

July 27, 2009

The Honorable John Conyers, Jr.
Chairman, Committee on the Judiciary
United States House of Representatives
2138 Rayburn Office Building
Washington, DC 20525

The Honorable Lamar Smith
Ranking Member, Committee on the Judiciary
United States House of Representatives
2138 Rayburn Office Building
Washington, DC 20525

Dear Chairman Conyers and Ranking Member Smith:

We understand the Committee may soon consider H.R. 3245, the Fairness in Cocaine Sentencing Act of 2009, legislation to eliminate the current disparity in federal sentences for crack versus powder cocaine offenses approved by the Subcommittee on Crime, Terrorism and Homeland Security by voice vote without amendment on July 22, 2009. I write on behalf of the American Bar Association to urge Committee members to approve H.R. 3245 so that it may soon be considered by the full House of Representatives. The ABA believes that enactment of this much-needed legislation is the most significant single step Congress can take to address manifest unfairness in the sentencing process and to reduce racial disparities in the federal justice system.

In response to a report of the United States Sentencing Commission (USSC) issued in 1995, the ABA House of Delegates adopted a policy that squarely endorsed the USSC proposal to equalize quantity thresholds for crack and powder offenses and called on Congress to enact legislation to eliminate the sentencing disparity between crack and powder cocaine offenses. In May 2007, the Sentencing Commission submitted to Congress its fourth report on federal cocaine sentencing policy, again calling on Congress to reform sentences for crack cocaine offenses. We join in that urgent call for reform.

The USSC 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; and
- 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 ABA has been on record for fourteen years in support of enactment of legislation to eliminate the federal sentencing disparity for crack versus powder cocaine offenses and to refocus federal law enforcement efforts toward major drug traffickers. The enactment of H.R. 3245 would fully implement the USSC recommendations and fulfill ABA policy reform goals.

The federal sentencing policies at issue in the USSC report were initially adopted by Congress in 1986 and 1988 as part of the Anti-Drug Abuse Acts that created a 100-to-1 quantity sentencing disparity between crack and powder cocaine, pharmacologically identical drugs. This means that crimes involving just five 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 1980s 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 these 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 proved false, the disparate impact of this sentencing policy on the African American community continues to grow. Our 1995 policy, which supports treating crack and powder cocaine offenses similarly, was developed in recognition that the different treatment of these offenses has a “clearly discriminatory effect on minority defendants convicted of crack offenses.” According to the 2007 report by the USSC, African Americans *constituted 82% of those sentenced* under federal crack cocaine laws. This is despite the fact that 66% of those who use crack cocaine are Caucasian or Hispanic. This prosecutorial disparity between crack and powder cocaine results in African Americans spending substantially more time in federal prisons for drug offenses than Caucasian offenders. Indeed, the Commission reported that revising the crack cocaine threshold would do more to reduce the sentencing gap between African Americans and Caucasians “than any other single policy change,” and would “dramatically improve the fairness of the federal sentencing system.”

We agree with the USSC’s careful analysis that the present 100-to-1 quantity ratio is unwarranted and results in penalties that 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.” Congress needs to address this problem and take steps to finally correct the gross unfairness that has been the legacy of the 100-to-1 ratio.

The ABA believes that enactment of H.R. 3245 will restore fairness and a sound foundation to federal sentencing policy regarding cocaine offenses by ending the disparate treatment of crack versus cocaine offenses and by refocusing federal policy toward major drug traffickers. We urge the members of the Judiciary Committee to support H.R. 3245 so that it may soon be considered by the full House of Representatives.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman