

# Open Letter to the United States Congress

October 2, 2007

Dear Senators and Representatives,

On May 15, 2007, the United States Sentencing Commission (USSC) submitted to Congress its fourth report on federal cocaine sentencing policy. In this latest report, and in every submission since 1995, the USSC called on Congress to reform sentences for crack cocaine offenses. The undersigned organizations applaud the Commission's latest recommendations and support enactment of legislation consistent with these recommendations and the elimination of the sentencing disparity between crack and powder cocaine offenses. We also urge the Judiciary Committee to immediately hold hearings to examine the report's findings.

The report, *Cocaine and Federal Sentencing Policy*, provides an exhaustive accounting of the research, data and viewpoints that led to the Commission's recommendations for crack sentencing reform. The recommendations include:

- Raising the crack cocaine quantities that trigger the five-year and ten-year mandatory minimum sentences in order to focus penalties on serious and major traffickers.
- Repeal of the mandatory minimum penalty for simple possession of crack cocaine.
- Rejection of legislation that addresses the drug quantity disparity between crack and powder cocaine by lowering the powder cocaine quantities that trigger mandatory minimum sentences.

The federal sentencing policies at issue in the USSC report were enacted by Congress in 1986 and 1988 under the Anti-Drug Abuse Acts which created a 100 to 1 quantity sentencing disparity between crack and powder cocaine, pharmacologically identical drugs. This means that crimes involving just 5 grams of crack, 10 to 50 doses, receive the same five year mandatory minimum prison sentence as crimes involving 500 grams of powder cocaine, 2,500 to 5,000 doses. Many myths about crack were perpetuated in the late 1980's that claimed, for example, that crack cocaine caused violent behavior or that it was instantly addictive. Since then, research and extensive analysis by the USSC has revealed that such assertions are not supported by sound evidence and, in retrospect, were exaggerated or simply false.

Although the myths perpetuated in the 1980s about crack cocaine have proven false, the disparate impact of this sentencing policy on the African American community continues to grow. According to the 2007 report by the USSC, *blacks constituted 82% of those sentenced* under federal crack cocaine laws. This is despite the fact that 66% of those who use crack cocaine are white or Hispanic. This prosecutorial disparity between crack and powder cocaine results in blacks spending substantially more time in federal prisons

for drug offenses than whites. Indeed, the Commission reported that revising the crack cocaine threshold would do more to reduce the sentencing gap between blacks and whites “than any other single policy change,” and would “dramatically improve the fairness of the federal sentencing system.”

Large quantities of cocaine are generally transported and trafficked into and throughout the U.S. in powder form. It is not converted into the form known as “crack” until it reaches the street level retail dealer, where powder cocaine is “cooked” with baking soda and water. Federal data demonstrate that the majority of crack cocaine prosecutions involve neighborhood dealing as opposed to the national and international prosecutions often associated with major powder cocaine prosecutions. Because of the small quantity levels that trigger five and 10 year mandatory minimums for crack cocaine offenses, low-level retail sellers are punished far more severely than their drug suppliers who provide the powder cocaine from which crack is produced. Congress intended to punish “major” drug traffickers when it passed the 1986 Act, but instead low-level crack sellers are punished 300 times more severely than high level international cocaine traffickers on an imprisonment per gram basis, according to USSC data.

Concern over the severity of crack sentences has even reached the U.S. Supreme Court which on October 2, 2007, heard arguments in *Kimbrough v. United States*, No. 06-6330. The case explores the reasonableness of a district judge’s below guideline sentencing decision based on the unfairness of the 100 to 1 quantity disparity between powder and crack cocaine. In addition, several bills have been introduced in the U.S. House and Senate that seek to limit the harsh punishments for crack cocaine offenses.

We agree with the USSC’s careful analysis that the present 100 to 1 quantity ratio is unwarranted and results in penalties that sweep too broadly, apply too frequently to lower-level offenders, overstate the seriousness of the offenses, and produce a large racial disparity in sentencing. Indeed, federal cocaine sentencing policy “...continues to come under almost universal criticism from representatives of the Judiciary, criminal justice practitioners, academics, and community interest groups,” according to the USSC report. “[I]naction in this area is of increasing concern to many, including the Commission.” It is imperative that Congress act quickly to finally correct the gross unfairness that has been the legacy of the 100 to 1 ratio.

We call for hearings immediately and urge the elimination of the cocaine sentencing disparity with legislation consistent with the Sentencing Commission’s report and recommendations. Thank you for your prompt attention to our concerns.

Sincerely,

Barbara R. Arnwine  
Executive Director  
Lawyers' Committee for  
Civil Rights Under Law

Pat Beauchemin  
Executive Director  
Therapeutic Communities of America

David Borden  
Drug Reform Coordination Network

Jane Browning  
Executive Director  
International Community Corrections  
Association

Sarah Bryer  
Director  
National Juvenile Justice Network

Arthur Burnett, Sr.  
National Executive Director  
National African American Drug Policy  
Coalition, Inc.

Christine Campbell  
Director  
National Advocacy and Organizing  
Housing Works, Inc.

Rev. Dr. Eliezer Valentín-Castañón  
Associate General Secretary  
General Commission on Religion and  
Race  
The United Methodist Church

Dr. Ben Chavis  
President and CEO  
Hip-Hop Summit Action Network

Dr. Ron Daniels  
President  
Institute of the Black World  
21<sup>st</sup> Century

Caroline Fredrickson  
Director, Washington Legislative Office  
American Civil Liberties Union

Jenni Gainsborough  
Director, Washington Office  
Penal Reform International

Dr. Kathie Stromile Golden  
Executive Director  
National Conference of Black Political  
Scientists

Roger Goodman  
State Representative, 45<sup>th</sup> District  
Washington State Legislature  
President, Voluntary Committee of  
Lawyers  
King County Bar Association

Judge Jon R. Gray (Retired)  
Chair  
Judicial Council of the  
National Bar Association

Frank Hall  
Managing Director  
The Eagle Group

Morton H. Halperin  
Executive Director  
Open Society Policy Center

Ron Hampton  
Executive Director  
National Black Police Association

Kimberly Haven  
Executive Director  
Justice Maryland

Peter Hayden  
Chair  
National Black Alcoholism and  
Addictions Council

Wade Henderson  
Executive Director  
Leadership Conference on  
Civil Rights

Carmen Hernandez  
President  
National Association of Criminal  
Defense Lawyers

Dr. Everlena Holmes  
President  
Justice Watch

Michael Israel  
Washington Representative  
Academy of Criminal Justice Sciences,  
Public Policy Section

Rob Keithan  
Director, Washington Office for  
Advocacy  
Unitarian Universalist Association of  
Congregations

Kris Krane  
Executive Director  
Students for Sensible Drug Policy

Fay Lassiter  
President  
National Association of Blacks in  
Criminal Justice

Kirsten Levingston  
Director, Criminal Justice Program  
Brennan Center for Justice

Kenny Linn  
Chairman  
FedCURE

Glenn E. Martin  
Co-Director  
National H.I.R.E. Network  
Legal Action Center

Marc Mauer  
Executive Director  
The Sentencing Project

Kit Murphy McNally  
Executive Director  
Benedict Center

Bill Mefford  
Director of Civil and Human Rights  
General Board of Church and Society,  
United Methodist Church

Garry Mendez, Jr.  
Executive Director  
The National Trust for the Development  
of African-American Men

Onaje Muid  
Associate Director  
Reality House, Inc.

Janet Murguia  
President and CEO  
National Council of La Raza

Ethan Nadelmann  
Executive Director  
Drug Policy Alliance

Pat Nolan  
Vice President  
Prison Fellowship

Charles Ogletree  
Founder and Director  
Charles Hamilton Houston Institute on  
Race and Justice and,  
Founder and Director  
Criminal Justice Institute  
Harvard Law School<sup>1</sup>

Dr. Doris Marie Provine  
School of Justice & Social Inquiry  
Arizona State University

---

<sup>1</sup> for affiliation only

Divine Pryor, Ph.D  
Deputy Executive Director  
Center for NuLeadership on Urban  
Solutions

Malika Saada Saar  
Executive Director  
Rebecca Project for Human Rights

Rabbi David Saperstein, Director,  
Religious Action Center of Reform  
Judaism, Union for Reform  
Judaism/Central Conference of  
American Rabbis

Gabriel Schlabach  
Legislative Assistant for Domestic  
Affairs  
Mennonite Central Committee  
Washington Office

Theodore Shaw  
Director-Counsel and President  
NAACP- Legal Defense and  
Educational Fund

Hilary Shelton  
Director, Washington Bureau  
National Association for  
the Advancement of Colored People

Deborah Small  
Executive Director  
Break the Chains, Communities of Color  
and the War on Drugs

Angela Smith  
National Coordinator  
Human Earth Animal Liberation

Kemba Smith  
President  
Kemba Smith Foundation

Mark Soler  
Executive Director  
Center for Children's  
Law and Policy

Eric Sterling  
Assistant Counsel, House Judiciary  
Committee, 1979-1989

Julie Stewart  
President and Founder  
Families Against Mandatory Minimums

Charles Sullivan  
Executive Director  
International CURE

Rev. Susan Taylor  
Church of Scientology, Washington, DC

Marsha Weissman  
Executive Director  
Center for Community Alternatives

Jim Winkler  
General Secretary  
General Board of Church and Society,  
United Methodist Church

Jason Ziedenberg  
Executive Director  
Justice Policy Institute