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Written Testimony of
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“Restoring Fairness to Federal Sentencing: Addressing the Crack-Powder Disparity”

House Judiciary Committee
Subcommittee on Crime, Terrorism, and Homeland Security
United States House of Representatives

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I am testifying on behalf of the National District Attorneys Association, the oldest and largest organization representing State and local prosecutors. I have attached a resolution adopted by NDAA regarding the sentencing disparity between crack and powder cocaine. NDAA agrees that some adjustment is warranted, but just as the 100:1 disparity cannot be justified by empirical data we believe that the proposed 1:1 realignment of Federal penalties for crack versus powder cocaine also lacks any empirical or clinical evidence. A random adjustment will have severe negative consequences on the efforts of this nation’s prosecutors to remove the destructive effects of crack and violence from our communities.

I have been a criminal prosecutor for over 31 years. My prosecutors and I work on one of the most active and successful task forces in Maryland and cooperate with federal agents and prosecutors from the Office of the U. S. Attorney for Maryland.

The cooperation of Federal and State prosecutors and law enforcement that has developed over the years is due in large part to the interplay of Federal and State laws. Maryland state statutes differentiate sentences between crack and powder cocaine offenders on a 9:1 ratio based on the amount that would indicate a major dealer. There is not in reality a 100:1 difference in the sentences given to crack versus powder offenders. A DOJ report states, “A facial comparison of the guideline ranges for equal amounts of crack and powder cocaine reveals that crack penalties range from 6.3 times greater to approximately equal to powder sentences.”

In recent years local prosecutors have brought hundreds of large quantity dealers for Federal prosecution, primarily because of the discretion of Federal prosecutors in dealing with these cases. This discretion allows for pleas to lesser amounts of cocaine or the option

of not seeking sentence enhancements. The end result is that the majority of these cases are ultimately resolved by a guilty plea to a sentence below the statutory amount.

The practical effect of guilty pleas is that serious violent criminals are immediately removed from our communities, they spend less time free on bail or in pre-trial detention, civilian witnesses are not needed for trial or sentencing hearings and are therefore not subject to threats and intimidation and undercover officers are not called as witnesses: all of which would happen if we were forced to proceed with these cases in courts. Yet meaningful sentences are imposed, which punish the offender but also protect the community. The plea agreements often call for testimony against higher ups in the crack organization. It is critical that Federal sentences for serious crack dealers remain stricter than State laws if this coordinated interaction is to continue.

Let me dispel myths about controlled substance prosecutions that are propagated by those who would de-criminalize the devastation caused by illegal drugs.

1. There is a difference between the affect of crack versus powder cocaine on the user ¹

In a study entitled “Crack Cocaine and Cocaine Hydrochloride: Are the Differences Myth or Reality?” by D. K. Hatsukami and M.W. Fischman, Department of Psychiatry, Division of Neurosciences, University of Minnesota, Minneapolis it is stated,

“The physiological and psychoactive effects of cocaine are similar regardless of whether it is in the form of cocaine hydrochloride or crack cocaine (cocaine base). However, evidence exists showing a greater abuse liability, greater propensity for dependence, and more severe consequences when cocaine is smoked (cocaine-base) ... compared with intranasal use (cocaine hydrochloride). The crucial variables appear to be the immediacy, duration, and magnitude of cocaine's effect, as well as the frequency and amount of cocaine used rather than the form of the cocaine.”

Smoked cocaine results in the quickest onset and fastest penetration. Generally, smoked cocaine reaches the brain within 20 seconds; the effects last for about 30 minutes, at which time the user to avoid the effects of a “crash” re-uses. The Drug Enforcement Administration's (DEA) intelligence indicates that a crack user is likely to consume anywhere from 3.3 to 16.5 grams of crack a week, or between 13.2 grams and 66 grams per month.

Intranasally administered cocaine has a slower onset. The maximum psychotropic effects are felt within 20 minutes and the maximum physiological effects within 40 minutes. The effects from intranasally administered cocaine usually last for about 60 minutes after

¹ Most of the following comments are taken from reports of the United States Sentencing Commission or of the Department of Justice.

the peak effects are attained. A typical user snorts between two and three lines at a time and consumes about 2 grams per month.

Using these amounts, the cost per user per month for crack cocaine is between \$1,300 and \$6,600 as compared to a cost for powder cocaine of \$200 per month; a 6.5 to 33:1 ratio in cost.

2. There is a difference in the associated crimes and the effect on the community caused by crack as opposed to powder cocaine.

The inability to legitimately generate the large amount of money needed by a crack addict leads to a high involvement in crimes that can produce ready cash such as robbery and prostitution. Studies show crack cocaine use is more associated with systemic violence than powder cocaine use. One study found that the most prevalent form of violence related to crack cocaine abuse was aggravated assault. In addition, a 1998 study identified crack as the drug most closely linked to trends in homicide rates. Furthermore, crack is much more associated with weapons use than is powder cocaine: in FY 2000, weapons were involved in more than twice as many crack convictions as powder.

One of the best-documented links between increased crime and cocaine abuse is the link between crack use and prostitution. In this study, 86.7% of women surveyed were not involved in prostitution in the year before starting crack use; one-third become involved in prostitution in the year after they began use. Women who were already involved in prostitution dramatically increased their involvement after starting to use crack, with rates nearly four times higher than before beginning crack use.

One complaint about the sentencing disparity is that it discriminates against black crack dealers versus white powder dealers. Unfortunately, what most discriminates against our black citizens is the violence, degradation and community collapse that is associated with crack use and crack dealers and their organizations. It is the black homeowners who most earnestly plead with me, as a prosecutor, for strict enforcement and long prison sentences for crack offenders. The stop snitching video was made by black crack dealers in Baltimore to threaten black citizens with retaliation and death for fighting the dealers. A black family of five was killed by a fire bomb which was thrown into their home at the direction of crack dealers because they were reporting crack dealers on the street in front of their house. Those areas with the highest violent crime rates are the same areas with the highest crack cocaine use.

Congress should consider that many persons serving federal crack sentences have received consideration from the prosecutors in return for a guilty plea. (i.e. pleas to lesser amounts of cocaine or the option of not seeking sentence enhancements) Many criminals who could be affected by a retroactive application of a new sentencing scheme have already received the benefits of lower sentences and would get a second reduction. New sentencing hearings would mean that citizens from the communities that crack dealers once ruined would have to come forward to keep the sentences from being cut.

The nation's prosecutors urge Congress to adopt a sentencing scheme with regard to the destruction caused by crack cocaine to our communities. If there is a need to reduce the disparity between crack and powder cocaine then perhaps the solution is to increase sentences for powder cocaine.