

Testimony of

The Honorable Orrin Hatch

May 22, 2002

Thank you Mr. Chairman for holding this very important hearing on federal cocaine sentencing policy. You and I have worked together for over two decades to fight crime, including drug trafficking, and I look forward to working with you on this issue.

The Constitution does not assign the responsibility for federal sentencing - the function of determining the scope and extent of punishment for federal offenses - solely to any one of the three branches of government. For this reason, it is appropriate that we have all three branches of government represented here today to deliberate this issue. I want to welcome our panelists whose diverse and expert testimony will undoubtedly provide us with additional, crucial information upon which we will rely as we continue to devise rational, coherent, and fair sentencing policies.

I want to commend Judge Murphy for her leadership on the Sentencing Commission which has led to fair-minded and cogent recommendations and changes to the sentencing guidelines. The Commission has been responsive to concerns and issues raised by Congress. Specifically, I want to recognize the swift action the Commission has taken to implement the criminal law and sentencing provisions included in the USA PATRIOT Act.

In December, Senator Leahy and I wrote to Judge Murphy requesting that the Commission update its 1997 report on federal cocaine sentencing policy for Congressional review to provide us with guidance as we continue to evaluate the appropriateness of the penalty differential between powder and crack cocaine. I was pleased that the Commission granted our request in providing guidance and did not act unilaterally by promulgating amendments that would have changed the cocaine sentencing structure before Congress had an opportunity to consider and act on their recommendations. I look forward to reviewing thoroughly this report, which was released by the Commission today.

I particularly look forward to hearing the testimony today from the Honorable Roscoe Howard, United States Attorney for the District of Columbia. Before becoming U.S. Attorney, Mr. Howard was a line prosecutor in both D.C. and Virginia, and he has also served as a law professor. The District of Columbia U.S. Attorney's office prosecutes more crack cocaine offenses than any other component in the Department of Justice, because that office is responsible for the enforcement of both the federal and the local drug laws in the District of Columbia.

Every day you are in a position to examine the real-life effects of our federal cocaine sentencing policy. Given your unique perspective, and the breadth of your prosecutorial experience, you are particularly well-situated to articulate the Department's position on these issues, and I believe that your input today is invaluable. I have confidence that this Administration's vigor to renew

and recharge our nation's battle against drug trafficking and abuse will yield positive results. It is good to see you again, and I look forward to hearing your testimony.

Finding ways to reduce drug crime is not and should not be a partisan issue. All involved in this process are trying to design a blueprint to curb the spread of drug trafficking and abuse. An easy, straightforward blueprint, unfortunately, has proven to be elusive.

Since the 1970's, Congress has been working to improve federal sentencing policy and has routinely made necessary changes to make our sentencing structure more just and effective. Over fifteen years ago, Congress passed the bipartisan Sentencing Reform Act, a revolutionary bill that categorically changed the objectives of sentencing policy. The then-existing model of haphazard and indeterminate sentencing was replaced with a sentencing policy that focused on certain and objective punishment.

The new objectives of sentencing included the creation and imposition of sentences that reflect the seriousness of the offense, adequately deter criminal conduct, and protect the public. The Sentencing Reform Act also created the Sentencing Commission, which was charged with the duty of producing guidelines that would curtail unwarranted sentencing disparities, ensure certainty, and provide just punishment. To further the goal of uniform and certain punishment, Congress also began enacting mandatory minimum sentences specifically targeting drugs and violent crime. The purpose of these mandatory penalties was to deter - through the prospect of certain and lengthy prison terms - potential offenders from engaging in these offenses.

It is fair to say that some of the bipartisan changes to federal sentencing policy that Congress has made over the last 20 years have been more successful than others. For over a decade I have questioned, along with others, the overall utility of some severe mandatory minimum sentences. Indeed, in 1993, I published a law review article examining Congressional attempts at creating a certain and effective sentencing system. In that article, I wrote that Congress should seriously consider greater use of alternatives to mandatory minimum sentences, including the use of specific and general sentencing directives, in pursuing uniform, certain, and effective sentencing. I still believe that today, and it is why I agreed to cosponsor with Senator Sessions S. 1874, the "Drug Sentencing Reform Act."

S. 1874 reduces the sentencing disparity between the mandatory minimum sentences imposed for offenses involving crack and powder cocaine. Over the past decade, public officials, interest groups, and criminal justice practitioners have questioned the fairness and practicality of the federal sentencing policy for cocaine offenses, specifically, the 100-to-1 quantity ratio between powder and crack cocaine. I have come to agree that while crack cocaine has a disproportionately greater detrimental effect than powder cocaine on society - particularly on minority families, children, and communities - the sentencing differential, which is based solely on drug quantity, does not further adequately the objectives a fair and just sentencing policy.

The Sessions-Hatch bill reduces the 100-to-1 sentencing disparity between crack and powder cocaine to a 20-to-1 ratio by raising the threshold for crack from 5 to 20 grams and lowering the threshold for powder from 500 to 400 grams. I want to be clear that this reduction does not give credence to the argument that crack and powder cocaine are coequal in their destructive effects.

On the contrary, this five-fold reduction in the crack-powder ratio corrects the unjustifiable disparity, while appropriately reflecting the greater harm to our citizens and communities posed by crack cocaine. Moreover, the increase in penalties for powder cocaine offenses simply reflects the existing reality that cocaine, in whatever form, has had devastating effects on families and communities.

Our bill also includes specific directives to create sentencing enhancements for all drug offenses involving firearm use or violence and for organizers and supervisors who use young women and children to distribute drugs. Finally, our bill contains another specific sentencing directive that will result in a sentencing reduction for people who play minimal roles in drug offenses and caps the amount of the sentence attributable to quantity alone to 10 years.

It is a balanced bill that uses various sentencing methods to craft a more rational and effective sentencing policy. It does not go easy on drug dealers. Those who are determined to peddle dangerous drugs to our most vulnerable citizens will continue to pay gravely for their choices. Those who use firearms or violence while dealing drugs will be punished more severely. And those who are less culpable, albeit far from innocent, will receive fair and just punishment.

The approach Senator Sessions and I take in our bill differs from that which is being recommended by the Administration and the Sentencing Commission. While the Administration does not favor raising the threshold for crack, the Sentencing Commission opposes lowering the threshold for powder. Reasonable minds can and do differ as to the appropriate response to this issue. I understand that the Administration is continuing to study the disparity issue and its consequential affects. I commend them for what they are doing and encourage their continued involvement in this process. We all agree that there is no panacea for ending all drug crimes, and all sentencing options need to be considered. I believe that we can all work together on this issue and possibly reach common ground. I look forward to meeting this challenge.

Mr. Chairman, I ask that a copy of my December 2001 letter to Judge Murphy and a copy of my 1993 law review article be included in the record along with my statement.

#