

April 27, 2009

Dear Representative:

I write on behalf of the American Bar Association to encourage your co-sponsorship and support for legislation to eliminate the cocaine sentencing disparity and to reprioritize federal law enforcement to target higher level drug operators instead of users and low-level offenders. By ending the federal cocaine sentencing disparity, Congress will take the most significant single step it can to address manifest unfairness in the sentencing process and to reduce racial disparities in the federal justice system. Two bills have been introduced in the House of Representatives that effectively address this sentencing unfairness – H.R. 265, the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act, and H.R. 1459, the Fairness in Cocaine Sentencing Act. Both bills deserve your attention and we urge you to endorse them.

In response to a report of the United States Sentencing Commission (USSC) issued in 1995, the ABA House of Delegates adopted a recommendation 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 which are supported by the ABA include:

- raising the crack cocaine quantities that trigger the five-year and ten-year mandatory minimum sentences to focus penalties on serious and major traffickers;
- repealing the mandatory minimum penalty for simple possession of crack cocaine; and
- rejecting 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 the USSC's call for 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. 265 would fully implement the USSC recommendations and fulfill ABA's policy goals. The ABA also supports H.R. 1459, which would more broadly address mandatory minimum sentences for all cocaine offenses.

The federal sentencing policies at issue in the USSC report were enacted by Congress in 1986 and 1988 as part of the Anti-Drug Abuse Acts, which created a 100-to-1 quantity sentencing disparity between crack and powder cocaine, which are 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 have 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 ratio is unwarranted and results in penalties that apply too frequently to lower-level offenders, overstates the seriousness of the offenses, and produces 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.

It is time for Congress to shift federal law enforcement focus from users and street-level dealers toward drug kingpins and restore basic fairness and a sound foundation to federal sentencing policy regarding cocaine offenses. We strongly urge your support for legislative change.

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