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Harsher Crack Sentences Criticized as Racial Inequity Narcotics: Mandatory penalties are unfair to blacks, critics say. Terms are stiffer for smokable cocaine.

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Abstract (Abstract): There are many whites who are serving federal time for cocaine offenses. The difference is that cocaine criminals who are white almost always have violated powder cocaine laws. Those crimes carry much shorter sentences even though powder cocaine is easily convertible into crack.

"This form of cocaine is extremely dangerous," said Dr. Robert Byck, a Yale University professor and nationally recognized cocaine expert. "The smokable cocaine habit is much more dangerous than the snorted cocaine habit."

Drug offenders in federal court receive sentences based on the type and quantity of the drug and on such factors as the defendant's criminal history. For sentencing purposes, each gram of crack cocaine is the equivalent of 100 grams of the powdered form of the drug. Here is a comparison of those sentences for hypothetical crack and powder cocaine defendants:

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Full text: Since late 1991, Curtis Fitzgerald Harding has been locked in federal prison, where he and the other crack criminals jammed into the cells around him have two things in common: They are being punished far more severely than if they had been caught with powder cocaine, and almost every single one of them is black.

"There's no whites here doing time for crack. It's all blacks," Harding said in a recent telephone interview from the Federal Correctional Institution in Safford, Ariz. "It's supposed to be equal, but how is that equal?"

There are many whites who are serving federal time for cocaine offenses. The difference is that cocaine criminals who are white almost always have violated powder cocaine laws. Those crimes carry much shorter sentences even though powder cocaine is easily convertible into crack.

It is hardly a surprise that Harding dislikes federal drug laws. But his criticisms are shared by a growing chorus of legal scholars and defense lawyers, and are reflected in recent calls for congressional action and in a spate of appeals filed by federal public defenders across the country. Many critics charge that federal crack laws are subjecting thousands of African-Americans to unfairly long prison sentences, while treating whites with comparative leniency.

Preliminary studies suggest that more than 90% of all federal crack defendants are black, and many are serving mandatory prison sentences of five years or more for as little as five grams—an amount that barely raises an eyebrow in powder cocaine cases and warrants no mandatory prison sentence.

At the same time, most drug agents, prosecutors and doctors believe that crack, while chemically indistinguishable from powder cocaine, is far more addictive and socially destructive because of the way it is marketed and ingested. They acknowledge that crack laws have punished blacks disproportionately, but they say differentiating between crack and powder is needed in order to thwart an epidemic drug crisis.

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Dr. Ronald K. Siegel, a psychopharmacologist at UCLA and one of the first medical experts to document the crack cocaine phenomenon, agrees that smoking crack is dangerous. But he calls the federal sentencing laws, which equate each gram of crack with 100 grams of powder, "arbitrary and capricious, and medically and scientifically wrong."

Siegel said smokable cocaine first appeared in the United States in 1885 with the introduction of coca leaf cigars and cigarettes. Freebase, a powerful form of smokable cocaine, emerged almost a century later, and the first recorded emergency room admission was in 1974 at UCLA. In those days, freebase was mostly abused by whites.

Freebase is highly addictive, expensive and dangerous to make because ether, which is flammable, is used to produce it. Still, freebase initially attracted little mainstream attention, and Congress took no action to punish freebase smokers more severely than cocaine snorters.

It was not until 1985 that crack—manufactured by a simple technique that eliminated the need for ether—found its way into the inner city. Congress then stepped in, holding hearings that were marked by their pitched rhetoric. "The drug epidemic is as dangerous, if not even more so, than any other terrorist that this nation faces, including the Kadafis, the Khomeinis," Sen. Alfonse M. D'Amato (R-N.Y.) said during those hearings. "Terror is being spread in our neighborhoods, in the hamlets and throughout this great nation of ours."

Under the sentencing laws that Congress enacted, every gram of crack was considered the equivalent of 100 grams of powder cocaine.

As a result, a defendant convicted of intending to sell five grams of crack must be sentenced to at least five years in prison, regardless of extenuating circumstances. To trigger the same minimum for a powder defendant, the criminal would have to be convicted of trying to sell 500 grams.

Why did Congress consider crack 100 times more severe than powder? Why not 10 times or 50 times—or 500 times, for that matter?

"The number is arbitrary," said Byck, who testified during the 1986 Senate crack hearings. "It neither makes sense nor doesn't make sense. It's just a number."

Try telling that to Harding. For him, it is the difference between two years in prison and 10.

Harding, who pleaded guilty, was convicted of possessing 89.1 grams of crack with the intent to sell it. Even though the judge tried to impose a lighter sentence, he ended up giving Harding 10 years, the mandatory minimum for possession of 50 grams or more. Had Harding pleaded guilty to possessing the same amount of powder cocaine, there would have been no mandatory minimum, and Harding probably would have spent less than two years in prison.

Meanwhile, powder cocaine offenders receive comparatively easy treatment.

Vasko D. Bankov possessed 2,482 grams of powdered cocaine when he was arrested at Los Angeles International Airport on Nov. 14, 1990. Bankov's cocaine easily could have been converted into 2,500 grams of crack. All it would have taken is some baking soda and water.

Bankov, who is white, was sentenced to seven years in prison—less time than Harding got even though Bankov possessed 25 times as much cocaine.

The largest-scale cocaine traffickers—Colombian cartel leaders, for instance—usually smuggle powder cocaine, not crack. Crack dealers are more likely to be street-level drug pushers than big-time cartel bosses. And they are much more likely to be black.

Studies on the subject are incomplete, but what is obvious to any observer in a federal courtroom is generally borne out by those statistics that are available.

For example:

* The Federal Public Defender Service in Los Angeles concluded 23 crack cases in 1991. All 23 defendants were black.

* In the Northern District of Georgia, 70 defendants were charged with crack-related crimes from early 1990 through Sept. 30, 1991. Sixty-nine were black or Latino.

* Nationally, figures showing the racial breakdown of federal drug offenders show that from April 1 to July 31, 624 crack offenders were sentenced in federal courts across the United States. More than 92% were black. That same study, conducted by the U.S. Sentencing Commission, found that 45% of defendants sentenced for

powder cocaine were white-compared to 4.7% sentenced in crack cases.

Even supporters of the sentencing law acknowledge that such numbers are disturbing, but many experts stress that smoking crack is a particularly destructive pastime with serious social consequences-many of which are deeply felt in black, inner-city areas.

"It is unfortunate . . . that principally blacks are out in the streets selling this stuff, and they're getting caught," said Rep. E. Clay Shaw, a Florida Republican who has long backed tough drug laws. "But the population of the community that is principally victimized is also black. . . . We're trying to get to that and save these communities."

Supporters of the stronger sentences also point out there is a broad medical consensus that smoking crack is more addictive than snorting cocaine. Because it is smoked, crack goes to the brain more quickly than powder. That causes a stronger, shorter high, but it also creates a sharper fall when the drug wears off, leaving the user with an intense craving for more.

Although both crack and powder are cocaine, some experts note that there is legal precedent for regulating drugs differently when they have the same active ingredient. As Byck notes, beer and wine often are regulated differently than Scotch or vodka, even though all those beverages impair users because they contain alcohol. Critics of the crack sentencing laws reject that comparison.

"When a Highway Patrol officer pulls you over, he doesn't care whether you've been drinking Jack Daniels or beer," said Suzanne Hashimi, a federal public defender in Atlanta who has challenged the crack sentencing law in federal court. "He only cares whether you're drunk."

A better analogy to the crack-powder issue, experts say, is the sentencing approach to methamphetamine traffickers. Methamphetamine, a powerful stimulant, usually is consumed as a powder, but it can be converted into a smokable version known as ice.

Smoking ice has a more powerful effect on the user and is considered more addictive and more dangerous than snorting methamphetamine for the same reason that smoking crack produces stronger results than snorting cocaine.

But for sentencing purposes, one gram of ice is treated as 10 grams of methamphetamine, while crack cocaine is considered the equivalent of 100 grams of powder. Also, even though the effects of smoking ice are stronger than those associated with smoking crack, ice is considered half as serious as crack for sentencing purposes. Finally, ice dealers and methamphetamine dealers are almost exclusively white, so a disparity in the sentencing does not result in defendants of one race doing more prison time than those of another.

"Those are important distinctions," said David S. McLane, the deputy federal public defender in Los Angeles who represents Harding. "Maybe I'm cynical, but I think that if you saw a lot of young white males getting five- and 10-year minimums for dealing powder cocaine, you'd have a lot more reaction."

McLane and his colleagues in federal public defender offices across the country have argued that the appellate courts should overturn the congressionally approved sentencing distinction. The federal courts have repeatedly rejected that argument, turning back challenges from California, Nevada and Georgia, among other places. The only high-level victory for critics of crack sentencing laws has been in the Minnesota Supreme Court, which overturned a state law that punished crack offenders more severely than powder criminals.

The litany of failed federal challenges has convinced some critics of the sentencing law that they might have better success if they took their case to Congress rather than the courts. Shaw and some other congressional insiders, however, see little appetite in Washington for weakening federal crack laws.

"There's going to be political fallout for cutting back on sentencing requirements for drug dealing," Shaw said. "That's strictly an uphill fight."

Still, some observers note that a new Congress is about to convene, one that will have many new members, including many minorities.

"A law that is so racially discriminatory must be re-examined if we are to be true to our concepts of equal

justice," said Eric E. Sterling, president of the Washington-based Criminal Justice Policy Foundation. "The question is whether this new Congress will have an appetite for it."

Crack: The Racial Divide

No drug is more closely associated with race than crack cocaine. Those convicted of powdered cocaine offenses are often Anglo, but crack offenders—who face far stiffer sentences—are overwhelmingly black. Below, results of study of all drug offenders sentenced in federal court from April 1, 1992 to July 31, 1992.

POWDER COCAINE Anglo: 760 (45.2%) Black: 500 (29.7%) Latino: 392 (23.3%) Other: 30 (1.8%)

*

CRACK COCAINE Anglo: 29 (4.6%) Black: 578 (92.6%) Latino: 16 (2.6%) Other: 1 (0.2%)

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Drug offenders in federal court receive sentences based on the type and quantity of the drug and on such factors as the defendant's criminal history. For sentencing purposes, each gram of crack cocaine is the equivalent of 100 grams of the powdered form of the drug. Here is a comparison of those sentences for hypothetical crack and powder cocaine defendants:

CASE 1: A suspect is caught with 70 grams of crack and is convicted of possessing the drug with intent to sell it. The suspect has no prior criminal history.

Prison sentence: 121-151 months.

CASE 2: A suspect is charged and convicted of possession with intent to sell 70 grams of powdered cocaine.

The suspect has no prior criminal history.

Prison sentence: 21-27 months.

Source: U.S. Sentencing Commission, monitoring data files; also U.S. Sentencing Commission Guidelines Manual, 1991.

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