



Office of the Attorney General
Washington, D. C. 20530

Crim - Crack

July 3, 1997

The President
The White House
Washington, DC 20500

Re: Crack and Powder Cocaine Sentencing
Policy in the Federal Criminal Justice System

Dear Mr. President:

On April 29, 1997, the United States Sentencing Commission ("Commission") submitted to Congress a report containing recommendations regarding crack and powder cocaine sentencing policy in the federal criminal justice system. The Commission recommended that the triggering amount for a five-year mandatory minimum sentence for crack be changed from the current 5 grams to somewhere between 25 and 75 grams, and that the triggering amount for a five-year mandatory minimum sentence for powder cocaine be changed from the current 500 grams to somewhere between 125 and 375 grams.

In a statement issued on the day the report was submitted to Congress, you commended the Commission for its report, agreeing that "some adjustment to the cocaine penalty structure is warranted as a matter of sound criminal justice policy [because] [f]ederal prosecutors should target mid- and high-level drug traffickers, rather than low-level drug offenders." You recognized that "[t]he disparity between sentences for powder and crack cocaine has led to a perception of unfairness and inconsistency in the federal criminal justice system." You further stated, however, that crack has had a particularly devastating impact on communities across America, and thus "[t]he sentencing laws must continue to reflect that crack cocaine is a more harmful form of cocaine." You directed us to study the Commission's report and to make our recommendations on cocaine sentencing in the federal system.

Recommendation

The Office of National Drug Control Policy (ONDCP) and the Department of Justice (DOJ) have carefully studied the Commission's report, engaged in a comprehensive review of recent literature on this subject, and examined information from the

Commission, DOJ, ONDCP, and the Department of Health and Human Services. Consistent with the Commission's report, we recommend that the threshold for the five-year mandatory minimum sentence for crack be set at 25 grams and the corresponding threshold for powder be set at 250 grams and urge that the Administration work with Congress to adopt implementing legislation.

Rationale

When Congress enacted the current mandatory minimum sentences for a wide range of illegal drugs, it stated that these sentences should be reserved for significant drug traffickers. Accordingly, the federal government should primarily focus its narcotics enforcement resources on mid-level and high-level drug traffickers, generally leaving lower-level traffickers and users for prosecution by state and local law enforcement. Indeed, the overwhelming majority of drug prosecutions in this country are brought by state and local prosecutors.

This division of responsibility makes sense. With its powerful enforcement tools, such as the RICO statute, wiretapping capabilities, and the witness protection program, and with its national and international enforcement programs, the federal government is better situated to target and dismantle major drug trafficking organizations, whether the organizations deal in heroin, LSD, methamphetamine, cocaine, or other dangerous narcotics. Because successful narcotics prosecutions often involve "working up the chain," there is also a federal interest in prosecuting individuals who, if they were to cooperate, could provide information that would lead to the prosecution of these organizations and major drug dealers.

The current sentencing structure for cocaine, however, has undermined this division of responsibility. Today, a defendant who traffics in 500 grams of powder cocaine faces a five-year mandatory minimum sentence. According to the Drug Enforcement Administration (DEA), 500 grams -- a half-kilogram -- of powder cocaine has a street value of approximately \$30,000. An individual who deals in \$30,000 (or more) of powder cocaine is a serious drug dealer who should, at the minimum, have information relevant to prosecuting even larger individual dealers or organizations.

In contrast, serious mandatory minimum sentences are not reserved for mid-level and high-level dealers when it comes to crack cocaine. Under the current system, a defendant need only traffic in 5 grams of crack in order to face a five-year mandatory minimum sentence. According to the DEA, 5 grams of crack is worth a few hundred dollars at most, and its sale is

characteristic of a low-level street dealer. A mid-level crack dealer typically deals ounce or multi-ounce quantities. (A single ounce equals 28 grams.) Thus, setting the five-year mandatory minimum threshold at 25 grams would ensure that even the very bottom of the mid-level range would be covered; setting the threshold any lower than 25 grams would undermine positive change and would continue, inappropriately, to target low-level street dealers.

Several negative consequences have resulted from the current cocaine sentencing scheme:

- Agents and prosecutors have the incentive to concentrate on cases where less effort can nonetheless result in long sentences. Thus, the current sentencing scheme may lead federal agents and prosecutors to focus on low-level street dealers of crack, who could as easily and appropriately be prosecuted by our state and local law enforcement partners.

- To the extent that law enforcement resources are directed against low-level street dealers, scarce federal law enforcement agents and prosecutors are diverted away from other higher priorities including larger-scale and more serious drug traffickers. Moreover, imprisoning scores of lower-level crack dealers for long periods of time has consumed considerable resources of the Bureau of Prisons.

- The large disparity in the sentencing scheme is outdated insofar as current data show that crack use has stabilized over the past few years; that the violence associated with crack dealing has dropped over the past few years, contributing to the overall crime drop across America; that of all the cocaine consumed in the United States, there is nearly an even split between crack users and powder users; and that treatment programs for crack and powder addicts are similar and have similar success rates.

- A sentencing scheme that treats crack 100 times more harshly than powder undoubtedly has become an important symbol of racial injustice in our criminal justice system. We cannot turn a blind eye to the corrosive effect this has had on respect for the law in certain communities and on the effective administration of justice. When communities lose faith in the fairness of the legal process, our ability to enforce the law suffers.

These problems cannot be solved by increasing powder penalties, while leaving current crack penalties unchanged. Such a change would merely replicate for powder cocaine the major

problem with current law enforcement efforts against crack cocaine -- the diversion of scarce federal resources to the prosecution and incarceration of low-level drug dealers who are more properly the focus of state and local officials. Moreover, simply increasing powder cocaine penalties would do little to address the perception that crack penalties inappropriately target racial minorities for harsh punishment. We support, in conjunction with a change in crack penalties, a change in the triggering amount for powder cocaine from 500 grams to 250 grams recognizing that all crack is brought into this country as powder and the ease by which that powder is converted to crack.

None of this is to say that the federal government should retreat from its vigorous prosecution of crack cocaine offenses. Under our recommended penalty structure, federal law enforcement would continue to prosecute crack cases in the federal system, particularly when there is organized drug dealing, the use of weapons, the use of minors in drug trafficking, drug trafficking near schools and other places, or other aggravating factors. Moreover, crack dealers would continue to be punished more harshly than powder dealers, which appropriately reflects the additional dangers associated with crack cocaine.

Conclusion

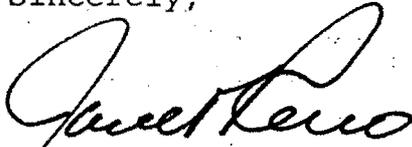
In short, we support a revised penalty structure with the five-year mandatory minimum threshold for crack set at 25 grams and the corresponding threshold for powder set at 250 grams because it would:

- Maintain tough federal sentences for serious drug offenders.
- Properly focus federal law enforcement efforts on mid-level and high-level drug traffickers.
- Improve the allocation of scarce federal law enforcement resources.
- Address perceptions of serious unfairness and inconsistency in the current sentencing scheme.
- Continue to reflect an appropriate distinction between crack and powder cocaine.

The President
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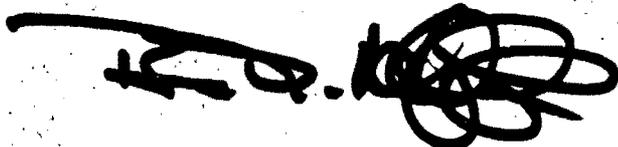
With your concurrence, we will work with Congress to adopt legislation that will improve federal law enforcement's response to the scourge of powder and crack cocaine trafficking in this country.

Sincerely,



Janet Reno
Attorney General

Sincerely,



Barry R. McCaffrey
Director, Office of
National Drug Control Policy

Crime-Crack

THE WHITE HOUSE
WASHINGTON

RAHM / BRUCE (ELENA):

FYI - I NEED NOT
MENTION THAT I
AGREE ENTIRELY; THAT
DOJ'S INTERNAL ANALYSIS
CONFIRMS THE SAME;
AND THAT, AS RANDALL
KENNEDY HAS POINTED
OUT, THESE PENALTIES
WERE ORIGINALLY
PROPOSED & SUPPORTED
BY MEMBERS OF THE
BLACK CAUCUS.

Joe

EMPOWER AMERICA

1776 I Street, NW, Suite 890
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The Honorable Orrin G. Hatch
Chairman
The Honorable Patrick J. Leahy
Ranking Member
United States Senate Committee
on the Judiciary
Washington, D.C. 20510

Founding Chairman
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Michael Novak
Dennis Prager
Julian H. Robertson, Jr.
Donald H. Rumsfeld
Judy Shelton
John Skoen
Ward W. Woods

Dear Senators Hatch and Leahy:

President Clinton has announced that he will ask you to relax sentences for trafficking in crack cocaine. We write to urge you and your colleagues to reject any such proposal.

Our position is a matter of public record -- while we do not oppose stiffer sentences for trafficking in powder cocaine, we strongly oppose weakening sentences against the crack trade.

It seems obvious that crack sentences should not be reduced, given crack's impact on vulnerable inner-city populations (including an unprecedented proportion of female addicts). Moreover crack sentences are not, as you know, 100 times more severe than those for powder cocaine; that widely-cited figure is based on the so-called "trigger" amount for a given sentence. In fact, crack sentences range between two and six times longer than for a comparable quantity of powder. Such a differential is fully justified. After all, crack dealers have destroyed the fabric of peace and harmony in inner-city communities all over America. Crack use is associated with the explosion of especially horrifying child abuse cases in recent years. Many crack sellers are remorseless killers, and need to be taken off the streets.

Nor are crack sentences excessive in any absolute sense. A crack dealer has to traffic at least 50 grams -- approximately 1,500 "rocks" -- to trigger the ten-year mandatory minimum. Selling 1,500 rocks of crack is an offense that easily merits ten years in jail. Indeed, the United States Sentencing Commission reports that in fiscal year 1996, the typical dealer convicted under federal law was caught selling 109 grams of crack -- the equivalent of more than 3,000 rocks. Federal crack defendants are also more likely than any other category of federal drug defendant to have a substantial criminal history.

Opponents of the current law argue that law enforcement snags mostly young, non-violent, minority defendants. In fact, very few federal crack defendants are low-level, youthful, and non-violent. Again, according to the Sentencing Commission, of the 3,430 crack defendants convicted in fiscal year 1994, just 51 were youthful, small-time offenders with no prior criminal history and no weapons involvement.

In other words, despite all the rhetoric, just one crack defendant out of 67 qualifies as youthful, non-violent, and low-level. And as you well know, under the so-called "safety valve" provision of the 1994 Crime Act, which overrides mandatory minimum penalties for certain first- or second-time offenders who did not use a firearm in connection with the offense, defendants similar to these 51 are now eligible for more lenient sentences. Even then, federal crack defendants are so unlikely to be low level, non-repeat offenders that, according to the Sentencing Commission, they are proportionately the *least* likely federal drug defendants to actually qualify for the safety valve.

These are the facts. Unfortunately, this debate is no longer about facts. It is about race.

Yet a basic feature of this debate, one that has apparently eluded even Drug Policy Director Barry McCaffrey, is that while many crack dealers are black, crack's victims are overwhelmingly black, inner-city residents – and these victims dramatically outnumber the crack dealers. Rev. Eugene F. Rivers, III, is co-chair of the National Ten Point Leadership Foundation in inner-city Boston. As Rev. Rivers sees it: "To confuse the concerns of crack dealers with the broader interests of the black community is at best inane and at worst immoral. Those who are straining to live in inner-city neighborhoods that are most adversely affected by the plague of crack, and who witness crack's consequences firsthand, want [crack dealers] taken off the streets for the longest period of time possible."

We associate ourselves with the remarks of Rev. Rivers. Our urban communities want crack dealing in their neighborhoods to stop. We urge you to continue to oppose those who would undermine their efforts.

Sincerely,


William P. Barr


William Bennett


Edwin Meese III


John Walters

THE WHITE HOUSE
WASHINGTON

11-18-97

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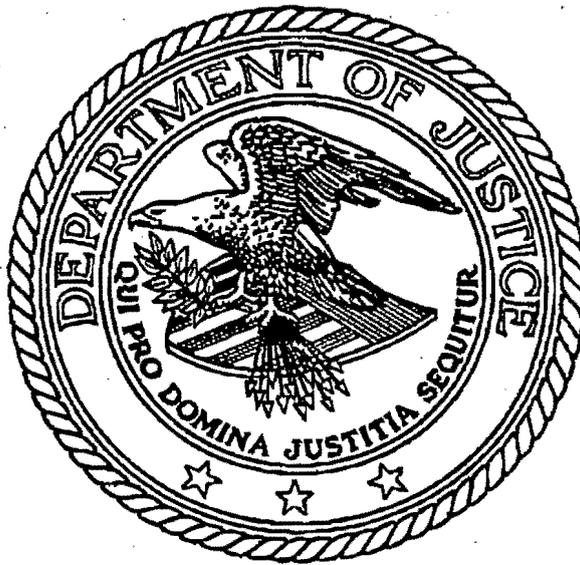
Crime-C

BRUCE/ELENA/RAHM:

ATTACHED PLEASE FIND THE
"FINAL-DRAFT" REPORT OF
THE CRACK WORKING
GROUP, WHICH IS NOW
SHIFTING TO LONG-TERM
+ DEFENSIVE MODE.

Joe

CC: LEANNE



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TO: *See attached hist*

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Total Pages (excluding this cover):

10

Additional Message:

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The Clinton Administration Crack-Powder Initiative November 1997

I. Overview

In July 1997, a Department of Justice, Office of National Drug Control Policy (ONDCP), and White House Working Group was formed to develop and implement a strategy to advance the Administration's proposal to reduce the disparity in sentences for crack and powder cocaine offenses from the current 100 to one disparity down to 10 to one.

Initially, the Working Group worked to generate support for the Administration's proposal among key members of Congress and congressional staff -- including Judiciary Committee members, moderate Democrats and Republicans, and members of the Congressional Black Caucus. The goal was to push for enactment of the Administration's proposal during this Congressional session.

Based upon the feedback the Working Group has received so far, it is clear that many members of Congress agree that there is a need to address the current disparity in crack and powder sentences. They are, however, sharply divided on the question of how to address this disparity.

Current legislative proposals to address the crack and powder sentencing disparity fall into two categories: reducing the disparity by increasing powder penalties or reducing the disparity by cutting crack penalties so that they are equivalent to powder penalties. The Administration's proposal falls squarely in the center of these two extremes, but at the present time there is no movement toward any compromise position or centrist approach, such as that proposed by the Administration.

On the basis of information now available, the Working Group has reconsidered the present strategy to focus on this congressional session and recommends a shift to a longer-term strategy designed to build support for the Administration's proposal and to stave off other proposals that could actually impede federal anti-drug efforts. The revised plan is a one to two year plan -- recognizing that it will take time to build sufficient support in Congress to pass the Administration's proposal and that there may be a need to oppose legislation in the 1998 Congressional session.

Public interest in the crack and powder cocaine disparity is likely to continue in the coming year. The Supreme Court recently granted certiorari in a criminal case, Edwards v. U.S., involving conspiracy to distribute powder and crack cocaine. Although the Court is not expected to address the sentencing disparity issue directly, because the case involves crack cocaine sentencing, we expect it to generate some level of public

interest in the sentencing disparity issue. A National Institute of Justice report on homicide rates and their link to crack cocaine has and may again put the public spotlight on crack cocaine sentences as well. The report, not yet formally released, but summarized in The New York Times, suggests that there is a link between crack and homicide and as crack use has declined so to have homicide rates. The report is said to credit longer prison sentences as being among the factors that have contributed to the decline in homicide rates.

II. Steps Taken to Date

Over the past two and a half months, the Department of Justice and ONDCP have taken the following steps to advance the Administration's proposal in Congress:

- The Working Group identified Members of Congress who are key to the resolution of the crack/powder cocaine sentencing issue.
- The Working Group developed talking points and materials for members of Congress and their staffs.
- Justice Department and ONDCP staff have provided briefings on the Administration's proposal for staff of the House and Senate Judiciary Committees.
- ONDCP Director McCaffrey and Deputy Attorney General Eric Holder have met with members of the House and Senate to discuss the Administration's proposal.
- The Working Group has reached out to former United States Attorneys under President Bush and to other former law enforcement officials to secure their support for the Administration's position.

III. Implementing A Longer-Term Strategy to Advance the Administration's Proposal

The Working Group has developed a revised strategy to advance the Administration's proposal and law enforcement interests over the course of the next session of Congress and during the 106th Congress. The strategy aims to continue to build support in Congress and to secure the backing of outside opinion leaders and organizations that are influential with members of Congress.

A. Continued Outreach in Congress

The Administration will continue to work directly with members of Congress and their staff to provide information about

the crack-cocaine issue, monitor legislative and other Hill activities, and to secure support for the Administration's proposal.

First, we will set up appropriate meetings and phone calls for Attorney General Janet Reno and General McCaffrey. At this time, we propose that the Attorney General and General McCaffrey speak with Senators Abraham and possibly DeWine.

Second, Deputy Attorney General Holder, individual United States Attorneys, DOJ and ONDCP senior staff, and other Administration spokespersons will continue to work with Members on this issue.

B. Line up Support Among Influential Opinion Leaders

Leaders in the law enforcement and civil rights communities can be tremendously helpful to the Administration in advancing the crack cocaine initiative. These individuals have respect in communities across the country and with members of Congress. We will reach out to former United States Attorneys General, former heads of the Drug Enforcement Administration and of the ONDCP, as well as to civil rights leaders to ask them to join in our effort to improve the fairness and efficiency of our nation's drug laws. In particular, we will seek the support from Reggie Walton, former DEA heads, Jack Lawn and Robert Bonner, former ONDCP Directors, Gov. Martinez and Lee Brown, as well as former Attorneys General Bell and Ben Civiletti.

C. Outreach to Organizations Outside the Government

A central component of the longer-term strategy to build support will involve work with outside law enforcement organizations, civil rights groups, and organizations that represent state and local governments.

1. Administration Spokespersons

First, the Attorney General and General McCaffrey will be the most effective Administration spokespersons with law enforcement and civil rights groups, as well as with representatives of state and local governments. The Working Group is now finalizing a draft letter that can be sent by the Attorney General and General McCaffrey to interested groups.

Other officials at the Department of Justice and throughout the Administration can also be extremely effective. Deputy Attorney General Eric Holder; Associate Attorney General Ray Fisher; the Administration's nominee to head the Civil Rights Division, Bill Lee; Assistant Attorney General for the Office of Policy Development, Eleanor D. Acheson; Assistant Attorney

General for the Office of Justice Programs, Laurie Robinson; Director of the Bureau of Justice Assistance, Nancy Gist; COPS Director Joe Brann; and many United States Attorneys, are all important spokespersons at the Department of Justice. Deputy Director Hoover Adger and soon to be nominated Associate Director Robert Warshaw are important spokespersons at ONDCP.

Second, Justice Department, ONDCP and White House staff should lay the ground work for and follow up on contacts made by senior Administration officials.

Third, the working group recommends that the Attorney General and Gen. McCaffrey send a memo to all DEA agents setting forth the Administration's position on crack and powder sentencing, why we have taken it and how it will support DEA enforcement operations. DEA agents can then communicate this to their counterparts in state and local law enforcement. The DEA is on the front line in the effort to control illegal drugs. DEA agents work with state and local law enforcement on a regular basis and it is essential that they understand how important the Administration's proposal is to the government's anti-drug strategy.

2. Outreach to Specific Groups

There are a number of groups that would be interested in the Administration's effort to reduce the sentencing disparity between crack and powder cocaine. These include state and local government organizations, law enforcement and civil rights groups and organizations that are involved in providing drug treatment and improving the criminal justice system. The following are specific organizations that the Administration should reach out to -- through contacts with the leadership and staff of the organizations, participation in board meetings and other annual meetings or organizational gatherings. In certain cases it will be useful to have General McCaffrey or Attorney General Reno speak to, meet with or write to the organization, and for the Administration to offer other spokespersons to speak on panels and meet with organization members.

• Organizations representing state and local governments

National League of Cities: This organization represents smaller cities and towns and has recently increased outreach activities in the minority community.

U.S. Conference of Mayors: The current chair, Paul Helmke (Ft. Wayne, IN), has focused "special cities" matters. It is unlikely that this body of elected local officials will involve itself to any great degree in the crack-cocaine issue; still it is important to educate and seek the support

of the organization. There may also be individual Mayors who would take a special interest in the issue.

National Association of Counties: This organization has limited resources but often takes an interest in issues that relate to crime or drug prevention and "fairness."

National Governors' Association: The National Governors Association is not likely to take an interest in the crack-powder issue. However, it is nonetheless useful to educate the organization about the Administration's position on federal sentencing laws for crack and powder cocaine.

National Council of Elected County Executives: While the issue of federal cocaine sentencing is somewhat removed from the scope of matters regularly taken up by the National Council of Elected County Officials, like the National Governors' Association, it would be useful to provide some background information to the group on the Administration's proposal.

National Black Prosecutors Association: This organization should be informed of the Administration's proposal and encouraged to consider the Administration's views.

● Law Enforcement Organizations

National Organization of Black Law Enforcement Executives (NOBLE): NOBLE supports a change in crack policy. The group applauded the Attorney General's announcement that the Administration too supported a change in crack policy. NOBLE has not, however, formally endorsed the Administration's proposal, and should be fully informed about the proposal and how the Administration arrived at a 10:1 position. This is a significant organization for the Administration in this effort.

Police Executive Research Forum: The Police Executive Research Forum would likely be interested in the crack and powder cocaine sentencing.

The Police Foundation - Although very small, the Police Foundation is an intellectual conscience for law enforcement. However, the organization rarely opines on legislative proposals.

National District Attorneys Association (NDAA) - While NDAA is not likely to become involved in this federal sentencing issue, we have strong ties to the organization and should offer to speak to and educate the group and its members on the crack and powder sentencing disparity issue. There may

also be individual district attorneys who are interested in working on the issue.

International Association of Chiefs of Police: Like NDAA, the International Association of Police Chiefs is not likely to become involved in this federal sentencing issue. However, individual chiefs of police may be interested in the Administration's proposal.

National Association of Police Organizations (NAPO): NAPO has not been interested in the issue of crack and powder sentencing. However, the organization is often supportive of Administration law enforcement policies and should be kept informed about the Administration's proposal and any action on sentencing for crack and powder cocaine.

Fraternal Order of Police: Like NAPO, the FOP has no significant interest in the Administration's proposal, but should be briefed and kept up to date on developments on the issue.

● Civil Rights Groups

Leadership Conference for Civil Rights: The Leadership Conference is an umbrella organization that is already involved in other criminal justice issues (victims, hate crimes, police misconduct). It would be useful to provide information and seek the organization's support for the Administration's proposal on crack and powder.

NAACP Legal Defense Fund: The NAACP Legal Defense Fund is a strong advocate for crack equalization. However, the organization is comprised of excellent litigators who understand the complexity of the crack and powder cocaine issue and the political hurdles faced in any effort to obtain equalization.

National Urban League: The National Urban League is often willing to listen to varying points of view and is likely to give the Administration a fair hearing on the crack/powder sentencing proposal.

Congress of National Black Churches: The Congress of National Black Churches is likely to be interested in learning about the Administration's crack proposal.

National Council of La Raza: La Raza is a civil rights group that works primarily with and on behalf of the Hispanic community and is likely to be interested in the Administration's proposal on crack and powder sentencing.

Mexican American Legal Defense Fund (MALDEF): Like the National Council of La Raza, MALDEF works with the Hispanic community and is likely to be interested in the Administration's proposal and its effect on the MALDEF constituency.

● **Drug Treatment and Related Organizations**

There are several drug treatment and other organizations that may be willing to review the Administration proposal on crack and powder cocaine. These organizations include the National Coalition on Alcoholism and Other Drug Issues, the Legal Action Center, the National Association of Drug Abuse Counselors, the criminal defense bar, and the Sentencing Project.

3. Upcoming Meetings and Events

The following upcoming meetings offer the opportunity for the Administration to discuss and share information about crack and powder cocaine sentencing:

December 3, 1997 Sacramento, CA: Justice and Public Safety in the 21st Century: Building the Justice Enterprise.

December 7, 1997 Phoenix, AZ: The National TASC Conference on Drugs & Crime.

December 8, 1997 Washington, DC: The Prison Population Projection and Forecasting Workshop.

D. Communications Strategy

The Working Group recommends a communications strategy that, at least initially, is focused on media outlets with targeted audiences. In particular, we recommend that the Attorney General and General McCaffrey author articles for the following types of publications:

- **Journals/Magazines targeted to Law Enforcement Groups:** Most of the law enforcement organizations listed above have magazines that might welcome an article on the Administration's proposal. Additionally, each of these groups have local affiliates that publish newsletters that might welcome a short article or letter.
- **Journals/Magazines targeted to the Legal Community:** The legal community -- particularly members of the criminal defense bar -- should be a target of a communications strategy. Magazines published by the American Bar Association, state and county bar organizations, and national and state criminal defense bar groups should be

interested in this issue.

- **Magazines/Newsletters published by drug treatment groups:** As with the law enforcement groups, most of the drug treatment organizations have publications that might publish an article or letter on this issue.
- **Newspapers for the African-American Community:** We recommend the use of op-eds in newspapers that have a large African-American readership.

The Working Group also recommends that we seek supportive editorials from key newspapers. Several of these newspapers have already published supportive editorials. We should keep these newspapers informed of any developments, and seek supportive editorials should any adverse legislation begin to move in Congress.

The Working Group recommends that mass media (such as radio and TV) not be used until we have first achieved strong support from the groups targeted by our intergovernmental affairs strategy. An aggressive media campaign could increase the risk of a bad result. At least initially, the proposal is most effectively presented in personal meetings with key decision makers.

Encouraging aggressive media coverage of this issue will favor the proponents of increasing penalties for powder -- and not adjusting penalties for crack -- because our more nuanced message will not sell as well as the "tough on crime" opposition message in an age of sound bites. At some point, of course, we hope to achieve sufficient support in Congress and among our targeted groups to allow a more aggressive media strategy. At this time, however, our communications strategy must be more focused on obtaining the support of individuals and groups that will be essential to our ultimate success.