

Disparity in crack, powder cocaine sentences

By Eric E. Sterling

The debate about crack and powder cocaine sentencing misses the big picture.

In 1986, Congress gave the U.S. Justice Department a powerful tool to attack high-level drug traffickers—mandatory minimum prison sentences. Since then, 95 percent of the crack dealers sent to federal prison have not been high-level dealers. More than 60 percent have been bodyguards, couriers or street-level operators—the low-level offenders.

What outrages many observers is that almost 90 percent of these low-level federal prosecutions involve African-American men—even though a substantially larger percentage of whites used crack cocaine than blacks in 1994.

In fact, the Los Angeles Times reported in 1995 that after eight years of prosecutions no white person had ever been convicted of a crack cocaine offense in the federal courts of Chicago, Boston, Dallas, Denver, Los Angeles or Miami.

Why are so many low-level crack dealers ending up in federal court? In its pre-election haste, Congress set the quantities defining two classes of high-level drug traffickers at absurdly low levels—one at 5 grams and the other at 50 grams of crack cocaine. The quantities for powder cocaine were slightly more reasonable—500 grams and 5 kilograms.

Some African-American lawmakers have seen Congress' mistaken 100-to-1 cocaine-to-crack ratio as the reason why so many black males were going to federal prison. They suggest creating quantitative parity between the two types of cocaine. Scientists have shown that cocaine is equally addictive whether it is powder or crack.

In 1995, the U.S. Sentencing Commission recommended moving to a 1-to-1 ratio between the two forms of cocaine (at the powder cocaine levels of 500 and 5,000 grams) for general sentencing purposes. Last week, the president adopted the recommendations of Atty. Gen. Janet Reno and drug czar Barry McCaffrey to change the mandatory minimum sentencing statute to 25 grams and 250 grams. But the statute is not the key to the problem. The key is that federal prosecutorial power is



Illustration by Paul Lockner

discretionary. The Justice Department picks which cases go to federal court. They should be the most important ones but they aren't. The U.S. Sentencing Commission's 1995 report revealed that of the 3,100 federal crack defendants in 1994 only 5 percent were high-level offenders. Federal power is being wasted on small fry.

If the Feds were focusing on high-level dealers, the racial disparity in cocaine sentencing would disappear.

Federal anti-cocaine efforts should be focused on those who ship cocaine by the ton, in 1 million-gram loads, not the 5-gram, 50-gram street criminals.

If there is any force on the globe that can successfully challenge the cocaine dealers' billions of dollars in revenues and private armies, it's U.S. law enforcement—but not if the officials are running down hoodlums at the corner crack house.

These low-level, non-white drug defendants are the least important drug trafficking offenders even though they are getting longer sentences than high-level drug traffickers—62 percent longer than the

average federal heroin sentence.

Isn't this evidence of a "pattern or practice" of racial discrimination? That is why the Congressional Black Caucus is outraged. Low-level Drug Enforcement Administration agents and prosecutors are making these decisions without effective supervision by the U.S. attorney general.

Arguing about the sentences for 5-gram, 25-gram, 50-gram or 100-gram cases when cocaine floods in million-gram and multimillion-gram shipments, is a debate about the size of the minnows. We must stop letting the Justice Department, the attorney general and the "drug czar" off the hook as the big fish get away.

It's time for Americans to stop cheerleading and yell at the coach.

Eric E. Sterling helped write the crack cocaine mandatory sentences as counsel to the House Judiciary Committee in 1986.