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President

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The Honorable Joseph R. Biden  
Chair, Subcommittee on Crime and Drugs  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senator Biden:

I write on behalf of the American Bar Association to express our strong support for S.1711, the Drug Sentencing Reform and Kingpin Trafficking Act of 2007, legislation you introduced to eliminate the current disparity in federal sentences for crack versus powder cocaine offenses. The ABA applauds your leadership and that of other Senate leaders who have recently introduced related legislation and who are working for reform on this important issue.

In response to a report of the United States Sentencing Commission (USSC) issued in 1995, the ABA House of Delegates adopted a policy recommendation that 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. As you know, on May 15, 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.

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 enactment of S.1711 would fully implement the USSC recommendations and would fulfill ABA policy reform goals.

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 disparity between sanctions for crack and powder cocaine offenses 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 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 face this problem and take steps to finally correct the gross unfairness that has been the legacy of the 100 to 1 ratio.

Enactment of S.1711 would 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 your colleagues to support S.1711 and to work with you so that it soon will be considered and passed by the full Senate.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Neukom". The signature is written in a cursive, slightly slanted style.

William H. Neukom