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October 3, 2007

Honorable Patrick Leahy
Chair
Committee on the Judiciary
United States Senate
Washington, DC 20515

Honorable John Conyers, Jr
Chair
Committee on the Judiciary
United States House of Representatives
Washington, DC 20510

Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Senators Leahy and Specter and Representatives Conyers and Smith:

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, as with every submission since 1995, the USSC called on Congress to reform sentences for crack cocaine offenses. In response to the Commission's report in 1995, the ABA House of Delegates adopted a policy recommendation that squarely endorsed the Commission's 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.

We are writing to endorse the Commission's latest recommendations and to urge enactment of legislation to implement its recommendations, including elimination of the federal sentencing disparity between crack and powder offenses. Our position is consistent with a broad range of criminal justice, sentencing reform, faith-based and community organizations that are writing separately to urge Congress to act now. As a first step, we urge your Judiciary Committees to promptly hold hearings to examine the USSC'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; 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 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 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 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. 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 Caucasian “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 demonstrates 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 June 11, 2007, granted certiorari 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, as you well know, 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." Congress needs to face this problem and take steps to finally correct the gross unfairness that has been the legacy of the 100 to 1 ratio.

We therefore urge your Committees to schedule hearings to examine the new USSC recommendations in the hope that such hearings will lead to enactment of legislation consistent with the Sentencing Commissions report and recommendations including those calling for elimination of the cocaine sentencing disparity.

Thank you for your prompt attention to our concerns.

Sincerely,

A handwritten signature in cursive script that reads "Denise A. Cardman".

Denise A. Cardman
Acting Director

cc: Members, House and Senate
Judiciary Committees