

animate that truth with the same resilience the same dignity, the same decency, and the same pragmatic approach the American people have applied to every task and every challenge.

It's long past time for the President to address the American people in prime time, to level with us about the monumental task ahead, to summon our support.

I and most of my colleagues will stand with him.

So yes, when it comes to foreign policy, I have a fundamental difference of opinion with some in this Administration and I'll be talking more about it in the next few weeks. But that's okay because I'm reminded of the words of Senator Arthur Vandenberg who said: "Bipartisan foreign policy does not involve the remotest surrender of free debate in determining our position. On the contrary, frank cooperation and free debate are indispensable to ultimate unity. It simply seeks national security ahead of partisan advantage. Every foreign policy must be totally debated and the loyal opposition is under special obligation to see that this occurs."

I think it is my obligation to articulate an opposing view.

MEMORANDUM

To: Senator Carper
From: Margaret Simmons
Re: Mandatory Minimum Sentencing
Date: April 28, 2003

BACKGROUND

The Anti-Drug Abuse Act of 1986 provided mandatory minimum sentences of imprisonment for possession with intent to distribute powder and crack cocaine. In this statute Congress established a quantitative 100-to-1 sentence ratio between the two (i.e., it takes 100 times as much powder cocaine as crack cocaine to trigger the same sentence). Under this distinction, a person convicted of possession with intent to distribute a pound of powder cocaine (453.6 grams) would serve considerably less time in a federal prison than one convicted of possession with intent to distribute 5 grams of crack. The United States Sentencing Commission incorporated the ratio into its generally binding sentencing guidelines. Since enactment, it has become apparent that the incidence of this sentencing differential falls disproportionately on African-American defendants.

Instructed to study the situation, the Sentencing Commission proposed amendments that would equate crack and powder cocaine for sentencing purposes and recommended that Congress drop the 100-to-1 ratio from its own mandatory penalties. Congress rejected both the amendments and the suggestion for equation, but directed the Commission to re-examine the issue and report back recommendations reflecting more moderate adjustments.

In May 2002 the Sentencing Commission issued its report to Congress on cocaine and federal sentencing policy. In that report, the Commission recommended a three-pronged approach for revising federal cocaine sentencing policy: increase the five-year mandatory minimum threshold quantity for crack cocaine offenses to at least 25 grams (and the ten-year threshold quantity to at least 250 grams); provide direction for more appropriate sentencing enhancements within the guidelines' structure that target the most serious drug offenders for more severe penalties without regard to the drug involved; and maintain the current mandatory minimum threshold quantities for powder cocaine offenses. The Commission found that there does not appear to be evidence that the current quantity-based penalties for powder cocaine are inadequate.

DRUG SENTENCING REFORM ACT OF 2001

In the last Congress, Senator Sessions introduced legislation to reduce the disparity in punishment between crack and powder cocaine offenses, and to focus the punishment for drug offenders on the seriousness of the offense and the culpability of the offender. The legislation reduces the disparity in sentences for crack and powder cocaine from the ratio of 100-to-1 to 20-to-1. (Under state law in Delaware, the ratio is 1-to-1.) It does so by reducing the penalty for crack and increasing the penalty for powder cocaine. For example, for the five-year mandatory minimum, the bill would decrease the trigger amount for powder cocaine from 500 grams to 400 grams, and increase the trigger amount for crack cocaine from 5 grams to 20 grams.

In addition, the bill shifts some of the sentencing emphasis from drug quantity to the nature of the criminal conduct. The bill increases penalties for the worst drug offenders that use violence and employ women and children as couriers to traffic drugs. The bill also decreases mandatory penalties on those who play only a minimal role in a drug trafficking offense, such as a girlfriend or child of a drug dealer.

RECOMMENDATION

Senator Sessions legislation is a good start to address the disparities in mandatory sentencing between crack and powder cocaine, and achieves the recommended 20-to-1 sentencing ratio proposed by the Sentencing Commission. The bill does so by lowering the threshold quantities for powder cocaine, and increasing the threshold for crack cocaine.

However, the Sentencing Commission's recommendation was to leave the quantity-based penalties for powder cocaine unchanged. Given that this recommendation was unanimous, I think it should be given considerable weight. Thus, I would not recommend supporting legislation that adjusts the disparity in sentencing between crack and powder cocaine by changing the threshold amounts for powder cocaine.

In addition, Hispanic groups and civil rights groups are very opposed to Senator Sessions' legislation since his bill essentially increases the penalties for powder cocaine by lowering the amount needed to receive a mandatory sentence. In addition, the legislation does not address the 5-year mandatory minimum for simple possession of crack cocaine. Crack cocaine is the only drug that has a mandatory minimum sentence for simple possession.

Finally, Senator Biden's Subcommittee held a hearing in the last Congress to review the recommendations of the Sentencing Commission. It is clear from the transcript of that hearing that Senator Biden believes that the mandatory minimum sentencing should be changed, but he does not support Senator Sessions' approach. According to Senator Biden's staff, the Senator had been interested in developing his own legislation to address the mandatory minimum sentence issue in the last Congress. Therefore, given Senator Biden's history on this issue, from writing the original mandatory sentencing law in 1986 to his interest in adjusting this law, I would strongly recommend that you speak with him directly before taking any action on this subject.

NAACP V. ACUSPORT

Mr. LEVIN. Mr. President, last week U.S. district court judge Jack Weinstein of the Eastern District of New York found in the case of National Association for the Advancement of Colored People v. Acusport, Inc. et al. "clear and convincing evidence" that

some gun manufacturers are guilty of "careless practices."

The NAACP filed the lawsuit against gunmakers and wholesalers for what they argued were negligent firearms distribution practices. The NAACP lawsuit did not seek financial relief but sought injunctive relief to force the gun industry to take meaningful steps towards safer business practices.

Judge Weinstein's decision was a broad condemnation of current business practices in the gun industry. Judge Weinstein said "the evidence presented at trial demonstrated that defendants are responsible for the creation of a public nuisance and could, voluntarily and through easily implemented changes in marketing and more discriminating control of sales practices of those to whom they sell their guns, substantially reduce the harm occasioned by the diversion of guns to the illegal market and by the criminal possession and use of those guns."

Although Judge Weinstein did not grant the NAACP the relief it sought, the gun industry should take no consolation in this result. In fact, relief was denied only because the court found that all New Yorkers suffered from the same kind of injuries from gun industry misconduct suffered by members of the NAACP.

The Lawful Commerce in Arms Act that recently passed the House and that has been referred to the Senate Judiciary Committee would shield negligent and reckless gun dealers from many legitimate civil lawsuits like the NAACP case. Certainly, those in the industry who conduct their business negligently or recklessly should not be shielded from the civil consequences of their actions. I urge my colleagues to oppose this bill.

THE RETIREMENT OF SHARON PETERSON

Mr. BAUCUS. Mr. President, I rise to pay tribute and express my deepest appreciation for a member of my staff who has served the U.S. Senate, me personally, and the State of Montana admirably.

Today is my State director Sharon Peterson's last day. She retires today after more than 22 year of service in the Senate.

Sharon's career in public service is the culmination of a lifetime of hard work.

Sharon became interested in public service after seeing the late Senate Majority Leader Mike Mansfield speak in Lewistown. He inspired her to give back to Montana. Which she's been doing ever since.

As a Fergus County rancher, along with her husband Garde, she has always been interested in the policies that affect Montana agriculture. And she's considered an expert in the field.

Sharon helped organize Montana Women Involved in Farm Economics—or WIFE—in 1975. This led to an appointment from President Jimmy