



(Photo not viewable online)

# Commission Recommends New Cocaine Sentencing Policy

## Report to Congress Suggests Range of Options

The U.S. Sentencing Commission unanimously recommended that the disparity in federal penalties for powder cocaine and crack cocaine be reduced. The recommendation came in a report submitted to Congress April 29, 1997, pursuant to a congressional directive. Federal law currently distinguishes between the two principal forms of cocaine by requiring much harsher sentences for trafficking in crack cocaine compared to powder cocaine. Five grams of crack and 500 grams of powder both trigger the same five-year mandatory minimum penalty, a differential known as the "100-to-1 quantity ratio."

In its recommendation, the Sentencing Commission said that "although research and public policy may support somewhat higher penalties for crack than for powder cocaine, a 100-to-1 quantity ratio cannot be justified." In the past several years, critics of the law have focused on the disproportionate impact the crack penalties have had on African-American defendants, who account for approximately 90 percent of all offenders sentenced under the penalties for crack.

"Selecting the appropriate threshold for triggering the five-year mandatory minimum penalties is not a precise undertaking," the report said. "The Commission is firmly and unanimously in agreement that the current penalty differential for federal powder and crack cocaine cases should be reduced by changing quantity levels that trigger mandatory

minimum penalties for both powder and crack cocaine."

Instead of offering a single new ratio, the Commission recommended a range of possible options to adjust both powder and crack penalties. "For powder cocaine, the Commission recommends that the current 500-gram trigger for the five-year mandatory minimum sentence should be reduced to a level between 125 and 375 grams, and for crack cocaine, the current five-gram trigger should be increased to between 25 and 75 grams," the report said.

Judge Richard P. Conaboy, Chairman of the Sentencing Commission, said, "The ranges suggested provide Congress the flexibility to make an informed judgment about the appropriate penalties for these two forms of cocaine. We feel strongly, though, that the current policy must be changed to ensure that severe penalties are targeted at the most serious traffickers."

In a White House statement, President Clinton commended the Sentencing Commission and asked General Barry McCaffrey, Director of the Office of National Drug Control Policy, and Attorney General Janet Reno to review the Commission's recommendations and report back to him in 60 days.

In order to act on the Commission's recommendations, Congress would need to pass and the President would

Commissioner Wayne A. Budd

## Commissioner Budd Resigns

The U.S. Sentencing Commission dipped to four voting members due to the May 1, 1997, resignation of Wayne A. Budd. Commissioner Budd, whose term expires October 31, 1999, resigned to devote more time to his position as Senior Vice President at NYNEX in Boston, Massachusetts.

Commissioner Budd previously served as United States Attorney for the District of Massachusetts, Associate Attorney General of the United States, and partner at the Boston law firm of Goodwin, Procter & Hoar. Most recently at the Commission, he co-chaired the development of recommendations to revise federal cocaine sentencing policy.

"Wayne's intelligence, understanding of the criminal justice system, and compassion for his fellow man

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# Commission Launches Public Service Media Campaign

Aim is to Educate Youth about Sentences for Drug Crimes

The Sentencing Commission plans to launch a pilot program of public service television announcements intended to prevent at-risk youth from getting involved in criminal activity. One of the major purposes of criminal punishment is deterrence, and the Commission believes that effective deterrence requires that the public understand the consequences of criminal activity.

To that end, the Commission has worked with an experienced advertising agency to create a media campaign in what it hopes to be an ongoing crime prevention effort. These first public service announcements are intended to deter youth from getting involved in drug crimes by informing them of the real-life consequences of drug involvement – specifically, that federal drug crimes result in long-term sentences with no parole.

(Storyboard graphic not viewable online)

This storyboard graphic, created by Galanty & Company for use in video production, illustrates the consequences of involvement in federal drug crimes.

In producing these first announcements, the Commission has taken great care to create a message that will resonate with the target audience. Extensive research and focus groups were conducted to help identify the most effective messages to influence young people around the country.

In addition, the announcements have high production quality, and the Commission is grateful to Alfre Woodard, the award-winning actress, for donating her time and talent as a narrator for one of the spots.

The first two television messages in this crime prevention campaign are currently being finalized for distribution to station managers across the country. ■

BUDD, continued from p. 1

will be sorely missed,” said Commission Chairman Richard P. Conaboy. “He served the Sentencing Commission with great distinction for nearly three years, and the country owes him a debt of gratitude.”

By statute, the Commission’s full complement is seven voting members and two non-voting, *ex-officio* members (the Attorney General and Chairman of the U.S. Parole Commission). The resignation leaves the Commission with four voting members – Judge Conaboy, Vice Chairman Michael Goldsmith, Vice Chairman Michael S. Gelacak, and Judge Deanell R. Tacha.

Two vacancies open since October 1995 have yet to be filled; the terms of three additional commissioners expire this October. ■

DISPARITY, continued from p. 1

need to sign a bill revising current federal mandatory minimum penalties. After Congress has evaluated the recommendations and expressed its views, the Commission will amend its sentencing guidelines to reflect congressional intent.

The Commission’s full report, *Special Report to Congress: Cocaine and Federal Sentencing Policy*, can be viewed or printed from the Commission’s website at <http://www.ussc.gov>. ■

For a full list of guideline amendments sent to Congress in 1997, see the Commission’s website at [www.ussc.gov](http://www.ussc.gov).

## Guide Lines

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Commission Toughens Penalties for Trafficking in Methamphetamine

# Guideline Amendments Presented to Congress

On May 1, 1997, the Sentencing Commission sent to Congress 26 amendments to the federal sentencing guidelines, including one that will significantly increase penalties for importing and trafficking in methamphetamine. The amendment will also increase sentences for any drug offense that results in environmental damage — a concern especially associated with clandestine methamphetamine labs.

In a White House statement, President Clinton said he was “pleased that the Sentencing Commission has increased penalties for methamphetamine offenses,” and indicated that the Commission’s actions will “toughen penalties on this emerging drug to prevent the kind of epidemic we saw in the

1980s with cocaine use.”

Most of the amendments sent to Congress implement legislation passed last year by the 104<sup>th</sup> Congress, including the Antiterrorism and Effective Death Penalty Act of 1996, the Illegal Immigration and Immigrant Responsibility Act of 1996, and the Drug-Induced Rape Prevention Act of 1996. The amendments will take effect November 1, 1997, unless Congress disapproves them during a six-month period of review.

Implementing the Drug-Induced Rape Prevention Act, the Commission substantially increased penalties for possession and trafficking of flunitrazepam, the so-called “date-rape” drug, and for

distributing any controlled substance with the intent to commit a crime of violence.

“We believe that using drugs to commit a rape, sexual assault, or other violent crime is among the most serious offenses and must be punished severely,” said Judge Richard P. Conaboy, Commission Chairman.

The Commission amended its drug guidelines to make penalties for trafficking in flunitrazepam similar to those for trafficking in Schedule I depressants. Commissioners also voted to make the penalties for simple possession of flunitrazepam the same as those for the simple possession of powder cocaine, LSD, or PCP.■

## Other 1997 Proposed Amendments Sent to Congress...

- provide more severe sentences for offenses related to smuggling, transporting, or harboring illegal aliens;
- expand (for offenses related to unlawfully entering or remaining in the U.S.) the definition of “aggravated felony” to include rape and sexual abuse of a minor, as well as any crime of violence for which the term of imprisonment is at least one year;
- add enhancements (for bodily injury, the involvement of a dangerous weapon, the length of confinement, and the commission of another felony offense during the instant offense) to guidelines covering peonage, involuntary servitude, and slave trade offenses;
- create guidelines to assist the courts in determining an appropriate amount of community restitution in certain drug offenses where there is no identifiable victim;
- resolve circuit conflicts;
- create a new guideline to cover federal domestic violence offenses, including the recently created offense of interstate stalking;
- provide at least a six-month term of imprisonment under the guidelines for certain computer-related offenses.
- increase penalties for international counterfeiting; and
- provide that, in retroactively applying an amendment, a court may not reduce the term below the time already served by that defendant.■

# Commission Surveys 1,700 In Study of

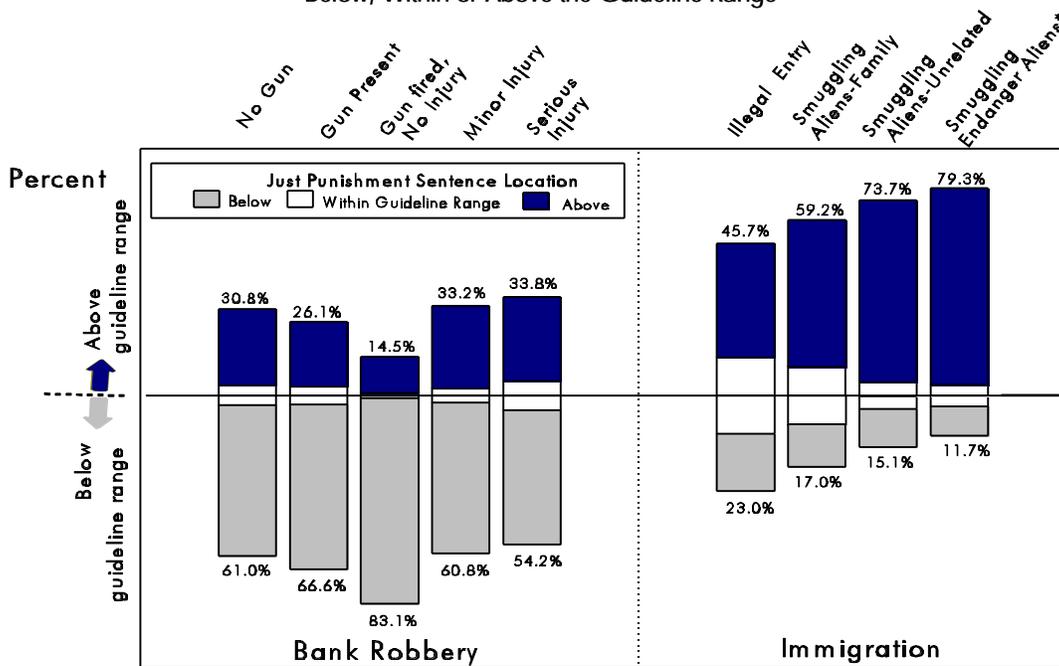
More than 1,700 citizens throughout the United States shared their thoughts on punishment and crime seriousness issues as part of the U.S. Sentencing Commission’s recently completed study on just punishment.

The Commission report is believed to be the first-ever survey of public attitudes towards federal sentences. The report, entitled *Just Punishment: Public Perceptions and the Federal Sentencing Guidelines*, was authored by Linda Drazga Maxfield, Willie Martin, and Christine Kitchens. It compares guideline sentencing ranges with the public’s sentencing opinions for four types of federal crimes: drug trafficking, bank robbery, immigration offenses, and fraud.

The Commission report reached the following conclusions:

- For drug trafficking offenses, the public was more likely to record a punishment preference above the guideline range for drug trafficking scenarios with smaller drug quantity amounts, and below the guideline range for drug trafficking scenarios with greater drug quantity amounts. Compared to cases that involved powder cocaine, heroin, or marijuana — a crack cocaine case was the most likely to receive a survey sentence below the guideline range.
- For bank robbery offenses, the public was more likely to prefer punishment below the guideline range. In these cases, injury to the victim often served to increase sentence length. (See Figure 1 below.)
- For immigration offenses, the public’s sentencing opinions were generally consistent with current guideline sentence lengths for illegal entry or smuggling of a defendant’s family members.

**Figure 1**  
Bank Robbery and Immigration Just Punishment Vignettes:  
Percent of Survey Respondents Preferring Punishment  
Below, Within or Above the Guideline Range



SOURCE: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.  
\*Endangerment may be grounds for an upward departure from the guideline range.

# Attitudes Towards Federal Sentences

However, the public recorded punishment preferences longer than the guideline range for defendants who smuggle illegal aliens for profit.

- For fraud offenses, the public’s opinions regarding sentencing lengths varied by the type of fraud. For two fraud scenarios with guideline ranges less than two years (submitting false Medicare claims and selling fraudulent and worthless stocks), the public was more likely to prefer punishments higher than the guideline range. For a third fraud case with a guideline range spanning five years (causing the failure of a savings and loan), the public generally recorded punishments lower than the guideline range.

The Commission survey used a series of crime scenarios that incorporated different combinations of offense and offender characteristics (*e.g.*, a bank robbery with a gun, injury, and \$10,000 taken – *See* Table 1). These scenarios were presented at personal interviews, and respondents were asked to record what they considered to be a “just” and appropriate punishment in each case. In addition, respondents completed a short questionnaire about their experiences, attitudes, and opinions about the criminal justice system.

In addition to the Commission’s in-house guideline comparison study, the Commission contracted with Dr. Peter H. Rossi of the University of Massachusetts, Amherst, and Dr. Richard A. Berk of the University of California at Los Angeles to prepare a separate general report summarizing the survey data. The Berk and Rossi report concluded that: (1) most of the variation in sentences given by survey respondents was a function of the crimes committed, not the background of the defendant; (2) longer previous criminal records led to longer sentences; (3) sentence length increased with

**Table 1**  
Bank Robbery Just Punishment Vignettes:  
Variations in Crime Characteristics

Characteristic	Variation
Weapon Possession	No weapon Gun Bomb
Weapon use	Not fired Fired
Threat	Did not threaten harm Threatened harm
Victim injury	No injury Minor wound Serious wound
Loss	\$900 \$4,000 \$19,000 \$50,000

Source: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.

increased economic gain from the crime, but not in equal proportion to the gain (*e.g.*, a robber netting \$200,000 did not receive twice the sentence of a robber netting \$100,000); and (4) the impact of crime and defendant characteristics was generally larger the more serious the type of crime.

Both reports are available on the Commission’s website at <http://www.ussc.gov>. ■

## Sentencing Commission Meeting Calendar

Washington, D.C. Commission meetings are held at the Thurgood Marshall Federal Judiciary Building. Internet subscribers may access meeting agendas on the Commission’s web page at <http://www.ussc.gov>. Meeting dates and times are subject to change.

Date	Activity	Location
June 4	Public Meeting/Hearing	Washington, D.C.
July 11	Public Meeting	Washington, D.C.
September 16	Public Meeting	Washington, D.C.
October 15	Public Meeting	Washington, D.C.
November 13	Public Meeting	Washington, D.C.
December 9	Public Meeting	Washington, D.C.

# Corner

## Commission Targets Defense Attorney Training

Training

Providing guideline application training to defense attorneys is a Commission priority for 1997. "The Commission strives to respond to the needs of all those who use the guidelines," said Chairman Richard P. Conaboy. "The Commission has implemented a plan to systematically increase the training of defense attorneys, and in the process, provide federal judges with more information and access to the Commission through briefings with commissioners and staff. Our goal is to offer as much training and guidelines education to as many defense attorneys as possible through the most efficient and effective means. The Commission is presently identifying the districts with the greatest needs and is designing programs tailored to meet those needs."

In addition to the current initiative, the Commission will continue to conduct its ongoing orientation programs for newly appointed district judges, probation officers, and federal prosecutors. The Commission will also continue to collaborate with the Federal Judicial Center, the Federal Sentencing Guidelines Group, the Federal Bar Association, and the U.S. Department of Justice to meet the training needs of professionals involved in federal sentencing.

Commission training events are not limited to "live" programs and include use of the Internet, videotaped presentations, and in the near future, will include presentations via satellite broadcasting.

For questions concerning the Commission's training agenda or to request training, please contact the Office of Training and Technical Assistance at (202) 273-4540.

Commission's National Seminar Addresses Drugs, White Collar Crime, Departures

In other training news, the Sentencing Commission and the Federal Bar Association co-hosted the *Sixth Annual National Seminar on the Federal Sentencing Guidelines*, held in San Francisco April 30 – May 2. More than 200 participants (mostly defense attorneys and federal probation officers) attended the three-day program.

National sentencing experts and prominent authorities on the federal sentencing guidelines participated in the seminar and shared information and exchanged ideas about such topics as the drug guidelines, money laundering, calculation of loss, corporate guidelines, substantial assistance, and guidelines departures. ■

### Federal Sentencing Seminar in South Texas Slated for June 19-20

In response to a request by Chief Judge George P. Kazen, Southern District of Texas and chairman of the Criminal Law Committee of the Judicial Conference, for more federal guideline education and training of the defense bar, the Sentencing Commission will present a guidelines training course on June 19-20, 1997, at the Sheraton Fiesta in South Padre Island, Texas. The event is being presented in cooperation with the State Bar of Texas Professional Development and the South Texas Chapter of the Federal Bar Association.

The course includes an optional half-day introduction to the federal sentencing guidelines on June 19 that may be attended separately, or as preparation for the advanced, second-day session. Among the featured topics are: Introduction to Guideline Sentencing Procedures; Relevant Conduct; Acceptance; Safety Valve; Substantial Assistance Departures; Departures after *Koon*; and Offense Conduct – Drugs, Guns, Immigration, and Economic Crimes.

Course faculty members include federal judges, assistant U.S. attorneys and public defenders, and Commission staff. As the featured luncheon speaker on June 20, Commission Chairman Judge Richard P. Conaboy will address Commission priorities, projects, and future directions.

For registration and course material ordering information, call 1-800-204-2222 x1574. ■

## Commission Presents Research at ASC Meeting

Commission staff presented a variety of research papers and works in progress at the American Society of Criminology's 1996 annual meeting, held in Chicago last November.

The presentations displayed the wide array of Commission datasets, the scope of variables collected, and the depth of information available for research and policy analysis of sentencing and related criminal justice issues. The research questions addressed in the papers ranged from a descriptive profiling of specific offense and offender groups to a policy study of prosecutorial discretion and comparative analyses of discretion in preguideline and guideline cases.

In addition to individual papers presented by Commission researchers on thematic panels, the Chicago meeting also offered a separate panel to highlight the Commission's empirical data, sentencing studies, and policy applications.

Paul Hofer, Barry Ruback, and Kevin Blackwell's study, "Disparity and Sentence Dispersion under the Guidelines," offered a comparative analysis of sentencing discretion in preguideline and guideline convictions for a select group of districts and judges. Lou Reedt and Christine Kitchens's paper, "Drug Trafficking:

Mandatory Minimum Sentences and the Safety Valve," analyzed the impact of recent statutory and guideline provisions on sentences for first-time, non-violent drug offenders in non-leadership roles.

Susan Katzenelson's "Substantial Assistance to Authorities: A Tool for Law Enforcement, Disparity or Justice?" was part of a comprehensive staff report on substantial assistance practices nationwide. The study employed multiple sources of information including the Commission's comprehensive monitoring database, on-site interviews with judges and criminal justice professionals at eight randomly selected districts, an analysis of conspiracy networks, telephone interviews with assistant U.S. attorneys; and a survey of written policies for all 94 U.S. Attorney offices.

Linda Maxfield and Willie Martin's study, "The Public's View of Just Punishment: Comparisons with the Federal Sentencing Guidelines," examined the relationship between the penalties recommended by the public and those prescribed by the guidelines for a select set of crime "scenarios." The final ASC presentation, Kevin Blackwell's "The Comparative Context: State and Federal Guidelines," reviewed guidelines approaches to measuring the severity of the instant offense and the offender's prior criminality. ■

## Judicial Fellow Honored

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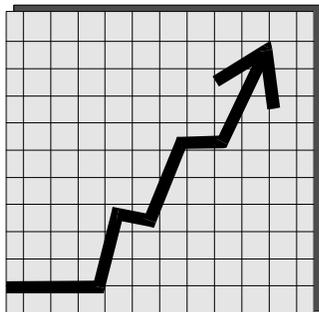
Dr. Barry Ruback is the recipient of the Justice Tom C. Clark Award for the 1996 Judicial Fellows Program. The award, sponsored by the law clerks of the late Justice Clark, is given annually to the outstanding member of the Fellows Program. Modeled after the White House Fellows Program, this program provides fellows the opportunity to study first-hand the federal judiciary and contribute to its work. This marks the first time a Fellow from the Sentencing Commission has received this honor. The presentation of the Clark Award to Dr. Ruback was made by Chief Justice William H. Rehnquist and the daughter of Justice Clark, Mimi Clark Gronlund, at a luncheon hosted at the U.S. Supreme Court.

Dr. Ruback is a Professor of Sociology and Psychology at the Pennsylvania State University. ■

Tom C. Clark award ceremony in the Supreme Court Building on June 3, 1996 (from left: Chief Justice William H. Rehnquist, Mimi Gronlund, daughter of Justice Clark, and Barry Ruback, 1996 recipient).

## AO/USSC Update Request for Sentencing Documents

Memorandum Seeks Hike in Submission Rate for Post-Judgment Changes



In their March 12, 1997, memorandum to chief judges, chief probation officers, and district court executives and clerks, Chairman Richard P. Conaboy and Administrative Office Director Leonidas Ralph Mecham are calling upon chief judges to step up their district's efforts to submit documents that reflect changes to a defendant's original sentence.

While acknowledging court personnel's excellent overall submission rate of original sentencing documentation, the memorandum aims to boost the submission rate of post-judgment changes for both individual and organizational defendants.

According to the AO and the Commission, the data submitted by the courts are the basis for much of the Commission's work, and most districts have done an excellent job of complying with the submission requirement. However, there are certain documents that reflect changes to the original sentence that do not always make their way to the Commission's database. The result is that the institutional time and resources spent on Rule 35 motions, retroactive amendment proceedings,

revocation proceedings, and post-conviction motions are 'invisible' and may not be accounted for in the data. The memo asked each chief judge to help develop a system to ensure that all vital sentencing data are submitted.

The March 12 memorandum supersedes a memorandum from the Administrative Office and the Sentencing Commission dated July 7, 1993. The following documents should be sent to the Sentencing Commission's Monitoring Unit: indictments, presentence reports, plea agreements, judgments in a criminal case, statements of reasons for imposing a sentence, amended judgments or orders that change a sentence, and revocation proceedings. ■

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