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Flawed sentencing the main reason for race disparity

In 1993, crack smokers got 3 years; coke snorters got 3 months

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WHEN IT COMES TO COCAINE, it isn't just a suspicion that the war on drugs is hammering blacks harder than whites. According to the U.S. Justice Department, it's a fact.

The "main reason" cocaine sentences for blacks are longer than for whites, the Bureau of Justice Statistics reported in 1993, is that 83 percent of the people being sent to prison for "crack" trafficking are black "and the average sentence imposed for crack trafficking was twice as long as for trafficking in powdered cocaine."

Even though crack and powder cocaine are the same drug, you have to sell more than six pounds of powder before you face the same jail time as someone who sells one ounce of crack -- a 100-to-1 ratio.

That logic has eluded [Dr. Robert Byck](#), a Yale University drug expert, from the moment he discovered the 100-to-1 ratio may have been his inadvertent doing.

Election-year hysteria

In 1986, at the height of an election-year hysteria over crack, Byck was summoned before a U.S. Senate committee to tell what he knew about cocaine smoking. Byck, a renowned scientist who had edited and published Sigmund Freud's cocaine papers, had been studying crack smoking in South America for nearly 10 years, with growing alarm.

Byck began his testimony by reminding the senators that he had come to Congress seven years earlier to warn that a coke-smoking epidemic was brewing and had begged the government to do something then, to no avail.

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But that was before crack houses and drug gangs had appeared on the covers of national news magazines and on network television. This time, panicky lawmakers hung on his every word.

Sen. Lawton Chiles, a Florida Democrat (and now that state's governor), was pushing for tougher crack laws, and he quizzed Byck about one line in his written testimony that said "some experts" believed crack was 50 times more addictive than powder cocaine. Byck acknowledged some people believed that. And that was all it took.

Incomprehensible math

Despite the speculative nature of the figure, Byck said, the addictive factor of 50 was "doubled by people who wanted to get tough on cocaine" and then, for reasons he still finds incomprehensible, turned into a measurement of weight.

The resultant 100-to-1 (powder-vs.-crack) weight ratio, Byck said, was "a fabrication by whoever wrote the law, but not reality. ... You can't make a number. You're converting one thing into another. The conversion is all silly. But, you see, they don't care. They want a number."

Recently, the U.S. Sentencing Commission -- a panel of experts created by Congress to be its unbiased adviser in these matters -- tried and failed to find a better reason to explain why powder dealers must sell 100 times more cocaine before they get the same mandatory sentence as crack dealers.

The "absence of comprehensive data substantiating this legislative policy is troublesome," it reported last year.

For black America, where crack smoking first took hold, the impact has been more than just troublesome.

In 1993, cocaine smokers got an average sentence of nearly three years. People who snorted cocaine powder received a little over three months. Nearly all of the long sentences went to blacks, the commission found.

Reforms sidetracked

Justice Department researchers estimated that if crack and powder sentences were made equal, "the black-white difference ... would not only evaporate but would slightly reverse."

Based on such findings, the commission recommended in May 1995 that the cocaine sentencing laws be equalized, calling the 100-to-1 ratio "a primary cause of the growing disparity between sentences for black and white federal defendants."

Both White House drug czar, Lee Brown, and U.S. Attorney General Janet Reno supported the change; Reno told reporters the crack laws were clearly unfair.

Normally, that would have been the end of it. In 12 years, Congress had allowed every one of the commission's recommendations to become law automatically.

Not this one.

Apparently fearful of being seen as "soft" on drugs, Congress voted overwhelmingly last year to keep the crack laws the same. On Oct. 30, President Clinton repudiated both his

attorney general and his top drug adviser by signing the bill rejecting the commission's recommendations.

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