

**Written Testimony of**

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**Submitted to the Crime and Drugs Subcommittee  
Committee on the Judiciary  
United States Senate**

**Hearing on “Federal Cocaine Sentencing Laws: Reforming the 100-to-1 Crack/Powder  
Disparity”**

**February 12<sup>th</sup>, 2008**

I want to thank Chairman Biden for providing the Drug Policy Alliance with the opportunity to submit written testimony and for introducing the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007 (S.1711), which would eliminate the crack/powder cocaine sentencing disparity. I want to thank Senator Sessions and Senator Hatch for introducing bills to reduce the disparity and Senator Feingold, Senator Feinstein and Senator Specter for co-sponsoring reform bills.

The Drug Policy Alliance (DPA) is the leading organization promoting alternatives to the failed war on drugs. Headquartered in New York City, DPA also has offices in Berkeley, Los Angeles, Sacramento, San Francisco, Santa Fe, Trenton, and Washington, DC. Our mission is to institute a new bottom line for U.S. drug policy, one that focuses on reducing the problems associated with both drugs and the war on drugs. In 2005 the Drug Policy Alliance spearheaded a successful campaign in Connecticut to eliminate that state’s crack/powder sentencing disparity, and we’re currently working in Ohio to do the same there.

DPA strongly supports the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act, the only bill in the Senate that would completely eliminate the crack/powder sentencing disparity. This disparity has devastated black communities, wasted taxpayer dollars, and undermined public safety by encouraging federal law enforcement agencies to target low-level drug law offenders instead of major crime syndicates. While we commend Senators Sessions and Hatch for their leadership on this issue, we are disappointed that neither of their bills fully eliminates the disparity.

Reducing the 100-to-1 crack/powder disparity to 20-to-1, as the Sessions (S.1383) and Hatch (S.1685) bills do, is like amending the Constitution’s three-fifths clause to make African-Americans fourth-fifths citizens, or integrating 60% of public establishments instead of all of them. Policymakers should seek to eliminate discrimination not just reduce it.

Additionally, unlike the Biden or Hatch bill, the Sessions bill lowers the amount of powder cocaine it takes to trigger a federal mandatory minimum sentence. This would encourage the U.S. Justice Department to target low-level powder cocaine offenders instead of high-level offenders. To the bill’s credit it would significantly reduce racial disparities for African-

Americans, but by lowering powder thresholds it would most likely increase racial disparities for Hispanics – an unacceptable trade-off.

When the crack/powder sentencing disparity was enacted into law in the 1980s, crack cocaine was believed to be more addictive and more dangerous than powder cocaine. Copious amounts of research, including a recent study by the U.S. Sentencing Commission, have shown that the myths first associated with crack cocaine, and the basis for the harsher sentencing scheme, were erroneous or exaggerated. For over two decades, powder cocaine and crack cocaine offenders have been sentenced differently at the federal level, even though scientific evidence, including a major study published in the *Journal of the American Medical Association*, has proven that crack and powder cocaine have similar physiological and psychoactive effects on the human body.

Perhaps no other single federal policy is more responsible for gross racial disparities in the federal criminal justice system than the crack/powder sentencing disparity. Even though two-thirds of crack cocaine users are white, more than 80% of those convicted in federal court for crack cocaine offenses are African American. Moreover, two-thirds of those convicted have only a low-level involvement in the drug trade. Less than 2% of federal crack defendants are high-level suppliers of cocaine. Taxpayer money should be spent wisely, and concentrating federal law enforcement and criminal justice resources on arresting and incarcerating low-level, largely nonviolent offenders has done nothing to reduce the problems associated with substance abuse.

Furthermore, the current sentencing policy, and the targeting of low-level offenders, has proven devastating for families and communities that suffer high incarceration rates. According to a 2006 report by the American Civil Liberties Union, 1 in 14 black children has a parent in prison, and approximately 1.4 million black men – 13% of all adult African American males - are disfranchised because of felony drug convictions. Single-parent homes, unemployment, disillusionment with the justice system and stigmas from felony convictions and incarceration can contribute to the degradation of already disadvantaged communities and increase crime rates. The U.S. Sentencing Commission has noted that even “perceived improper racial disparity fosters disrespect for and lack of confidence in the criminal justice system.”

Most U.S. states do not differentiate between crack and powder cocaine when it comes to sentencing and neither should the federal government. The Drug Policy Alliance urges members of the Crime and Drugs Subcommittee to stand up for justice and public safety by quickly passing the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act. We also urge you to re-think federal drug policy more broadly.

More than half of all people incarcerated in federal prison are there for drug law violations, and through various law enforcement grant programs the federal government encourages the mass incarceration of nonviolent drug offenders at the local and state level as well. Police make more than 1.8 million drug arrests in the U.S. every year (nearly 700,000 for nothing more than simple marijuana possession). Those arrested are separated from their loved ones, branded criminals, denied jobs, and in many cases prohibited from accessing public assistance for life. The United States incarcerates more of its citizens for drug violations than all of Western Europe incarcerates for all crimes combined (and Western Europe has 100 million more people).

Yet despite spending hundreds of billions of dollars and arresting millions of Americans, illegal drugs remain cheap, potent and widely available in every community, and the harms associated with them continue to mount. Meanwhile, the war on drugs is creating problems of its own - broken families, racial disparities, and the erosion of civil liberties. The crack/powder disparity may be one of the worst excesses of U.S. drug policy but it is still just the tip of the iceberg.

In a recent op-ed in New Orleans' Times-Picayune, former ACLU Executive Director and current Drug Policy Alliance President Ira Glasser makes the case that the war on drugs is one of the major civil rights issues of our day.

[T]he racially discriminatory origin of most [drug] laws is reinforced by the disparate impact they have on racially targeted drug felons. In the states of the Deep South, 30 percent of black men are barred from voting because of felony convictions. But all of them are nonetheless counted as citizens for the purpose of determining congressional representation and electoral college votes. The last time something like this happened was during slavery, when three-fifths of slaves were counted in determining congressional representation.

Just as Jim Crow laws were a successor system to slavery in the attempt to keep blacks subjugated, so drug prohibition has become a successor system to Jim Crow laws in targeting black citizens, removing them from civil society and then barring them from the right to vote while using their bodies to enhance white political power in Congress and the electoral college.

Eliminating the crack/powder cocaine sentencing disparity is a good start in tearing down this new Jim Crow, but more needs to be done.

As I told members of the House Subcommittee on Crime, Terrorism and Homeland Security during Chairman Scott's Crime Policy Summit last year, Congress should restore the right to vote to Americans who have served their time; require law enforcement agencies receiving federal funding to document their arrests, seizures, and searches by race and ethnicity; repeal policies that bar former drug law offenders from receiving student loans, public housing and TANF; and raise the threshold amount of drugs it takes to trigger federal mandatory minimum sentences to encourage the Justice Department to prosecute high-level traffickers.

If you would like to be bold, pass legislation requiring federal agencies to set short- and long-term goals for reducing the problems associated with both drugs and punitive drug policies. The Office of National Drug Control Policy (ONDCP), for instance, is already statutorily required to set annual goals for reducing drug use and drug availability. Why not also require the agency to set annual goals for reducing overdose deaths, the spread of HIV/AIDS from injection drug use, the number of Americans who cannot vote because of a felony conviction, and other criteria. If ONDCP, the Justice Department and other agencies were graded and funded in part on their ability to reduce racial disparities in the criminal justice system, then those agencies would probably be supporting crack/powder reform instead of opposing it or standing on the sidelines.

Reforming federal cocaine sentencing laws should unquestionably be the Crime and Drugs Subcommittee's top priority this year. The crack/powder disparity is causing great harm to families, taxpayers, and the criminal justice system. Eliminating it would be one of the biggest civil rights accomplishments of this decade. The disparity, however, is just one part of a larger set of failed drug policies that need to be reformed.

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Attachment: Ira Glasser Op-ed.

## **Times-Picayune (New Orleans)**

December 6, 2007

### **How the drug war targets black Americans**

BYLINE: Ira Glasser

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This week, more than 1,000 people will gather for the 2007 International Drug Policy Reform Conference in New Orleans. There could not be a better venue for us to discuss how the drug war has become a war against black Americans.

Louisiana's rate of incarceration for nonviolent drug-law violations is among the highest in the nation. But all over America, including states like New York, drug-war arrests, convictions and imprisonment have increased dramatically, and are disproportionately targeted against African-Americans, making this a major, though largely unrecognized, civil rights issue.

In the late 1960s there were fewer than 200,000 people in state and federal prisons for all offenses. By 2004, there were more than 1.4 million people incarcerated in state and federal prisons, and more than 700,000 in local jails -- about 2.2 million in all, an explosion in prison population heavily due to nonviolent drug offenses. Since 1980, the proportion of all state prisoners who are there because of a drug offense increased from 6 percent to 21 percent. In federal prisons, the proportion increased from 25 percent to 57 percent. Drug arrests have tripled to 1.6 million annually, more than 40 percent for marijuana -- and 88 percent of those are for possession, not even sale or manufacture.

At the same time, the racial disparity of arrests, convictions and imprisonment have become pronounced. According to federal statistics gathered by The Sentencing Project, only 13 percent of monthly users of all illegal drugs are black, roughly corresponding to their proportion of the

population. In other words, black people do not use illegal drugs disproportionately to their numbers in the population. But nationwide they are arrested, convicted and imprisoned disproportionately. Thirty-seven percent of drug-offense arrests are black; 53 percent of convictions are of blacks; and 67 percent -- two-thirds of all people imprisoned for drug offenses -- are black.

This is not because more black than white Americans use drugs: About eighty percent of drug users are white. There is no evidentiary justification for racially targeted stops and searches or for racially targeted arrests and convictions. The law is being enforced as if skin color were a credible proxy for evidence amounting to probable cause. It is this kind of targeting that has resulted in the explosion of racially disparate incarceration in our prisons.

These racially targeted patterns affect more than imprisonment: They have effectively eroded much of the voting rights victories won by the civil rights movement during the 1960s. Until recently, many states have barred former felons from voting, some permanently, some in a way that allowed -- theoretically but often not as a practical matter -- for the restoration of voting rights.

Nearly 5 million people are now barred from voting because of felony disenfranchisement laws. The United States is the only industrial democracy that does this. And the origin of most of these law is the post-Reconstruction period after slavery, when many states sought to undermine the 15th Amendment, which had newly granted former slaves the right to vote.

Today, the racially discriminatory origin of most of these laws is reinforced by the disparate impact they have on racially targeted drug felons. In the states of the Deep South, 30 percent of black men are barred from voting because of felony convictions. But all of them are nonetheless counted as citizens for the purpose of determining congressional representation and electoral college votes. The last time something like this happened was during slavery, when three-fifths of slaves were counted in determining congressional representation.

Just as Jim Crow laws were a successor system to slavery in the attempt to keep blacks subjugated, so drug prohibition has become a successor system to Jim Crow laws in targeting black citizens, removing them from civil society and then barring them from the right to vote while using their bodies to enhance white political power in Congress and the electoral college.

That people of good will have been at best timid in opposing the drug war and at worst accomplices to its continued escalation is, in light of the racial politics of drug prohibition, a special outrage. People of good will should instead stand with us in this fight against the racist war on drugs, and not only in New Orleans.

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Ira Glasser directed the ACLU for nearly 25 years. He is president of the board of the Drug Policy Alliance.