

March 10, 2010

Senator Patrick Leahy, Chair  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Senator Jeff Sessions, Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**RE: Support the Fair Sentencing Act of 2009 (S. 1789)**

Dear Chairman Leahy and Ranking Member Sessions:

We are former federal judges and prosecutors -- including retired United States District Court Judges, a retired United States Circuit Court Judge, former United States Attorneys, and former high-ranking Department of Justice officials -- united in our support for the Fair Sentencing Act of 2009 (S. 1789) and its 1:1 ratio for crack and powder sentencing. The disparity between sentences for offenses involving crack cocaine and powder cocaine diverts limited federal law enforcement resources away from prosecutions of high-level traffickers and kingpins, while unjustifiably discriminating against African-Americans. We urge you not to delay remedying this injustice any longer.

Under current federal law, an offense involving five grams of crack cocaine results in a mandatory five-year minimum sentence. To receive the same five-year mandatory sentence for an offense involving powder cocaine, one must handle 500 grams, resulting in a 100:1 sentencing disparity between powder and crack. Furthermore, crack cocaine is the only drug that requires a mandatory minimum felony sentence for first-time simple possession. Simple *possession* of five grams of crack subjects a defendant to the same five-year minimum sentence as the defendant who *distributes* 500 grams of cocaine.

We support the Fair Sentencing Act's prioritization of federal law enforcement resources for serious drug traffickers and kingpins. The penalties for low-level crack cocaine offenses provided by current federal law divert limited resources away from the prosecution of more serious offenses. The United States Sentencing Commission ("USSC"), in its *2007 Report to Congress: Cocaine and Federal Sentencing Policy*, reported that in 2005, 62% of federal crack cocaine defendants performed low-level functions, such as street-level dealer, courier or lookout. Rather than focus on low-level crack offenses such as these, which state and local law enforcement are certainly capable of handling, federal law enforcement must concentrate on dismantling sophisticated trafficking networks that cross international and interstate boundaries.

Additionally, the current ratio, although facially neutral, results in unjustifiable racial discrimination. In 2007, over 80% of defendants sentenced to federal prison for crack cocaine-related offenses were African-American, even though an estimated two-thirds of crack cocaine users are white or Hispanic. On the other hand, African-Americans accounted for only 27% of those convicted of powder cocaine sentences in 2007. The USSC stated in its *Fifteen Years of Guidelines Sentencing* that revising the sentencing disparity between crack and powder cocaine

“would better reduce the gap [in sentencing between blacks and whites] than any other single policy change, and it would dramatically improve the fairness of the federal sentencing system.”

Shockingly, Congress has allowed this disparity to remain for over 20 years despite a lack of scientific basis for the different treatment of crack and powder. The crack-powder disparity was codified in federal law at a time when lawmakers believed that crack cocaine was substantially more addictive and dangerous than powder cocaine, but research now demonstrates that crack and powder cocaine are pharmacologically identical and produce similar physiological and psychoactive effects.

As former prosecutors and judges, we are acutely aware that limited law enforcement resources must be carefully targeted to maximize their effect and that racial discrimination in the criminal justice system undermines public trust in verdicts that prosecutors obtain and sentences that judges impose. We urge you to support the 1:1 ratio for crack and powder sentencing in the Fair Sentencing Act to increase the efficiency of and reduce the racial disparities in the federal drug laws' impact, thereby strengthening public trust in the criminal justice system.

In addition, as strongly as we urge you to eliminate the crack-powder disparity by supporting S. 1789, we also urge you to vote NO on any amendment offered during mark-up that establishes new mandatory minimum sentences and/or fails to protect defendants with limited culpability from harsh mandatory sentences. Mandatory minimum sentences strip judges of the ability to exercise discretion based on the individual facts of each case, often resulting in overly harsh punishment for low-level offenders.

Our respective careers in the federal criminal justice system demonstrate that we are committed to just punishment for those who violate federal law. However, the current punishments imposed for crack cocaine offenses are unjust. Now is the time to rectify this injustice by fully supporting S. 1789.

Sincerely,

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cc: Senate Judiciary Committee