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Attention: Public Affairs

Dear Commissioners:

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On behalf of the American Civil Liberties Union (ACLU), and its hundreds of thousands of members, activists, and fifty-three affiliates nationwide, we submit comments pursuant to the U.S. Sentencing Commission's (USSC) request for public comments, as noticed in the Federal Register on January 30, 2007. We thank the Commission for providing us the opportunity to submit comments on the Commission's November 14, 2006 hearing on cocaine sentencing policy in order to rectify the 20-year sentencing disparity between powder and crack cocaine.

The ACLU has been deeply involved in advocacy regarding race and drug policy issues for more than a decade.<sup>1</sup> Recently, in 2002, we urged the Commission to amend the guidelines to equalize the crack and powder cocaine sentencing structure. Five years later, we continue to urge this body to support amendments to federal law that would equalize crack and powder cocaine sentences at the current level for powder cocaine. Currently, simple possession or distribution of just 5 grams of crack carries a minimum 5-year federal prison sentence, while for powder cocaine, distribution of 500 grams – 100 times the amount of crack cocaine – carries the same sentence.<sup>2</sup> This disparate sentencing regime has serious implications for due process and equal protection, and puts at risk our citizens' freedom of association and freedom from disproportionate punishment.

We are not alone in this sentiment. In 2001, then President-elect George W. Bush stated that the sentencing disparity between crack and powder cocaine “ought to be addressed by making sure powdered cocaine and crack cocaine penalties are the same. I don't believe we ought to be discriminatory.”<sup>3</sup> Moreover, in 2004, this body said, “[r]evising the crack cocaine thresholds” would do more to reduce the sentencing gap “than any other single policy change, and it would dramatically improve the fairness of the federal sentencing system.”<sup>4</sup>

We agree with both statements and hope that this Commission will once again make a recommendation to Congress that this sentencing disparity is unjustified. Below we address four areas which caution against the continuation of this arbitrary system: 1) racial disparities and the deterioration of African American communities; 2) the unfounded perceptions of violence and crack use; 3) the myth of crack's chemical effects; and 4) the failure to focus on high-level drug traffickers.

## **I. Racial Disparities and the Deterioration of African American Communities**

In the twenty years that have passed since the Anti-Drug Abuse Act of 1986 was enacted,<sup>5</sup> many of the myths surrounding crack cocaine have been dispelled, as it has become clear that there is no scientific or penological justification for the 100:1 sentencing disparity between crack and powder cocaine. Accordingly, on three separate occasions, this body has urged Congress to reconsider the statutory penalties for crack cocaine. Judges, commentators, federal prosecutors, medical professionals, and other experts have all concurred with this assessment.

### **A. Racial Disparities**

One of the most egregious problems with the current 100:1 drug quantity ratio is that it promotes unwarranted disparities based on race.<sup>6</sup> Because of its relative low cost, crack cocaine is more accessible for poor Americans, many of whom are African Americans. Conversely, powder cocaine is much more expensive and tends to be used by more affluent white Americans. Nationwide statistics compiled by USSC reveal that African Americans are more likely to be convicted of crack cocaine offenses, while whites are more likely to be convicted of powder cocaine offenses.<sup>7</sup> Thus, the sentencing disparities punishing crack cocaine offenses more harshly than powder cocaine offenses unjustly and disproportionately penalize African American defendants as compared to white defendants.

Compounding the problem is the fact that whites are disproportionately less likely to be prosecuted for drug offenses in the first place; when prosecuted, are more likely to be acquitted; and even if convicted, are much less likely to be sent to prison.<sup>8</sup> Recent data indicates that African Americans make up 15% of the country's drug users, yet they comprise 37% of those arrested for drug violations, 59% of those convicted, and 74% of those sentenced to prison for a drug offense.<sup>9</sup> Specifically with regard to crack, in fiscal year 2006, more than 80% of the defendants sentenced for crack offenses were African American,<sup>10</sup> despite the fact that in 2005 only 24% of crack users were African American and 72% of crack users were white or Hispanic.<sup>11</sup>

Due in large part to the sentencing disparity based on the form of the drug, African Americans serve substantially more time in prison for drug offenses than do whites. The average sentence for a crack cocaine offense in 2003, which was 123 months, was 3.5 years longer than the average sentence of 81 months for an offense involving the powder form of the drug.<sup>12</sup> Also due in large part to mandatory minimum sentences for drug offenses, from 1994 to 2003, the difference between the average time African American offenders served in prison increased by 77%, compared to an increase of 28% for white drug offenders.<sup>13</sup> African Americans now serve virtually as much time in prison for a drug offense at 58.7 months, as whites do for a violent offense at 61.7 months.<sup>14</sup> The fact that African American defendants received mandatory minimum sentences more often than white defendants who were also eligible for mandatory minimum sentences, further supports the racially discriminatory impact of these penalties.

Over the last 20 years, federal and state drug laws and policies have also had a devastating impact on women. In 2003, 58% of all women in federal prison were convicted of drug offenses, compared to 48% of men.<sup>15</sup> The growing number of women who are incarcerated

disproportionately impacts African American and Hispanic women. African American women's incarceration rates for all crimes, largely driven by drug convictions, increased by 800% from 1986, compared to an increase of 400% for women of all races for the same period.<sup>16</sup> Mandatory sentencing laws prohibit judges from considering the many reasons women are involved in or remain silent about a partner or family member's drug activity such as domestic violence and financial dependency. Sentencing policies, particularly the mandatory minimum for low-level crack offenses, subject women who are low-level participants to the same or harsher sentences as the major dealers in a drug organization.<sup>17</sup>

## **B. Deterioration of Communities**

Department of Justice officials have argued before this body that crack has been uniquely responsible for the deterioration of communities justifying the sentencing disparities with powder cocaine. Studies of the neighborhoods where crack was visible in the 1980s indicate, however, that the economic conditions were "hopeless" – declining employment, reduced social services, and out-migration of successful community members.<sup>18</sup> This economic and social deterioration made possible the new market forces needed for crack. It is too simple to say this drug *caused* the deterioration of communities, increased prostitution, or higher rates of victimization without examining the lack of economic and educational opportunities already missing in some of these predominately African American communities.

As law enforcement focused its efforts on crack offenses, especially those committed by African Americans, a dramatic shift occurred in the overall incarceration trends for African Americans, relative to the rest of the nation, transforming federal prisons into institutions increasingly dedicated to the African American community. In 1986, before the enactment of federal mandatory minimum sentencing for crack cocaine offenses, the average federal drug sentence for African Americans was 11% higher than for whites. Four years later, the average federal drug sentence for African Americans was 49% higher.<sup>19</sup> In 2000 there were approximately 791,600 African American men in prisons and jails. That same year, there were 603,032 African American men enrolled in higher education.<sup>20</sup> The fact that there are more African American men under the jurisdiction of the penal system than in college has lead scholars to conclude that our crime policies are a major contributor to the disruption of the African American family.<sup>21</sup>

These racial disparities are even more troubling considering the devastating impact that the nation's drug policy and mandatory minimums have on the African American family. Indeed, it is the punitive measures themselves that contribute to the deterioration of communities.<sup>22</sup> The effects of mandatory minimums not only contribute to these disproportionately high incarceration rates, but also separate fathers from families, separate mothers with sentences for minor possession crimes from their children, leave children behind in an overwhelmed child welfare system, create massive disfranchisement of those with felony convictions, and prohibit previously incarcerated people from receiving social services such as welfare, food stamps, and access to public housing.<sup>23</sup> For example, one of every 14 African American children has a parent locked up in prison or jail today,<sup>24</sup> and African American children are 9 times more likely to have a parent incarcerated than white children.<sup>25</sup> In terms of financial effects, incarcerated black parents significantly reduce the aggregate income of African American families, further preventing many African American children from rising above the gross

poverty they face.<sup>26</sup> Incarceration on such a massive scale leads to more unemployed and unemployable parents, more poverty, and more deterioration of communities.

Exacerbating the problem, the damaging impact of incarceration continues after a family member's release from prison. Approximately 1.4 million African American males – 13% of all adult African American men – are disfranchised because of felony convictions. This represents 33% of the total disfranchised population and a rate of disfranchisement that is 7 times the national average.<sup>27</sup> In addition, as a result of federal welfare legislation in 1996, there is a lifetime prohibition on the receipt of welfare for anyone convicted of a drug felony, unless a state chooses to opt out of this provision.<sup>28</sup> The effect of mandatory minimums for a felony conviction, especially in the instance of simple possession or for very low-level involvement with crack cocaine, can be devastating, not just for the accused, but also for the entire community.

The ACLU is concerned that the desire to appear “tough on crime” is substituting for sound policymaking – policymaking that should, by contrast, be focused on equity and proper alternatives. In addition to diverting funds from social programs, harsh mandatory minimums and prison expansion have imposed a particular social cost on African American families. The best way to respond to the drug problem may not be to lock up thousands of young African Americans by over-punishing crack in relation to powder, but rather consider fairness in sentencing and building structures to help families – job training, drug treatment, housing, adequate health care, better schools, welfare reform, and sufficient family support.<sup>29</sup> Countries that do provide such services to their poorest members suffer less crime and drug abuse than does the United States.<sup>30</sup>

## **II. Unfounded Perceptions of Violence and Crack Use**

The 100:1 drug quantity ratio was designed in part to account for certain harmful conduct believed to be associated to a greater degree with crack cocaine offenses than with powder cocaine offenses. In particular, crack was said to cause particularly violent behavior in those who used the drug. In 1988, a study of homicides in New York City found that in all of the 414 homicide cases that year, there were only 3 homicides associated with behavior caused by using crack and in 2 of those cases the crack user was the victim.<sup>31</sup> The study also found that 85% of all crack-related deaths resulted from the nature of the illegal drug market and not from the actual use of the drug.<sup>32</sup> This violence occurred between dealers or between dealers and users in an illegal drug market that is inherently violent, regardless of what drug is being bought or sold. When crack began to permeate cities across the country in the mid to late 80s, much of the violence was associated with the territorial disputes between low-level street corner drug dealers.<sup>33</sup> Therefore, most violence associated with crack is the result of being part of an illegal market, similar to violence associated in trafficking of other drugs.<sup>34</sup>

According to Dr. Alfred Blumstein, Professor of Urban Systems and Operations Research at Carnegie Mellon University, any violence associated with the crack trade could be attributable to the venue of the market (open-air, street crack markets compared to closed powder markets) or to the dispute resolution culture of the communities in which the market is located.<sup>35</sup> The assertion that crack physiologically causes violence has not been found to be true, and the violence that was once associated with the intense competition of a new drug market has

abated.<sup>36</sup> Differences that might appear between cocaine and crack markets, Blumstein concludes, has nothing to do with the difference between the drugs themselves.

Sociologist Katherine Beckett made a similar conclusion in her recent study of arrest practices in Seattle, Washington.<sup>37</sup> In her study she examined the popular explanations for higher arrest rates for African Americans involved in the crack market – explanations which include the idea that the targeting of outdoor markets is a priority of law enforcement and the idea that crack is more associated with violence than other drugs.<sup>38</sup> In 2005, Beckett found, however, that while only 33% of outdoor serious drug transactions (also including heroin, methamphetamine, and powder), involved crack, 75% of all arrests were for crack.<sup>39</sup> Moreover, the study found that crack was also much less associated with violence than the other drugs; crack arrests were only 10% as likely as heroin arrests to involve guns.<sup>40</sup> Beckett concluded that the patterns had to do with a racially polarized conception of who and what comprises the drug trade in Seattle.<sup>41</sup>

Certainly, recent data confirms that significantly less trafficking-related violence is associated with crack than was previously assumed. For example, in 2000: 1) 64.8% of overall crack offenses did not involve weapons with regard to any participant; 2) 74.5% of crack offenders had no personal weapons involvement; and 3) only 2.3% of crack offenders actively used a weapon.<sup>42</sup> In 2006, available statistics in crack offenses stayed relatively constant – 74% of drug offenders had no weapons involvement.<sup>43</sup> Moreover, in 2000, death, resulting from violence rather than drug use itself, occurred at the exact same rate, 3.4%, for both forms of cocaine.<sup>44</sup>

The fear that crack manifested violent behavior embedded a problematic assumption into the sentencing structure that a crack defendant also committed a concurrent serious crime.<sup>45</sup> By treating crack so much more severely than powder, Congress codified the now refuted belief that all crack defendants manifest violent behavior.<sup>46</sup> This means that for individuals who have not engaged in any violent behavior, the penalty scheme subjects crack offenders to punishment based on acts they did not commit. Moreover, for defendants charged with a concurrent offense, the sentencing differences then “double count” the charged conduct relative to a powder defendant.<sup>47</sup> In other words, an offender caught with 5 grams of crack and a holstered firearm could be punished for double the time in prison due to the presumption of serious violence-related conduct already part of the drug’s mandatory minimum.<sup>48</sup> The practical effect of this sentencing disparity is that a crack offender is held responsible for conduct in which he or she did not engage or is penalized for the same conduct twice.

In 2002, Dr. Blumstein testified that it would be more rational to use sentencing enhancements to punish individuals who use violence, regardless of the drug type, rather than to base sentencing disparities on the chemical itself. Such enhancements should also account for an offender’s role in the distribution hierarchy. Blumstein saw no reason why there should be any difference in sentencing guidelines between crack cocaine and powder cocaine offenses.<sup>49</sup> He also noted that the 100:1 drug quantity disparity suggests racial discrimination.<sup>50</sup>

The federal sentencing scheme already provides two alternative means for increasing sentences for weapons possession in drug trafficking offenses. Federal drug offenders with weapons may either be statutorily convicted under 18 U.S.C. § 924(c) (possession of a firearm in relation to a

drug trafficking offense), or alternatively they may be subjected to application of the weapons enhancement in the drug trafficking guidelines.<sup>51</sup> Thus, the mandatory minimum sentences implemented by the Anti-Drug Abuse Act of 1986 sweep far too broadly by treating all crack cocaine offenders as if their offenses involved weapons or violence, even though the evidence demonstrates that most crack cocaine offenses have not.

### **III. The Myth of Crack's Chemical Effects**

Despite many of the misconceptions at the time of the 1986 Act, numerous scientific and medical experts have determined that in terms of pharmacological effects, crack cocaine is no more harmful than powder cocaine – the effects on users are the same regardless of form.<sup>52</sup> In 1996, the Journal of the American Medical Association published a study that found that the physiological and psychoactive effects of cocaine are similar regardless of whether it is in the form of powder or crack.<sup>53</sup> The study concluded that the propensity for dependence varied by the method of use, amount used and frequency, not by the form of the drug.<sup>54</sup> The study also indicated that people who are incarcerated for the sale or possession of cocaine, whether powder or crack, are better served by drug treatment than imprisonment.<sup>55</sup>

In both 2002 and 2006, the Commission had hearings with a wide range of experts who overwhelmingly concluded that there is no valid scientific or medical distinction between powder and crack cocaine.<sup>56</sup> Among those experts was Dr. Glen Hanson, then Acting Director of the National Institute on Drug Abuse, who, in 2002, testified before the Commission stating that in terms of pharmacological effects, crack cocaine is no more harmful than powder cocaine. He noted that although cocaine in any form produces the same effects, the onset, intensity, and duration of its effects are related directly to the method of use and how rapidly cocaine enters the brain.<sup>57</sup>

In addition, research indicates that the negative effects of prenatal crack cocaine exposure are identical to the negative effects of prenatal powder cocaine exposure.<sup>58</sup> The media stories that appeared in the late 1980s of crack-addicted mothers giving birth to “crack babies” are now considered greatly exaggerated.<sup>59</sup> In many cases, the mothers are low income and use various drugs, both of which are factors that affect a child's development. In 2002, Dr. Ira J. Chasnoff, President of the Children's Research Triangle, testified before the Sentencing Commission that since the composition and effects of crack and powder cocaine are the same on the mother, the changes in the fetal brain are the same whether the mother used crack cocaine or powder cocaine.<sup>60</sup> According to Dr. Chasnoff, the studies found that a child's home environment is the single most influential factor in determining whether a child will be healthy.<sup>61</sup> In fact, the children of drug-abusing mothers who develop poorly, may be suffering from a combination of factors that often correlate with this environment, including poor nutrition, smoking, and lack of prenatal care.<sup>62</sup>

### **IV. Failure to Focus on High Level Traffickers**

Finally, the federal law's goal of targeting high-level drug traffickers has failed. Congress made explicitly clear that in passing the current mandatory minimum penalties for crack cocaine, it intended to target “serious” and “major” drug traffickers. The opposite has proved true: mandatory penalties for crack cocaine offenses apply in the vast majority of crack cases to offenders who are low-level participants in the drug trade.

Indeed, if Congress wanted to send a message by enacting mandatory minimums that the Department of Justice should be more focused on high-level cocaine traffickers, Congress missed the mark. Instead of targeting large-scale traffickers, the law established low-level drug quantities to trigger lengthy mandatory minimum prison terms.<sup>63</sup> This Commission has reported that only 15% of federal cocaine traffickers can be classified as high-level, while 73% of crack defendants have low-level involvement in drug activity, such as street level dealers, couriers, or lookouts.<sup>64</sup> And because the mandatory minimums prohibit judges from considering the many reasons women are involved in or remain silent about a partner or family member's drug activity, we have seen the emergence of the "girlfriend problem" – women who are low-level participants in the drug trade, but subject to the same or harsher sentences as the major dealers in a drug organization.<sup>65</sup>

Even judges and those prosecuting these cases have stood up against mandatory minimums, arguing such penalties are arbitrary and excessive. For example, U.S. District Judge Robert Sweet for the Southern District of New York has argued that the administration of mandatory minimums in crack cases "has resulted in Jim Crow justice," noting the 100:1 disparity between crack and powder cocaine.<sup>66</sup> Similarly, former prosecutor and U.S. District Judge Cassell for the District of Utah has condemned the legal disparity between crack and powder cocaine, contending that "apparent inequality in the sentencing guidelines produces actual injustice to the crack-cocaine defendant."<sup>67</sup> Moreover, in 1997, 27 federal judges, all of whom had previously served as U.S. Attorneys, sent a letter to the U.S. Senate and House Judiciary Committees stating that "[i]t is our strongly held view that the current disparity between powder cocaine and crack cocaine, in both mandatory minimum statutes and the guidelines, can not be justified and results in sentences that are unjust and do not serve society's interest."<sup>68</sup>

## **Recommendations**

The ACLU commends the Commission for re-examining the Anti-Drug Abuse Act of 1986 and the harmful consequences of this legislation. Although there are more white crack cocaine users, national drug enforcement and prosecutorial policies and practices have resulted in the targeting of inner-city communities of color. This has caused the overwhelming number of prosecutions to be directed against African Americans, and because of the sentencing disparities, these African Americans are disproportionately given longer sentences than powder users. The sentences for low-level drug crimes are wasteful in terms of both tax dollars and human lives, and have had devastating collateral consequences for African American men, women, and families. Changing these policies would dramatically help African American families by removing the harsh penalties that currently disproportionately affect them and severely limit their opportunities.

After the 2002 hearings, the Sentencing Commission issued its third report on crack and powder cocaine disparities and once again found that the 100:1 ratio between the drugs was unjustified.<sup>69</sup> In so stating, the Commission made the following findings: 1) the current penalties exaggerate the relative harmfulness of crack cocaine; 2) the current penalties sweep too broadly and apply most often to lower level offenders; 3) the current quantity-based penalties overstate the seriousness of most crack cocaine offenses and fail to provide adequate proportionality; 4) the current penalties' severity mostly impacts minorities.<sup>70</sup> This body made

clear that it “firmly and unanimously” believed the ratio to be unjustified.<sup>71</sup>

Therefore, the ACLU urges the Commission make the following recommendations to Congress in the Commission’s 2007 report:

- The quantities of crack cocaine that trigger federal prosecution and sentencing must be equalized with and increased to the current levels of powder cocaine. As demonstrated above, there is no rational medical or penological reason for the 100:1 disparity between crack and powder cocaine sentences, and instead it causes an unjustified racial disparity in our penal system.
- In order for judges to exercise appropriate discretion and consider mitigating factors in sentencing, mandatory minimums for crack and powder offenses must be eliminated, including the mandatory minimum for simple possession.
- Federal prosecutions must be properly focused on the high-level traffickers of both crack and powder cocaine.

Thank you once again for re-visiting this very important policy matter.

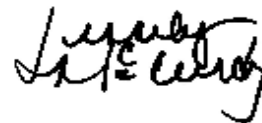
Sincerely,



Caroline Fredrickson,  
Director



Deborah J. Vagins  
Policy Counsel for  
Civil Rights and Civil Liberties



Jesselyn McCurdy  
Legislative Counsel

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<sup>1</sup> For example, in 1993, the ACLU assisted in convening the first national symposium that examined the disparity in sentencing between crack and powder cocaine, entitled *Racial Bias in Cocaine Laws*. The conclusion, more than a decade ago, of the representatives from the civil rights, criminal justice, and religious organizations that participated in the symposium was that the mandatory minimum penalties for crack cocaine are not medically, scientifically or socially justifiable and result in a racially biased national drug policy. Most recently, in 2006, the ACLU authored a detailed report on the inequities of the crack/powder sentencing disparity at the twentieth anniversary of the Anti-Drug Abuse Act of 1986, as well as submitted testimony for the Commission’s November 2006 hearing. See DEBORAH J. VAGINS AND JESSELYN MCCURDY, ACLU, *CRACKS IN THE SYSTEM: TWENTY YEARS OF THE UNJUST FEDERAL CRACK COCAINE LAW* (2006), available at <http://www.aclu.org/drugpolicy/sentencing/27181pub20061026.html>; *Public Hearing on Cocaine Sentencing Policy Before the U.S. Sentencing Commission*, (Nov. 14, 2006) (Written statement of Jesselyn McCurdy, ACLU Legislative Counsel), available at <http://www.aclu.org/crimjustice/gen/27357leg20061114.html>.

<sup>2</sup> 21 U.S.C. § 841(b) (2000). In 1988, Congress created a 5-year mandatory minimum and 20-year maximum sentence for simple possession of 5 grams or more of crack cocaine. See 21 U.S.C. § 844 (2000).

<sup>3</sup> MARC MAUER, *THE SENTENCING PROJECT, RACE TO INCARCERATE* 83 (2006) (citing interview with Candy Crowley, CNN, Jan. 18, 2001) [hereinafter *RACE TO INCARCERATE*].

<sup>4</sup> U.S. SENTENCING COMMISSION, *FIFTEEN YEARS OF GUIDELINES SENTENCING* 132 (2004).



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- <sup>5</sup> Pub. L. No. 99-570, 100 Stat. 3207 (codified as amended at 21 U.S.C. § 801 (2000)).
- <sup>6</sup> See U.S. SENTENCING COMMISSION, REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 102-103 (2002) [hereinafter 2002 USSC REPORT].
- <sup>7</sup> U.S. SENTENCING COMMISSION, SPECIAL REPORT TO CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 156, 161 (1995) (issued after a review of cocaine penalties as directed by Pub. L. No. 103-322, § 280006).
- <sup>8</sup> Gabriel J. Chin, *Race, The War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 J. GENDER RACE & JUST. 253, 266 (2002).
- <sup>9</sup> Interfaith Drug Policy Initiative, *Mandatory Minimum Sentencing Fact Sheet*, [http://idpi.us/dpr/factsheets/mm\\_factsheet.htm](http://idpi.us/dpr/factsheets/mm_factsheet.htm).
- <sup>10</sup> U.S. SENTENCING COMMISSION, 2006 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table 34 (2006).
- <sup>11</sup> SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, 2005 NATIONAL SURVEY ON DRUG USE AND HEALTH: DETAILED TABLES, Table 1.43a (2006) : see also Clarence Page, *Legacy Hijacked, 20 Years Later*, THE WASHINGTON TIMES, June 24, 2006, available at <http://198.65.148.234/commentary/20060623-085057-3629r.htm>.
- <sup>12</sup> U.S. SENTENCING COMMISSION, 2003 SOURCEBOOK OF FEDERAL SENTENCING, Figure J, at 91 (2003).
- <sup>13</sup> BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 1994, Table 6.11, at 85 (1998); BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2003, Table 7.16, at 112 (2004).
- <sup>14</sup> BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2003, Table 7.16, at 112 (2004).
- <sup>15</sup> ACLU ET AL., CAUGHT IN THE NET: THE IMPACT OF DRUG POLICIES ON WOMEN AND FAMILIES 1 (2005), available at <http://www.fairlaws4families.org/final-caught-in-the-net-report.pdf> [hereinafter CAUGHT IN THE NET] (citing BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE, (30th ed. 2002)).
- <sup>16</sup> *Id.* at 17 (citing SUSAN BOYD, FROM WITCHES TO CRACK MOMS: WOMEN, DRUG LAW, AND POLICY 208-09 (2004)).
- <sup>17</sup> *Id.* at 4.
- <sup>18</sup> Michael Agar, *The Story of Crack: Towards a Theory of Illicit Drug Trends*, 11 ADDICTION RESEARCH AND THEORY, No. 1, 2003, at 25.
- <sup>19</sup> Drug Policy Alliance, *Race and the Drug War*, <http://drugpolicy.org/communities/race/index.cfm?printpage=1>; B.S. MEIERHOEFER, FEDERAL JUDICIAL CENTER, THE GENERAL EFFECT OF MANDATORY MINIMUM PRISON TERMS: A LONGITUDINAL STUDY OF FEDERAL SENTENCE IMPOSED 20 (1992).
- <sup>20</sup> JUSTICE POLICY INSTITUTE, CELLBLOCKS OR CLASSROOMS?: THE FUNDING OF HIGHER EDUCATION AND CORRECTIONS AND ITS IMPACT ON AFRICAN AMERICAN MEN 10 (2002), available at <http://www.justicepolicy.org/coc1/corc.htm>.
- <sup>21</sup> See Common Sense for Drug Policy, *Drug War Facts: Race, Prison, and the Drug Laws*, <http://www.drugwarfacts.org/racepris.htm>; see also Craig Haney & Philip Zimbardo, *The Past and Future of U.S. Prison Policy: Twenty-five Years After the Stanford Prison Experiment*, 53 AMERICAN PSYCHOLOGIST, No. 7, July 1998, at 716 (stating that at the beginning of the 1990s, the United States had more African American men between the ages of 20 and 29 in the criminal justice system than in college).
- <sup>22</sup> See generally, E. Michelle Tupper, Note, *Children Lost in the Drug War: A Call for Drug Policy Reform to Address the Comprehensive Needs of Family*, 12 GEO. J. ON POVERTY L. & POL'Y 325, 336 (2005).
- <sup>23</sup> See generally, Deborah N. Archer & Kele S. Williams, *Making America "The Land of Second Chances:" Restoring Socioeconomic Rights for Ex-Offenders*, 30 N.Y.U. REV. L. & SOC. CHANGE 527 (2006); Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. REV. 255 (2004); CAUGHT IN THE NET, *supra* note 15, at 47-55.
- <sup>24</sup> See also Marc Mauer, *Race, Drugs Laws & Criminal Justice, from Symposium: U.S. Drug Laws: The New Jim Crow?*, 10 TEMP. POL. & CIV. RTS. L. REV. 321, 324 (2001).
- <sup>25</sup> CAUGHT IN THE NET, *supra* note 15, at 49.
- <sup>26</sup> Note, *Winning the War on Drugs: A "Second Chance" for Nonviolent Drug Offenders*, 113 HARV. L. REV. 1485, 1490 (2000).
- <sup>27</sup> HUMAN RIGHTS WATCH & THE SENTENCING PROJECT, LOSING THE VOTE: THE IMPACT OF FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES 8 (1998); see also Mauer, *supra* note 24, at 324.
- <sup>28</sup> THE SENTENCING PROJECT, DRUG POLICY AND THE CRIMINAL JUSTICE SYSTEM 6 (2001).
- <sup>29</sup> David Cole, *The Paradox of Race and Crime: A Comment on Randall Kennedy's "Politics of Distinction,"* 83 GEO. L. J. 2547, 2569-70 (1995).
- <sup>30</sup> *Id.* at 2570 (citing ELLIOTT CURRIE, RECKONING: DRUGS, THE CITIES, AND THE AMERICAN FUTURE 166, 180 (1993)).

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- <sup>31</sup> Paul J. Goldstein et al., *Crack and Homicides in New York City: A Case Study in the Epidemiology of Violence*, in *CRACK IN AMERICA: DEMON DRUG, AND SOCIAL JUSTICE* 118 (Craig Reinerman & Harry G. Levine eds., 1997).
- <sup>32</sup> *Id.* at 119-120.
- <sup>33</sup> *Id.*
- <sup>34</sup> *Id.* at 120.
- <sup>35</sup> *Public Hearing on Cocaine Sentencing Policy Before the U.S. Sentencing Commission* (Nov. 14, 2006) (Written statement of Dr. Alfred Blumstein, Professor of Urban Systems and Operations Research, Carnegie Mellon University, at 6).
- <sup>36</sup> *See id.*
- <sup>37</sup> *RACE TO INCARCERATE*, *supra* note 3, at 165 (citing Katherine Beckett, “Race and Law Enforcement in Seattle,” May 3, 2004).
- <sup>38</sup> *Id.* at 165-66.
- <sup>39</sup> *Id.* at 166.
- <sup>40</sup> *Id.*
- <sup>41</sup> *Id.*
- <sup>42</sup> 2002 USSC REPORT, *supra* note 6, at 54, 100, Table 17.
- <sup>43</sup> U.S. SENTENCING COMMISSION, 2006 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table 39 (2006).
- <sup>44</sup> 2002 USSC REPORT, *supra* note 6, at 57.
- <sup>45</sup> *Public Hearing on Cocaine Sentencing Policy Before the U.S. Sentencing Commission* (Nov. 14, 2006) (Written statement of Ryan S. King, Policy Analyst, The Sentencing Project, at 6).
- <sup>46</sup> *Id.*
- <sup>47</sup> *Id.*
- <sup>48</sup> *Id.* at 7.
- <sup>49</sup> 2002 USSC REPORT, *supra* note 6, at E-4.
- <sup>50</sup> *Id.*
- <sup>51</sup> *Id.* at 55.
- <sup>52</sup> *Id.* at Appendix E, E-1–E-6.
- <sup>53</sup> D. K. Hatsukami & M. W. Fischman, *Crack Cocaine And Cocaine Hydrochloride. Are The Differences Myth of Reality?*, 279 *JOURNAL OF THE AMERICAN MEDICAL ASSN.*, No. 19, Nov. 1996, at 1580.
- <sup>54</sup> *Id.*
- <sup>55</sup> *Id.*
- <sup>56</sup> 2002 USSC REPORT, *supra* note 6, at Appendix E, E-1–E-6; *Public Hearing on Cocaine Sentencing Policy Before the U.S. Sentencing Commission*, (Nov. 14, 2006).
- <sup>57</sup> 2002 USSC REPORT, *supra* note 6, at E-3.
- <sup>58</sup> *Id.* at 94.
- <sup>59</sup> *See also Crack in Context: America’s Latest Drug Demon*, in *CRACK IN AMERICA: DEMON DRUG, AND SOCIAL JUSTICE* 4 (Craig Reinerman & Harry G. Levine eds., 1997).
- <sup>60</sup> 2002 USSC REPORT, *supra* note 6, at E-4.
- <sup>61</sup> *Id.*
- <sup>62</sup> *RACE TO INCARCERATE*, *supra* note 3, at 171.
- <sup>63</sup> Eric E. Sterling & Julie Stewart, *Undo This Legacy of Len Bias’ Death*, *THE WASHINGTON POST*, June 24, 2006, at A21.
- <sup>64</sup> *Id.*; *see also* 2002 USSC REPORT, *supra* note 6, at 38, 99.
- <sup>65</sup> *See generally* *CAUGHT IN THE NET*, *supra* note 15, at 4.
- <sup>66</sup> *National War on Drugs Symposium, Panel II: Social Justice & the War on Drugs* (2000) (statement of Hon. Robert Sweet), <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/symposium/panel2.html>.
- <sup>67</sup> *How Judges are Properly Implementing The Supreme Court’s Decision in United States v. Booker: Hearing Before the Subcomm. On Crime, Terrorism, and Homeland Security of the H. Comm on the Judiciary*, 109th Cong. 68 (2006) (statement of Judge Paul G. Cassell, Chairman, Committee on Criminal Law, Judicial Conference of the United States), *available at* <http://www.uscourts.gov/testimony/Cassell031606.pdf#search=%22paul%20g%20cassell%20%22mandatory%20minimum%22>.
- <sup>68</sup> Letter from Judge John S. Martin, Jr. to Senator Orrin Hatch, Chairman of the Senate Judiciary Committee, and Congressman Henry Hyde, Chairman of the House Judiciary Committee (Sept. 16, 1997), in 10 *FED. SENT’G RPTR.* 195 (No. 4, Jan./Feb. 1998).

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<sup>69</sup> 2002 USSC REPORT, *supra* note 6, at v.

<sup>70</sup> *Id.* at v-viii.

<sup>71</sup> *Id.* at 91-92.