Appendix A

SUMMARY OF PUBLIC HEARING ON COCAINE SENTENCING POLICY

A. INTRODUCTION

On November 9, 1993, the Sentencing Commission convened a public hearing in Washington, D.C., on federal cocaine sentencing policy. The hearing, organized in conjunction with this special report to Congress, featured testimony by research scientists, scholars, law enforcement officers, an educator, a corrections official, an emergency room specialist, and a former cocaine abuser.

Representing the Sentencing Commission at the hearing were Chairman William W. Wilkins, Jr.; Commissioners Julie E. Carnes, Michael S. Gelacak, A. David Mazzone, and Ilene H. Nagel; and *ex-officio* Commissioners Janet Reno and Edward F. Reilly, Jr. The hearing was organized into four panels: law enforcement and community corrections, violence and gangs, pharmacology, and social institutions.

B. LAW ENFORCEMENT AND COMMUNITY CORRECTIONS

John J. Brennan, a sergeant in the Narcotics and Special Investigations Unit of the District of Columbia Metropolitan Police Department, opened the panel by recounting how the 1986 introduction of crack cocaine into the city increased the number of open-air drug markets from less than 20 (selling primarily phenmetrazine, dilaudid, heroin, and marijuana) to 80 markets selling crack cocaine. Sergeant Brennan said that the mandatory minimum drug laws have assisted law enforcement in infiltrating larger drug organizations by inducing defendants to cooperate with law enforcement. He believes, however, that the penalties for crack cocaine and powder cocaine should be the same. "[I]t takes fifteen minutes to turn powder cocaine into crack cocaine – a box of baking soda, a pot of water, and a microwave or a stove, and you have crack cocaine."

Jeff L. Tymony, Executive Director of Halfway House for Adults, Inc., in Wichita, Kansas, presented arrest statistics for the Wichita area by race, sex, and age. He noted that the amounts of confiscated crack cocaine and powder cocaine did not differ significantly in 1993 in the Wichita metropolitan area. He reported that of 852 drug arrests for powder and crack cocaine offenses, 698

of the defendants were Black and 146 were White. He also said that he is "seriously concerned about what the violence associated with crack cocaine is specifically doing to the African-American community." Mr. Tymony added that young people seemingly have become tolerant of the use of narcotics "which means that we haven't done a very good job of educating them about the cost."

Special Agent Kevin M. Donnelly of the federal Drug Enforcement Administration office in Camden, New Jersey, provided details of crack cocaine investigations in which he was involved as a member of a "Weed and Seed" task force. He reported that the task force not only "weeds" out major defendants from the city, but also targets repeat and violent offenders for prosecution in federal court because of the stricter sentencing guidelines that apply. Agent Donnelly said that mandatory minimum penalties have had a favorable impact in the Trenton area because they lead to cooperation that assists subsequent investigations. When asked if the 100-to-1 quantity ratio of powder cocaine to crack cocaine was necessary, he said, "[s]peaking for myself as a DEA agent on the street, I think I need the [statutory] difference between crack cocaine and cocaine powder."

C. VIOLENCE AND GANGS

Dr. Steven Belenko, Deputy Director, New York Criminal Justice Agency, discussed the empirical evidence available on the relationship among crack cocaine use, the marketing of crack cocaine, and violent crime. He stated that while the crack cocaine subculture can be characterized as more violent and more involved in crime than previous or parallel drug subcultures, the reasons for this are complex and not necessarily a function of the psychopharmacological effects of crack cocaine. According to Dr. Belenko, media suggestion and public fear of a direct causal relationship between crack cocaine and non-drug crime does not seem to be confirmed by the data.

> Rather, the levels of violence and crime associated with crack appear to reflect parallel and other interactive forces that are related to the relative immaturity and volatility of the crack markets, the ages and types of persons initially attracted to crack distribution, the increasing social and economic disorganization of the nation's innercities beginning in the 1980s, and the mounting proliferation of more powerful guns, as well as a spread of cheaper powder cocaine during the same period of time.

Dr. Paul J. Goldstein, Associate Professor of Epidemiology at the University of Illinois at Chicago Circle, testified that the primary association between cocaine and violence is systemic. While crack cocaine is a major contributor to drug-related violence, this occurs largely because crack is the newest and most prominent substance in violent, illicit street markets and not because of the psychopharmacological properties of crack. Dr. Goldstein said, "I have no evidence that crack cocaine is more dangerous than powder cocaine. . . I have no evidence that crack is any more addictive than powder cocaine." However, he believes that the health risks from injecting cocaine are much greater than from smoking cocaine. Dr. Goldstein said that he supports the elimination of

both the mandatory minimum penalties and the distinction between crack cocaine and powder cocaine.

Dr. Jerome H. Skolnick, Professor of Law at the University of California at Berkeley, attributes gang violence more to the underlying culture of a particular gang than to any other factor. Consequently, Dr. Skolnick does not believe that the present penalty distinction between crack cocaine and powder cocaine makes sense.

> Crack is simply processed cocaine. In fact, the people who are probably the most violent are the people who are dealing in kilos because that is where the money is. A lot of the dealers . . . don't use the crack. They sell it. They are business people, and they are dealing in powder cocaine. So that distinction just is not a sensible distinction.

Dr. Skolnick testified that the social milieu affects why a drug is used differently in different communities. "[I]t takes you out of where you are and puts you where you want to be."

D. PHARMACOLOGY

Dr. Charles R. Schuster, Senior Research Scientist at the Addiction Research Center of the National Institute on Drug Abuse, focused his presentation on cocaine pharmacology, toxicology, and routes of administration. He testified that "cocaine is cocaine is cocaine, whether you take it intranasally, intravenously, or smoked." He noted, however, important differences associated with the manner in which the drug is administered. According to Dr. Schuster, both cocaine hydrochloride that is injected intravenously and crack cocaine that is smoked produce rapid effects in the user. Snorting cocaine, however, produces effects that "come on more slowly and last over a longer period of time."

Dr. Schuster recounted a study by the Addiction Research Center that examined whether the number of Black crack cocaine users is disproportionate to the number of White users. Controlling for neighborhood, the study revealed that "the odds ratios for whether the individual [crack user] is White, Black, or Hispanic are equal . . . [I]t is really neighborhood that we are talking about, not race specific[ally]." Dr. Schuster said that the potential public health consequences of crack cocaine are significant because the proportion of the population willing to smoke a drug is larger than "those who would be willing to put a needle in their arm."

Dr. Robert Byck, Professor of Psychiatrics and Pharmacology at Yale University School of Medicine, testified that he believes the law uses drug weight as a metaphor for intent. Because the cost of cocaine is decreasing, Dr. Byck reasoned, "the absolute weight becomes relatively irrelevant." While weight is linked at times to dangerousness and degree of punishment, Dr. Byck did not feel that

as a scientist he could speak to these issues. Rather, he said that he believes the most pertinent variable is marketing. Crack cocaine is easily made, it is sold in small quantities (single-dose packaging), and it can be taken using an acceptable route of administration (smoking).

Dr. Byck stated that while crack cocaine and powder cocaine have the same active ingredient, they have different melting points, chemical compositions, and solubilities, and "[c]rack is historically and pharmacologically a more threatening material." When asked if the 100-to-1 quantity ratio is correctly attributed to his 1986 testimony before Congress, Dr. Byck replied that the ratio could have been based on his comments contending that crack is much more dangerous that powder cocaine, but disclaimed responsibility for providing the ratio.

Frances D. Johnson, a former substance abuser, testified about her experiences with crack cocaine and powder cocaine. She spoke about the personality changes she underwent as she became an abuser and the effects her addiction had on her schooling, work, and life. Ms. Johnson detailed her recovery process and her efforts to share her experiences and hopes with other people. Ms. Johnson told the Commission that "coke is coke," and when asked if the laws should punish the crack dealer more severely than the cocaine dealer, she replied, "No . . . A pound is a pound. I don't care how you look at it. If I sold crack or I sold coke, I am selling the same kind of substance."

E. SOCIAL INSTITUTIONS

Dr. Ira J. Chasnoff, President of the National Association for Perinatal Addiction and Professor of Pediatrics at the University of Illinois, opened the hearing's final panel. In his remarks, Dr. Chasnoff listed four principles regarding prenatal exposure to cocaine:

- any drug taken by a woman during pregnancy will reach the fetus;
- crack cocaine has become a problem among women of child-bearing age because it is easily accessible and it does not require intravenous injection;
- "the pharmacology of cocaine and crack is identical. They are identical drugs, so any effect that you have on the fetus is similar, whether the woman uses crack or uses cocaine"; and
- research has shown that the "single most important factor affecting the life of the child is the environment in the home in which he is being raised," not the drug the child was exposed to prenatally.

The deleterious effects upon an infant who has been exposed to cocaine *in utero* include difficulties in responding to parental interactions and erratic behaviors that are difficult to control.

Dr. Chasnoff stated that "cocaine and crack exposure does not affect intellectual functioning . . . [but] does affect behavioral functioning." Dr. Chasnoff reports, however, that early intervention that includes physical, occupational, and speech therapy along with parenting interventions can help these children. Dr. Chasnoff stated that he could not speak to the issue of heavier penalties for crack cocaine offenses, but if the goal is to benefit the children, "then we are going to have to find other ways than taking their mothers away and putting them in jail."

Ms. Marguerite P. LaMotte, Principal of Washington Preparatory High School in Los Angeles, focused her remarks on her South Central Los Angeles high school, a school with 3,100 students, 75 percent of whom are Black and 25 percent of whom are Hispanic. Her school participates in a drug-free zone project to reduce drug and alcohol use among students. Ms. LaMotte reported that with cocaine use in her school "almost nonexistent," the school's major drug of abuse is marijuana, which is also the drug of choice in her school district. She spoke to the need for prevention efforts. Regarding the penalty distinction between crack cocaine and powder cocaine, Ms. LaMotte said: "Drugs are drugs. A student who gets hooked on cocaine, be it crack or powder, is still an addict and will suffer the same consequences. So the dope dealer should be subject to the same sentencing."

The final presenter at the hearing was Dr. Robert S. Hoffman, Senior Attending Physician, Department of Emergency Services at New York City's Bellevue Hospital Center. Dr. Hoffman offered his perspective as an emergency room physician, stating that "[a]s of 1986, crack surpassed all other causes of illicit drug presentations to the emergency department." He described the manifestations of acute cocaine intoxication in patients as severe agitation and uncontrollable violent behavior, accompanied by "life-threatening abnormalities of their vital signs."

Dr. Hoffman said that cocaine produces violence. To him, the real difference between crack cocaine and powder cocaine is the general population's easy accessibility to crack cocaine. Regarding the punishments for the two types of cocaine, Dr. Hoffman stated: "As a scientist and clinician, from my viewpoint, the issues need to be better clarified. Until they are, it doesn't make sense to punish a molecule with a little twist so much more severely than the same molecule in a different scenario."