty differential between powder and crack cocaine should be reduced.

A. Sentences Should Be Commensurate With the Dangers Associated With A Given Drug

Regardless of the quantity of drug involved, distributing any of the primary domestic illegal drugs — heroin, cocaine (powder or crack), methamphetamine, PCP, LSD, or marijuana — is a serious crime. All of these drugs cause great harm to individuals and to society at large, and the stern punishments meted out under federal law for drug distribution reflect congressional, executive, and Sentencing

Commission judgment about the gravity of these offenses and the menace caused by these drugs.

Congress and the Commission have also concluded, however, that some of these drugs have more attendant harms than others and that those who traffic in more dangerous drugs ought to be sentenced more severely than those who traffic in less dangerous drugs. This policy is meant both to discourage the trafficking of more serious drugs and to punish those who do more harm to society by distributing these drugs. The policy is embodied, for example, in the federal schedules of controlled substances, 21 U.S.C. § 812, that differentiate the more dangerous controlled substances from those that are less dangerous, as well as in the different penalty levels associated with trafficking in the various scheduled substances, 21 U.S.C. § 841.

The Commission's research, detailed at great length in its 1995 report, found significant dangers associated with both crack and powder cocaine trafficking and use. The Commission also found, however, that many of these dangers are associated to a greater degree with crack cocaine than with powder cocaine. For example, crack cocaine is more often associated with systemic crime — crime related to its marketing and distribution — particularly the type of violent street crime so often connected with gangs, guns, serious injury, and death. In addition, because it is easy to manufacture and use and relatively inexpensive, crack is more widely available on the street and is particularly appealing and accessible to the most vulnerable members of our society. Unfortunately, the purveyors of crack worked hard to design a method to distribute the drug at a cheap price, making it appealing to the most economically disadvantaged of our society. Finally, because crack is smoked rather than snorted, it produces more intense physiological and psychotropic effects than snorting powder cocaine, and so the crack user is more vulnerable to addiction than the typical powder user, though we note that injecting powder cocaine into the bloodstream produces effects similar to smoking crack and hence creates a similar vulnerability to addiction. Based upon these findings, the Commission reiterates the conclusion from its 1995 report that federal sentencing policy must reflect the greater dangers associated with crack.

B. Five- and Ten-Year Mandatory Sentences Should Be Targeted At Serious Traffickers

Since 1986, federal drug sentencing policy has been based in part on the principle that the quantity of drug involved in an offense reflects both the harm to society as well as the offender's culpability. Accordingly, Congress countenanced in the Anti-Drug Abuse Act of 1986 that any drug trafficker accountable for a quantity of drug indicative of a "mid-level" or "serious" trafficker ought to receive, with very few exceptions, at least a five-year prison sentence. To determine the quantity of drugs indicative of mid-level or serious traffickers, Congress consulted with drug

enforcement experts to gather information about drug markets at the time and set quantity triggers based on this information.

In reexamining current cocaine sentencing policy, the Commission has used this same approach based on updated market information. In 1986, the crack cocaine market was just emerging, and since that time, much more has been learned about the marketing of both powder and crack cocaine. Recently, the Commission requested and obtained information from the Drug Enforcement Administration ("DEA"), the Office of National Drug Control Policy, the National Institute on Drug Abuse, and the Substance Abuse and Mental Health Administration to reevaluate the quantity levels of drug associated with mid-level or serious traffickers. Following these consultations and based on the Commission's own data — including data that have become available since the Commission's 1995 report — the Commission concludes that the five-gram trigger for crack cocaine is over inclusive because it reaches below the level of mid-level or serious traffickers who deserve the five-year statutory penalty.

Five grams of crack cocaine is indicative of a retail or street-level dealer rather than a mid-level dealer. Accordingly, the Commission concludes that the five-gram trigger should be increased to better target mid-level dealers. This is not to say that all street-level cocaine dealers should receive sentences of less than five-years imprisonment. If a street-level dealer possesses a gun, is involved in violence or other aggravating conduct, uses juveniles, or is involved in unusually large quantities of drugs, a more severe sentence would be warranted. Both the guidelines and other laws provide for such enhancements. But based solely on quantity, our analysis suggests that an appropriate trigger for the five-year mandatory sentence for crack offenses should be higher than five grams.

For powder cocaine, the information and data suggest that some decrease in the quantity trigger may be warranted. Because nearly all cocaine is initially distributed in powder form until some later time in the distribution chain when some is then converted to crack, the Commission believes that it is appropriate to increase penalty levels for trafficking in powder cocaine to partially reflect the greater harms associated with crack and to reduce unwarranted sentencing disparity between powder and crack cocaine traffickers. In addition, the ease with which powder cocaine is converted to crack cocaine also suggests that some increase in powder cocaine penalties may be appropriate. For these reasons, the Commission concludes that a more appropriate quantity trigger for the five-year mandatory sentence for powder cocaine would be less than 500 grams.

It is important to note that, although changes in the quantity triggers for crack and powder cocaine would change the starting point for determining sentences under the guidelines, ultimate sentences are based on more than simply drug quantity. In contrast to a penalty structure that relies exclusively or primarily

on a quantity ratio to distinguish among offenders, the guidelines approach allows for the more refined and individualized sentencing that Congress envisioned under the Sentencing Reform Act as well as the most efficient and effective use of scarce federal prison resources. The Commission reiterates its 1995 conclusion that, when applicable, guideline enhancements should be used to account for harms related to crack and powder cocaine offenses with less reliance put on drug quantity. For example, any cocaine trafficker who possesses or uses a firearm or other dangerous weapon during a drug crime ought to receive a substantially enhanced sentence. Other factors — such as the use of juveniles in a drug trafficking offense, a defendant's prior drug trafficking convictions, a defendant's role in the offense, and the other factors listed in the 1995 congressional directive — are all important in determining an appropriate drug sentence. The enhancements in the guidelines system can account for these and other important factors related to a defendant's criminal culpability and should be relied on to the greatest extent possible.

C. Cocaine Sentencing Policy Should Advance the Federal Government's Role in the National Drug Control Effort and Rationalize Priorities for the Use of State and Federal Resources in Targeting Drug Use and Trafficking

The federal government and state governments share a common interest in developing an effective drug control policy that allocates responsibility for prosecution, adjudication, sentencing, and imprisonment in such a way that these functions are carried out in the most efficient, effective, and constitutionally appropriate manner. Sentencing policy plays an important role in the allocation of resources among federal, state, and local government entities. Thus, the Commission is increasingly convinced that federal sentencing policy must be designed in coordination with a larger national effort that recognizes and takes into account the appropriate allocation of drug enforcement and drug control efforts at all levels of government.

National drug control policy over the last decade has, for appropriate reasons, relied upon extensive coordination and cooperation among federal, state, and local governmental entities. The result has been that both the federal government and state and local governments are targeting many of the same offenders and the same criminal activity in an effort to root out perpetrators of drug-related criminal activity. Stated another way, in most instances, the same offenders and the same criminal activity can jurisdictionally be prosecuted, adjudicated, sentenced, and imprisoned in either the state or federal system. The choice about whether to proceed under state or federal law has, to some extent, been driven by comparisons of these overlapping sentencing policies.

The resources available at all levels of government are limited and will, in the foreseeable future, be increasingly stretched. This is particularly true in the area of

law enforcement, judicial resources, and prison resources. Thus, in the sentencing context, as well as many other contexts inherent in the criminal justice system, we support national efforts to rationalize and target, in an efficient and effective way, the manner in which criminal justice resources are deployed to take into account the appropriate roles of the federal government as compared with state and local governments, and to focus the use of criminal justice resources in such a way that the effectiveness of the resources is maximized and the appropriate roles of each level of government are recognized. The constitutional principles of federalism are no less imperative in the criminal law context than they are in other areas of constitutional inquiry. *See United States v. Lopez,* 514 U.S. 549 (1995). Although this goal of rationalizing and allocating the respective roles of federal and state and local governments is an issue far bigger than sentencing policy, the Sentencing Commission recognizes and takes as one of its goals the effort to try to draw appropriate thresholds for federal sentencing that will take into account the regional variations and preferences of state and local governments that should be respected in the criminal law context.

To this end, it is our view that federal sentencing policy should reflect federal priorities by targeting the most serious offenders in order to curb interstate and international drug trafficking and violent crime. Consistent with general constitutional principles of interstate commerce and the appropriate roles of the federal government, it is our view that an effort to rationalize federal sentencing policy would attempt to identify those components of the criminal element in drug trafficking that are most appropriate for federal concern and reserve to the states those criminal activities and defendants that state resources could most effectively target and consider in their own sentencing schemes. Though most of the overlapping jurisdiction between the state and federal governments in national crime control policy may be authorized by the Constitution, it does not necessarily follow that such overlapping jurisdiction is either the most effective or the most efficient use of the combined resources of the federal and state governments. For example, it is clear in looking at state sentencing schemes that states have historically made a wide variety of choices about the sentencing of persons who are deemed low-level offenders or who are apprehended with street-level amounts of drugs. These choices reflect traditional state responsibility for addressing public health, safety, and welfare issues related to addicts, street-level crime, and persons low in local distribution chains. States may be able to address these issues more economically and with more locally-focused penal and social goals than can be achieved by the federal government.

Federal cocaine sentencing policy is an excellent example of a place to start rationalizing federal and state priorities with respect to drug control. It is the view of the Sentencing Commission that current federal cocaine policy inappropriately targets limited federal resources by placing the quantity triggers for the five-year mandatory minimum penalty for crack cocaine too low. The use of federal

sentencing policy as the machine to drive enforcement, adjudication, and imprisonment choices does not reflect a thoughtful and considered choice about the most effective use of public resources at all levels. This debate about the proper role of the respective levels of government goes far beyond federal cocaine policy. We are convinced, however, that adjusting the powder and crack five-year quantity triggers to target serious dealers will begin the process of adjusting national drug policy in a way that effectively and efficiently directs resources at all levels.

D. Cocaine Sentencing Policy and Practice Must Be Perceived By the Public As Fair

One of the issues of greatest concern surrounding federal cocaine sentencing policy is the perception of disparate and unfair treatment for defendants convicted of either possession or distribution of crack cocaine. Critics argue that the 100-to-1 quantity ratio is not consistent with the policy, goal, and mission of federal sentencing — that is to be effective, uniform, and just. While there is no evidence of racial bias behind the promulgation of this federal sentencing law, nearly 90 percent of the offenders convicted in federal court for crack cocaine distribution are African-American while the majority of crack cocaine users is white. Thus, sentences appear to be harsher and more severe for racial minorities than others as a result of this law. The current penalty structure results in a perception of unfairness and inconsistency.

Designing sentencing policy to properly focus federal resources on the most violent and dangerous offenders will also help alleviate concerns that have been raised with the Commission about prosecutorial and investigative sentencing manipulation. For example, because powder cocaine is easily converted into crack cocaine and because the penalties for crack cocaine offenses are significantly higher than for similar quantity powder cocaine offenses, law enforcement and prosecutorial decisions to wait until powder has been converted into crack can have a dramatic impact on a defendant's final sentence. To the extent that the differential is reduced, the potential for this practice will also diminish.

IV. Conclusions and Recommendations

A. Penalties for Cocaine Trafficking

In reassessing penalties for cocaine trafficking, the Commission has moved step-by-step through an evaluative process that examined all of the factors listed by Congress in the 1995 legislation and the goals set forth above. In arriving at recommended changes to current policy, the Commission has balanced conflicting goals. The Sentencing Commission shares congressional and public concern about the harms associated with both forms of cocaine — both to users and to the society as a whole — including the violence associated with its distribution, its use by juveniles, the involvement of juveniles in its distribution, and its addictive potential. However, as the Commission reported in 1995, we again conclude unanimously that congressional objectives can be achieved more effectively without relying on the current federal sentencing scheme for cocaine offenses that includes the 100-to-1 quantity ratio.

The Sentencing Commission thereby recommends that Congress revise the federal statutory penalty scheme for both crack and powder cocaine offenses. Selecting the appropriate threshold for triggering the five-year mandatory minimum penalties is not a precise undertaking, but based on the best available research and the goals detailed above, the Commission recommends for Congress's consideration a range of alternative quantity triggers for both powder and crack cocaine offenses. For powder cocaine, the Commission concludes that the current 500-gram trigger for the five-year mandatory minimum sentence should be reduced to a level between 125 and 375 grams, and for crack cocaine, the five-gram trigger should be increased to between 25 and 75 grams.

We urge Congress to adopt a ratio within the quantity ranges we have recommended to address the problem as soon as possible, as hundreds of people will continue to be sentenced each month under the current law. After Congress has evaluated our recommendations and expressed its views, the Commission will amend the guidelines to reflect congressional intent. Consistent with the principles of the Sentencing Reform Act of 1984, the Commission believes that better sentencing policy — for cocaine as well as for other offenses — is developed through Commission research and expertise together with regular and ongoing consultation with Congress and the Executive Branch. We intend to continue to work closely with Congress and senior administration officials as pertinent legislation is developed. By doing so, we believe a fairer and more effective cocaine sentencing policy — one that better targets serious and upper-level dealers and the most violent and dangerous drug offenders — can be created.

The Commission is mindful that these and other related sentencing changes could have a substantial impact on the federal prison population, thus changing the

resources available for other drug control strategies. The President, the Attorney General, the Congress, and the Office of National Drug Control Strategy have repeatedly indicated that an effective drug control strategy requires a balanced approach of domestic and international law enforcement, interdiction, prevention, and treatment. The impact of policy changes on drug control resources must be considered seriously before making any substantial increase in drug sentences. The Commission is prepared to provide impact analysis and other expertise to both Congress and the Executive Branch at any time.

B. Penalties for the Simple Possession of Crack Cocaine

The Commission has also reassessed the penalties uniquely applicable to the simple possession of crack cocaine. Much of the rationale for reexamining the 100-to-1 quantity ratio applicable to cocaine trafficking offenses similarly applies to the penalties applicable to crack simple possession offenses. The Commission reiterates its unanimous finding that the penalty for simple possession of crack cocaine should be the same as for the simple possession of powder cocaine.

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Concurring Opinion of
VICE CHAIRMAN MICHAEL S. GELACAK

COCAINE AND FEDERAL SENTENCING POLICY
(as directed by section two of Public Law 104-38)

I concur with my colleagues in this report and the recommendations in response to Congress's request. However, the recommendations, while moving our federal sentencing system in the direction of greater fairness, fail to rectify fully an unjust sentencing system for crack cocaine. After several years of careful study, detailed examination of our sentencing system, and meetings with defendants sentenced under these penalties, I have come to the conclusion that Congress established an unfair mandatory minimum of five years for trafficking in five grams of crack cocaine. This is particularly the case when those who traffic in up to 500 grams of powder cocaine may in many instances not even be prosecuted at the federal level. The Sentencing Commission exacerbated this problem by constructing its guidelines to increase sentences proportionately for drug quantities above mandatory minimum levels. The result is extremely severe sentences for those at the lower ends of the drug distribution chain.

I support severe sentences for serious criminal conduct. I oppose a penalty structure that results in unfair sentences, and it is clear to me that the current mandatory minimum sentences for five grams of crack cocaine are unjust and that failing to correct the imbalance with powder cocaine does not serve justice. I am also troubled by the economics of this penalty structure. Incarceration is expensive. Whether lengthy federal prison sentences for street-level crime is the wisest use of scarce resources deserves far more consideration. I believe the country would be better served by our dealing more directly with these issues. Political compromise is a function better left to the Legislature.

Congress and the Sentencing Commission have a responsibility to establish fair sentencing standards that protect the public, enhance the public's confidence in our criminal justice system, and ensure that similarly situated offenders are treated similarly. For the majority of crimes, we have accomplished these goals by establishing a "truth in sentencing" system and fair sentencing standards. We have jointly failed in our approach toward crack cocaine sentences, and the result is seriously disparate sentences. We should not lose sight of that overriding reality.

President Kennedy in a speech to the Massachusetts State Legislature said:

> For of those to whom much is given, much is required.
> And when at some future date the high court of history

> sits in judgment on each of us, recording whether in our brief span of service we fulfilled our responsibilities to the state, our success or failure, in whatever office we hold, will be measured by the answers to four questions: First, were we truly men of courage.... Second, were we truly men of judgment.... Third, were we truly men of integrity.... Finally, were we truly men of dedication?

Does any Commission preserve its integrity by persevering in that which it is unable to accomplish even though it believes it to be right? The answer seems apparent. In its original recommendation to the Congress, the Commission proposed changes to the sentencing guidelines for cocaine offenses that would have equated base sentences for powder and crack offenders by adopting a 1:1 quantity ratio at the powder cocaine level with sentencing enhancements for violence and other harms disproportionately associated with crack cocaine.

Congress and the Administration chose not to accept that recommendation. The Congress specifically rejected the proposed amendments that would otherwise have taken effect by operation of law on November 1, 1995. That, of course, was the prerogative of both but does not necessarily lead to the conclusion that the Commission's recommendation was wrong as a matter of policy.

We can argue over the merits. We could also propose simple solutions in the hope that the problem would then go away. The Commission, for its part, could simply do nothing. Silence is clearly the simplest course. I believe that that would accomplish nothing positive. Conversely, the Congress could suggest that the ratio be eliminated by simply raising the penalties for powder cocaine to the same level as crack. That also would accomplish nothing positive. There are no easy answers.

During the year 1993, of those sentenced for crack cocaine, 88.3 percent were Black and 95.4 percent were non-White. Even though the Commission has conceded that there was no intent by the Legislature that penalties fall disproportionately on one segment of the population, the impact of these penalties nonetheless remains. If the impact of the law is discriminatory, the problem is no less real regardless of the intent. This problem is particularly acute because the disparate impact arises from a penalty structure for two different forms of the same substance. It is a little like punishing vehicular homicide while under the influence of alcohol more severely if the defendant had become intoxicated by ingesting cheap wine rather than scotch whiskey. That suggestion is absurd on its face and ought be no less so when the abused substance is cocaine rather than alcohol.

The logic of this analogy is compelling, but even if that is not so, eliminating discrimination is a principle to which this nation has committed itself. As a signator

of the United Nations International Convention on the Elimination of all Forms of Racial Discrimination, the United States pledged to:

> ... take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

Clearly the 100:1 powder/crack cocaine ratio would qualify as such a law.

Although a discussion of the nation's drug abuse problem and the impact of penalties on African Americans and other people of color is often uncomfortable and elevates the profile of the issue as well as the political consequences, we cannot choose to ignore it or act as if it is of no concern. The perception of unfairness is a very real problem. Black Americans know that the penalties for crack cocaine fall primarily upon the youth of their communities and they do<u>not</u> countenance the present penalty structure. There is a vast difference between wanting to rid your neighborhoods of crack users and dealers and wanting members of your community treated more harshly than others using and trafficking in the same substance in a different form. How is what we are doing or propose to change making the lives of these people better? It seems to me it is not. Rather, I believe that those we would like to protect and help are those most affected and harmed by a law that clearly leads to a racially disparate and overly severe result. That is wrong.

There are other, and better ways to deal with drug abuse in this country. The current quantity-driven system of imposing penalties is simplistic and quite effective in filling our prisons. It begs the question of what the role of the federal government ought to be with regard to drug use, abuse, and trafficking. Should the federal government focus its enforcement efforts more on street-level dealers or on major importers and traffickers of the drug trade? Is the best use of federal manpower concentrating on street-level trade or are states and localities better able to be cost-efficient in this area? Conceding that reasonable men and women can and do differ on these questions, I submit that the federal government ought to focus resources on the major players in the drug trade and leave the street-level players to be dealt with by state courts as a local issue. If you accept that premise of different roles for the federal and state governments in dealing with drug abuse, a federal penalty scheme based upon significant punishment for minimal quantities of drugs is counterproductive. The current policy focuses law enforcement efforts on the lowest level of the distribution line – the street-level dealer. Unless we ignore all evidence to the contrary, the current policy has little or<u>no</u> impact upon the drug abuse problem. The jails are full. Drug abuse is a more significant problem than it was when Congress in 1986 adopted mandatory minimum penalties based on the quantity of drugs involved in the offense. There also seems to be an unending

released from jail. Does this country really expect them to become productive members of society or might we anticipate some retributive behavior?

I believe strongly that the disparity between penalties for the same quantities of crack and powder cocaine is wrong. The only real solution to the injustice is to eliminate it. I also believe that tenacity of purpose in a rightful cause should not be shaken by the frenzy of those clamoring for what is wrong. The congressional mandate that penalties for crack cocaine must be higher than those for a similar quantity of powder cocaine, however, makes it impossible for the Commission alone to accomplish that goal at the present time. The Commission's recommendation is better than simply choosing to ignore the problem.