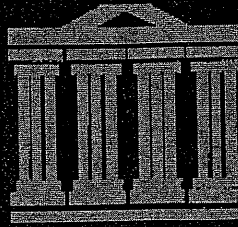


SUBJECT to DEBATE



A NEWSLETTER OF THE POLICE EXECUTIVE RESEARCH FORUM

FROM THE PRESIDENT

Two More Issues for President Obama, With Implications for Justice and Race

PRESIDENT BARACK OBAMA IS GOING TO HAVE A lot on his plate when he takes the oath of office on January 20—the economy, Iraq, Afghanistan, terrorism, and health care reform, just for starters.

I'd like to talk about two more issues that I hope will receive serious consideration in an Obama Administration: disenfranchisement of felons, and sentencing disparities for crack and powder cocaine.

Of course I realize that these will not be at the top of the President's to-do list. But I believe they deserve serious attention, because they are important. On both issues, I believe the status quo tends to undermine the criminal justice system and deepen racial divisions in the United States.

Voting is a right that is provided by the U.S. Constitution, but at the moment, an estimated 5.3 million Americans have lost that right, either permanently or temporarily, because of a felony conviction. The laws vary by state. Nearly all states—all except Maine and Vermont—prohibit voting by offenders who are currently incarcerated for a felony offense. Thirty-five states bar felons from voting while they are on parole. Two states deny the right to vote to all offenders, even those who have completed their sentences.

Some of my friends and colleagues may have different views, but my opinion is that, while there is no way that people should be voting while they are in prison, once you get out, you should be restored to full citizenship as much as possible.

It's not that I'm some kind of bleeding-heart liberal; I just sincerely believe that this is the right thing to do. I don't think we should give criminals an excuse for not reforming themselves because they are bitter about having had one of their most important rights—the right to vote—taken away. I think it is better to remove any obstacles that stand in the way of offenders resuming a full, healthy, productive life. Some say offenders on parole should not be allowed to vote, because the term of parole is part of their sentence. But my sense is, once you've cleared the four walls of the jail, your right to vote should be restored.

Aside from the question of promoting rehabilitation by encouraging released criminal offenders to think of themselves as full citizens with all the rights of citizens, there is a racial aspect to the disenfranchisement of felons. Thirteen percent of African-American men—1.4 million in total—are disenfranchised. That rate is seven times the national average.

The second issue—cocaine sentencing—is similar. I believe that this issue undermines trust in the criminal justice system, and it has strong racial effects that are unhealthy to our society. For anyone who is not familiar with this issue, the problem is that federal sentencing laws governing convictions for crack cocaine are much, much stiffer than sentences for powder cocaine. The federal Anti-Drug Abuse Act of 1986 created a mandatory five-year prison term for offenses involving 5 grams of crack. An offender must have 100 times as much powder cocaine to trigger the same five-year sentence.

The U.S. Sentencing Commission, a panel that Congress created in 1984 to write sentencing guidelines for federal judges, with

the specific goal of making sentences fairer and more uniform, for many years has urged Congress to amend the cocaine laws to reduce that 100-to-1 disparity. And last year, the Sentencing Commission took some limited action to decrease the sentencing guidelines for crack cocaine offenses, and made those changes retroactive.

So prisoners convicted of crack crimes across the nation have been getting some relief. But the Sentencing Commission noted that it had only limited authority to take a partial step on this issue, and said that only Congress can address the mandatory penalties that still apply.

Bear in mind that this Sentencing Commission, like me, is not a bunch of bleeding-heart liberals. The members are mostly federal judges, law school professors, and partners at leading law firms. It was President Ronald Reagan who signed the law creating the Commission. But this panel has consistently found that the disparity in sentencing for crack and powder cocaine is not justified.

The disparity came about in the 1980s, when the nation was frightened by the crack cocaine epidemic, and was told that crack is a lot more deadly than powder cocaine and that it caused users to become violent. But the Sentencing Commission, as well as a lot of other experts, have discounted those claims. I believe it's harmful to have this severe disparate impact in sentencing based on an artificial distinction about the particular form of the same drug. It's not the right thing to be doing. It creates mistrust in the justice system.

And again, this issue has a strong racial impact. While fewer than half of crack cocaine users are black, 82 percent of crack cocaine defendants in 2006 were African-American, according to the Sentencing Commission. Only 27 percent of powder cocaine defendants were African-American. The result is that African-Americans end up serving longer prison terms in federal prison for drug offenses—about the same as whites serve for violent crimes. That is not fair. And while the sentencing laws may have been written back in the 1980s based on a misunderstanding about crack being more dangerous, in my view, the longer these disparities are allowed to remain in effect after that misunderstanding has been cleared up, the more it creates a perception of intentional racism in the justice system.

If a rich white guy gets drunk on whiskey and causes a motor vehicle accident, chances are he'll be charged with the same crime as a poor white guy or an African-American guy who does the same thing. It's time to bring that same concept to our sentencing for drug crimes.

And it's time to scale back the disenfranchisement of criminals who have been released from prison, and whom we are trying to encourage to put their lives on the straight and narrow track.



Chief John F. Timoney, PERF President