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Judge Says Crack Sentencing Goes Too Far

By MATT APUZZO 11.14.06, 1:54 PM ET

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A federal judge who served as a top drug policy adviser to the first President Bush and advocated harsher penalties for crack cocaine crimes said Tuesday the policy had gone too far and was undermining faith in the judicial system.

U.S. District Judge Reggie B. Walton told the U.S. Sentencing Commission that federal laws requiring dramatically longer sentences for crack cocaine than for cocaine powder were "unconscionable" and contributed to the perception within minority communities that courts are unfair.

"I never thought that the disparity should be as severe as it has become," said Walton, who sits on the bench in Washington, where he previously served as a Superior Court judge, a federal prosecutor and a deputy drug czar.

The current law includes what critics have called the 100-to-1 disparity: Trafficking in 5 grams of cocaine carries a mandatory five-year prison sentence, but it takes 500 grams of cocaine powder to warrant the same sentence.

Advocates for changing the law point to crime statistics that show crack is more of an inner-city drug while cocaine powder is used more often in the suburbs.

The Sentencing Commission, which has thrice recommended that Congress narrow the sentencing gap, is again reviewing the disparity. Previous recommendations, which were not adopted, have included raising the penalties for powder cocaine and lowering them for crack.

The Bush administration, like the Clinton administration, indicated Tuesday that it welcomed a discussion about the sentencing disparity but adamantly opposed lowering the penalties for crack. The Justice Department says crack is more addictive and easier to sell in small doses, leading to increased violence and a greater health impact.

The Justice Department also urged the Sentencing Commission only to make recommendations to Congress and not to take it upon itself to narrow the gap by rewriting sentencing guidelines.

Walton said there may still be a need for tougher sentences for crack because it is more addictive and more closely associated with violence. But he said the disparity is too great.

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As an example, he offered two hypothetical cases involving a white college student arrested with a kilogram of powder cocaine and a black high school dropout caught with the same amount of crack. The white man would face a likely sentence of 3 to 4 years in prison, Walton said in exhibits filed with the commission. The black man would face a mandatory 10-year sentence and the possibility of a life sentence.

Walton said the law wasn't intended to target poor people or minorities. But with a disproportionately high number of minorities in prison and potential jurors openly balking at convicting drug offenders because of concerns over the fairness of the system, Walton said the problem must be addressed.

"I hope the powers that be will have the will to do the right thing and rectify the problem," Walton said.

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