

February 20, 2003

The Honorable Diana Murphy, Chair
United States Sentencing Commission
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Washington, D.C. 20002-8002

Dear Judge Murphy:

Federal cocaine sentencing policies remain fundamentally unfair. As the Sentencing Commission considers which guideline amendments to submit to Congress on May 1, the undersigned organizations urge the Commission to include an amendment addressing the unjustified disparity between crack cocaine and powder cocaine sentences.

For the past 17 years, the quantity thresholds in the drug statutes and guidelines have been based on a now-discredited 100 to 1 ratio between crack and powder. The Commission has published not one but two comprehensive empirical studies on this subject, both of which concluded that the 100 to 1 ratio is scientifically invalid and racially discriminatory. Congress also recognizes that the current ratio is flawed -- the statute disapproving the Commission's 1995 proposal to equalize threshold quantities for crack and powder (a proposal that our organizations supported), nonetheless called on the Commission to propose a revised ratio.

Last year the Commission commendably revisited this issue. Many of our organizations were pleased to participate in the Commission's public hearings, and while we did not agree with aspects of the Commission's final proposal to change the ratio and related guideline provisions, we recognized it as a step forward in a long-term process of rationalizing drug sentences. Like members of the Commission, we were disheartened by the Justice Department's last-minute testimony that current cocaine sentences are "proper."

In deference to Congress, the Commission chose not to transmit its proposal as a guideline amendment pursuant to 28 U.S.C. § 994, but instead transmitted a report containing recommendations. The Senate Judiciary Committee held a hearing on the report but there was no further legislative action on the Commission proposal. The ratio remains unchanged in both the statutes and the guidelines.

This year, the Commission should propose a guideline amendment pursuant to 28 U.S.C. § 994, given your affirmative obligation to ensure that the guidelines are fair and rational. Congress bears responsibility for redressing unwarranted statutory disparity, but the Commission should utilize all available authority to minimize injustice resulting from the guidelines.

Submission of a revised ratio in the form of a guideline amendment would, in effect, trigger congressional reconsideration of the issue. In light of the reform-minded proposal introduced last year by Senators Jeff Sessions (R-AL) and Orrin Hatch (R-UT), we believe such a process would result in improvements to the status quo. If Congress acts in response to the proposed guideline

amendment, it may well amend the statutes and guidelines in a favorable direction. If Congress fails to act within six months, or if the executive branch refuses to accept legislative changes, then at least the Commission's guideline amendments would take effect. Incongruity between the statutes and guidelines is not ideal, but it is not unprecedented; similar incongruities exist with respect to the calculation of marijuana and LSD quantities.

At this point, the Commission's only alternative to submission of a guideline amendment is to do nothing and hope that Congress acts on last year's recommendation. That course is unacceptable. The injustice of federal cocaine sentencing has festered for 17 years. It has had a devastating effect on minority incarceration rates and a corrosive effect on respect for the law in minority communities. It must not persist any longer without action by those in a position to act.

If the Commission publishes a guideline amendment for public comment, we respectfully request an opportunity to testify before the Commission on the substance of the proposal prior to May 1. Thank you for considering our views.

Sincerely,

Wade Henderson Hilary Shelton
Leadership Conference on Civil Rights NAACP

Charles Kamasaki Laura W. Murphy
National Council of La Raza American Civil Liberties Union

Julie Stewart Jamie Fellner
Families Against Mandatory Minimums Human Rights Watch

Lawrence S. Goldman Jon Sands
National Association of Criminal Defense Lawyers Federal Public Defenders