

African Americans, Crack, and the Federal Sentencing Guidelines

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Historically, various antidrug policies have targeted ethnic minorities. Current federal law allows for more severe penalties for possession of crack-cocaine than for cocaine powder, and this sentencing policy has been criticized on the grounds that it discriminates against African Americans.

Media portrayal has contributed to the perception that crack-cocaine is used disproportionately among African Americans, and these media portrayals are described briefly in this essay. The authors then report findings from their study of an ethnically diverse sample of cocaine users in Miami. The results show that crack use does not differ substantively across ethnic groups. Moreover, although crack users engage in various criminal activities, the authors observed only a few ethnic differences in relation to the crack-crime connection.

This one provision, the crack statute, has been directly responsible for incarcerating nearly an entire generation of young black American men for very long periods. It has created a situation that reeks with inhumanity and injustice. The scales of justice have been turned topsy-turvy so that those masterminds, the kingpins of drug trafficking, escape detection while those whose role is minimal, even trivial, are hoisted on the spears of an enraged electorate and at the pinnacle of their youth are imprisoned for years while those responsible for the evil of the day remain free

—(UNITED STATES DISTRICT COURT JUDGE
CLYDE S. CAHILL, 1994)

Although Judge Cahill's remarks are both melodramatic and somewhat overstated, his point is

well taken. Under the current federal sentencing scheme for cocaine offenses, crimes involving crack-cocaine are punished far more severely than those involving powder-cocaine (U.S. Sentencing Commission 1993). In fact, the Federal Sentencing Guidelines treat a given amount of crack as equivalent to 100 times the amount of powder-cocaine. Thus, this 100-to-1 ratio results in sentences for crack defendants that are considerably more severe than sentences for those whose offenses involve other forms of cocaine (see Figure 22.1). In addition to the disparities in the crack and powder cocaine Sentencing Guidelines, the 100-to-1 ratio is also used in the determination of statutory *mandatory minimum sentences* that are intended to heavily penalize drug traffickers. Thus, the mandatory minimum sentence of 5 years for the sale of

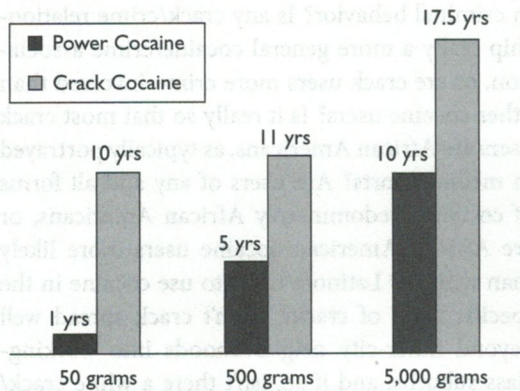


Figure 22.1 Minimum Sentences (in Years) for First Offenders Under Federal Sentencing Guidelines

50 grams of powder cocaine (10 years for 5,000 grams) is applied to the sale or possession of just 5 grams of crack (and 10 years for 50 grams of crack).

This oddity in the federal sentencing scheme is best illustrated with the story of Derrick Curry, a 20-year-old African American college student who was also a small-time crack dealer (see Leiby 1994). In 1990, Curry was one of several Washington, D.C.-area men involved in the distribution of crack who were under surveillance in a joint F.B.I./D.E.A. sting operation. At one point in the investigation, undercover agents had supplied Curry—who was no more than a low-level drug courier—with a cellular phone in exchange for crack. All of his telephone conversations about his crack deliveries were recorded, and eventually were used as evidence against him. On the day of Curry's arrest, agents found just over a pound of crack in his car, along with a criminal justice textbook [Inciardi's as a matter of fact] and a spiral notebook with his name on it. He was eventually convicted by a federal jury of conspiracy and distribution of crack, and sentenced to prison for 19 years and 7 months, with no possibility of parole.

Derrick Curry's sentence, by almost any available standard, is incomprehensibly severe. It is nearly three times the prison sentence served by most murderers in the United States; it is four times the prison sentence served by most kidnappers; it is

five times the prison sentence served by most rapists; and it is ten times the prison sentence served by those who illegally possess guns.

2006 Law Update. In *United States v. Booker*, decided by the U.S. Supreme Court in 2005, the Sentencing Guidelines were rendered advisory to the sentencing judge rather than mandatory. Sentencing judges were thereby authorized discretion to consider the individual circumstances and characteristics of the case at hand, in addition to the Guidelines. Because the ruling in *Booker* affected only the Sentencing Guidelines and not statutory minimum sentences, however, this judicial sentencing discretion is available only in those crack-cocaine cases where mandatory minimum sentences do not apply (i.e., where the amounts of the drug are less than 5 grams, about 25% of all cases), or in those cases in which the judge is determining additional penalties beyond the applicable statutory minimum (King and Mauer 2006).

Although many who opposed the crack-powder discrepancies embedded in the Sentencing Guidelines initially hoped that the *Booker* case would lead to a reduction in discrepant sentencing in at least those cases where judges were authorized the exercise of discretion, such hopes appear to be unfounded. A study of 24 written federal court decisions in 2005 involving crack-cocaine offenses—and which cited *Booker* in support of the decision—*did* find that some judges justified lower-than-Guideline sentences for crack offenders because they perceived the 100-to-1 ratio to be unfair. Several judges described the ratio as “excessive” or as “too severe.” A number of them determined that a 20-to-1 ratio was more appropriate, because that was the most recent ratio recommended (unsuccessfully) to the Congress by the U.S. Sentencing Commission (USSC).

At this writing, however, at least two circuit courts have struck down sentencing judges' authority to justify below-Guideline sentences on the basis of the unfairness of the Guideline-determined sentence or of Congressional policy (USSC 2006), holding that only Congress has the

power to change the law. Further, national sentencing data *post-Booker* generally show that sentences for crack offenses have been maintained within the Sentencing Guidelines (USSC 2006).

Many African American defendants have argued in the federal courts, unsuccessfully for the most part, that this sentencing scheme discriminates against them on the basis of race. They point to the fact that, at least in the public's perception, crack-cocaine is primarily associated with black sellers and users, whereas powder cocaine is primarily associated with white users and sellers (Cauchon 1993).

To a large extent, this perception of crack as a "black" or "African American" drug can be traced to the mass media. In their many analyses of the crack epidemic, journalists have portrayed crack use and crack-related crime as essentially problems of blacks in inner-city neighborhoods. Magazine photographs show young African American men and women smoking crack in abandoned buildings, minority youths with guns in their jeans holding handfuls of crack, and even the former (and once again current) Washington, D.C., mayor Marion Barry smoking crack. Headlines proclaim "A Tide of Drug Killings: The Crack Plague Spurs More Inner City Murders" and "Prisoners of Crack: Eight Years of Reagan Politics Corrupted a Generation of Urban Black Americans and Devastated Their Communities." Feature articles highlight "Drugs and the Black Community" and "The New Criminal Recruits of the Inner City, the Children Who Deal Crack." Altogether, journalists have presented a crack/crime/African American interconnection that would appear to be a simple, well-established fact of American life.

The problem with these representations is that only part of it all has been clearly and accurately documented in media reports—that crack has had a destructive impact on black inner-city communities. The evidence presented for more specific crack/crime/African American connections is far more tenuous, leaving a series of unanswered questions. Is the crack/crime association mere sensationalism, or are crack users commonly involved

in criminal behavior? Is any crack/crime relationship really a more general cocaine/crime association, or are crack users more crime-involved than other cocaine users? Is it really so that most crack users are African Americans, as typically portrayed in media reports? Are users of any and all forms of cocaine predominantly African Americans, or are African American cocaine users more likely than white or Latino/a users to use cocaine in the specific form of crack? Hasn't crack spread well beyond inner-city neighborhoods into working-class suburbs, and if so, isn't there a white crack/crime problem? Are any such ethnic differences anything more than socioeconomic differences?

These questions, even without answers, suggest a considerably more complex relationship between crack use, crime by crack users, and race/ethnicity than that implied by mass media reports. Much of the complexity is due to the fact that multiple considerations other than race/ethnicity are at issue. These factors cannot be disentangled with urban war zone reporting techniques, but instead require scientific methods of sample selection and data analysis.

The Crack/Crime Connection

The relationship between crack use and crime has received considerable attention since the late 1980s, but the available studies have rarely examined race/ethnic differences. Nevertheless, at least the crack/crime linkages appear to be rather clear cut, particularly with regard to crack selling and violence (Goldstein et al. 1991; Hamid 1990; Inciardi, Lockwood, and Pottieger 1993, pp. 116–31; Inciardi and Pottieger 1991; Klein and Maxson 1985; McBride and Swartz 1990). The media reports appear to be correct in implying that crack users are commonly involved in criminal behavior.

Prior research is also fairly consistent in its answer to another question about the crack/crime/race connection. Many studies suggest crack users are more often African Americans. For example, a disproportionate amount of crack use among African Americans is indicated in official statistics from the Substance Abuse and Mental Health

Services Administration (SAMHSA) *National Survey on Drug Use and Health* (formerly the *National Household Survey*). In 1991, 4.3 percent of blacks surveyed had used crack, compared with only 1.5 percent of whites and 2.1 percent of Latinos/as. (By 2003, these statistics were similar except that the proportion of whites who had used crack had doubled to 3.3 percent, reducing, but not eliminating, the observed ethnic differences). Race/ethnic differences in lifetime crack use were especially large among people aged 26 to 34 years old: the 9.2 percent of blacks reporting use is some three times that of the 2.8 percent for whites or 3.7 percent for Latinos/as (National Institute on Drug Abuse 1991). However, because whites represent the majority of the U.S. population, these percentage estimates imply that in terms of absolute numbers, most crack users are *not* African Americans, but whites. NIDA's estimates of current crack use—defined as use in the past month—are 0.7 percent for blacks, 0.4 percent for Latinos/as, and 0.2 percent for whites. This translates to population estimates of 172,000 black crack users, 68,000 Latino/a crack users, and 238,000 white crack users. That is, of the 479,000 crack users estimated for the 1991 U.S. household population, 49.9 percent were white, 14.2 percent were Latino/a, and only 35.9 percent were African Americans.

While SAMHSA's *National Survey on Drug Use and Health* provides the *best available evidence* on race/ethnic distributions of crack users, it should also be noted that this does not mean it is necessarily a *good* estimate. Very low percentage estimates in this type of study—such as those given for current crack use—mean less reliable estimates. Further, as a survey of the general household population, the NIDA study does not include populations critical to examining race/ethnic differences in crack use, such as runaways and other homeless people, addicts in residential treatment, incarcerated populations, and those living on the street and in drug subcultures that are generally inaccessible through standard survey methods. Some other official statistics do include some of these populations—notably SAMHSA's Drug Abuse

Warning Network (DAWN)—but they cannot separate crack use from other cocaine use and they do not report statistics in a way that permits extrapolation to population estimates.

Beyond these two points—a strong crack/crime relationship and no more than a weak crack/black association—very little published research exists on ethnic differences specifically among *crack users*, let alone ethnic differences in crimes among crack users. In fact, there is surprisingly little research on ethnic differences concerning any type of illegal drug use or its correlates. Moreover, the work that has been done is suspect for purposes of understanding race-ethnicity/drug-use relationships because it is almost all based on samples of either students or drug treatment patients, and ethnic minorities have both higher rates of school dropout and lower rates of treatment seeking than whites (Collins 1992; Rebach 1992).

The most research attention in this regard has focused on adolescents, primarily students. The findings generally show that ethnic differences in drug use are explained by background variables, particularly income and availability (Adlaf, Smart, and Tan 1989; Kandel, Single, and Kessler 1976; Maddehian, Newcomb, and Bentler 1986; Wallace and Bachman 1991). More important, studies indicate that most drug use rates including those of alcohol, cocaine, pills of all types, cigarettes, hallucinogens, and inhalants—are *lowest* among black adolescents (Bachman et al. 1991; Kandel, Single, and Kessler 1976; National Institute on Drug Abuse 1991; Rebach 1992; Segal 1989). Latino/a males, however, are generally found more likely to have used cocaine than either whites or blacks (Bachman et al. 1991; Marin 1990; SAMHSA 2003; Wallace and Bachman 1991).

Among adult drug users, most research on ethnic differences comes from studies of heroin addicts in treatment in which, usually, only two ethnic categories are compared: black and white, or Latino/a and white Anglo. These studies suggest that minorities, including African Americans, Puerto Ricans, and Mexican Americans, are over-represented among heroin users (Anglin et al.

1988; Ball and Chambers 1970; Kleinman and Lukoff 1978). Studies of cocaine and crack users also indicate disproportionate use among minorities (Carroll and Rounsaville 1992; Johnson, Elmoghazy, and Dunlap 1990). As in the studies of students, however, ethnicity generally is found to interact with other variables. In particular, an interaction effect between gender and ethnicity has been documented in several studies (Austin and Gilbert 1989; Prendergast et al. 1989), and other researchers have presented their results separately for males and females to clarify the ethnic differences within gender categories and to avoid the complexity of this interaction (Anglin et al. 1988; Wallace and Bachman 1991).

More recently, treatment status also has been recognized as an important confounding factor in the study of ethnic differences in drug use. One recent study, for example, found that 55 percent of 298 cocaine users in treatment were white, whereas among 101 cocaine users *not* in treatment, only 14 percent were white (Carroll and Rounsaville 1992). Treatment status of cocaine users also appears to be entangled with gender and other differences (Boyd and Mieczkowski 1990; Brunswick, Messeri, and Aidala 1990; Chitwood and Morningstar 1985; Griffin et al. 1989; Rounsaville and Kleber 1985).

Altogether, social science research pertinent to the alleged crack/crime/black linkage can be summarized as follows. First, it is limited, particularly on the specific topic of crack. Second, it has documented a *crack/crime* association. Third, it suggests that any *black/crack* association is a limited one—higher rates of crack use for blacks than for whites and Latinos/as, but fewer black crack users than non-black crack users. Fourth and most important, it repeatedly documents the complexity of drug use/race-ethnicity relationships and the consequent requirement for a large, demographically diverse sample in order to study this subject adequately. Drug users who differ in ethnicity invariably also differ in ways that have nothing to do with ethnicity, such as gender, and in additional ways that are correlated with ethnicity, such as income levels and residence patterns,

and in still other ways, such as treatment status, for which relationships to ethnicity are still not well understood. These other differences tend either to explain the drug/ethnicity differences or to make the sample size too small for the kind of analysis that would even permit study of this possibility. For the specific problem of the crack/crime/black association alleged in media reports, many of these methodological difficulties are overcome in a recent study of a large, demographically diverse sample of cocaine users.

Studying Crack/Crime Connections

Drug use patterns and criminal behavior were the focus of a study conducted in the Miami, Florida, metropolitan area (Inciardi and Pottieger 1994). A total of 699 cocaine users were interviewed, 349 of them in residential treatment at the time and 350 on the street. Eligible participants were those who reported any cocaine use during the “last 90 days on the street.” For the street sample, this was the 90 days prior to interview. For the treatment sample, it was the most recent continuous 90 days on the street prior to treatment entry. This 90-day period was required to be within the two years prior to interview. Questions about drug use and criminal behavior were asked during an interview lasting 30 to 60 minutes, and respondents were paid \$10 for their time. Legal protection for subjects was assured by anonymity and a Certificate of Confidentiality from the National Institute on Drug Abuse. This guaranteed that project employees could not be compelled by any court or law enforcement agency to reveal information sources or questionnaire data. Treatment program clients were assured that neither participation nor nonparticipation would affect their program status and that their answers would not be seen by counselors or other program personnel.

Selection of both street and treatment respondents was guided by subsample targets for gender, age, and ethnicity in order to ensure a demographically diverse sample. In the treatment programs, this generally meant returning repeatedly to interview every new client in the hard-to-fill

subsamples (younger and white or Latino/a). On the street, subsample targets meant pushing the interview process into a variety of neighborhoods to get the required race-ethnic diversity. Street respondents were located through standard multiple starting-point "snowball sampling" techniques in neighborhoods with high rates of cocaine use by a street interviewer familiar with and well known in the target areas. The details of how this kind of street data collection is done are described elsewhere (Inciardi, Horowitz, and Pottieger 1993, pp. 64–67; Inciardi, Lockwood, and Pottieger 1993, pp. 147–51).

The final sample was 66 percent male and 34 percent female. The 285 black respondents comprised 34 percent of the males and 54 percent of the females; the 273 white respondents were 36 percent of the males and 46 percent of the females; and the 141 Latino/a respondents (108 of them Cuban) made up the remaining 30 percent of the male respondents. Forty-six percent of the respondents were ages 20 to 29, while 28 percent were ages 13 to 19, and 26 percent were 30 to 49 years old.

Questions about cocaine use in the last 90 days on the street were asked separately for six types of cocaine use; snorting, intravenous (IV) use, crack smoking, other (pure, ether-based) freebasing, coca paste smoking, and any other (new) form of cocaine. For each cocaine type, respondents were asked how many days cocaine was used and the usual number of doses per day. "Amount of cocaine use" was then calculated by multiplying "number of usual doses per day" by "number of days that dosage was used," to arrive at an estimated total quantity for each cocaine type used in the respondent's last 90 days on the street. These figures permitted calculation of each cocaine user's "primary cocaine type"—the one cocaine form, if any, which accounted for 75 percent or more of all cocaine used by each respondent. The resulting estimated totals for each cocaine type were recoded into variables ranging from zero (none) to six (1,350+ doses).

Measures for illegal activities were constructed in a similar fashion. For each of 23 crime types, respondents were asked on how many days the

offense was committed and the usual number of offenses per day. Total crimes for the 90 days were then computed for each specific offense type. These numbers were combined into totals for six general crime types—violence-related, major property crime, petty property crime, prostitution and procuring, drug trafficking or manufacture, and street-level drug sales.

The Nature of the Connection

This analysis focuses on two issues: (1) the primary type of cocaine used; and (2) the crack/crime connection, in general and by race-ethnicity, and specifically among African Americans.

The first question addressed is that of whether black cocaine users were more likely than their white and Latino/a counterparts to have crack as their "primary cocaine type." A breakdown by ethnicity alone suggests no black/crack association: the only apparent differences in primary cocaine type by ethnicity are (1) a preference for snorting among Latinos/as (31.9 percent, compared with 12.3–13.2 percent of blacks and whites) and thus less preference for crack (58.2 percent, compared with 74.5 percent for both blacks and whites), and (2) more injection use among blacks (8.4 percent, compared with 1.4 percent–1.8 percent of Latinos/as and whites).

Because prior research suggests that gender, age, and treatment status might all be related to race-ethnic differences in cocaine-type preference, these three factors were held constant so that a clearer picture of the relationship between race-ethnicity and primary cocaine type could be examined. The results indicate that among users ages 13 to 29 years who were interviewed on the street, there were very few differences in cocaine use by either ethnicity or gender. Crack was the primary cocaine type for every single street respondent under age 20, and for over 90 percent of street respondents ages 20 to 29, with the sole exception of Latino males. For the older cocaine users interviewed on the street, in contrast, both ethnic and gender differences appear. Among whites ages 30 to 49 years, all of the women and most of the men

had crack as their primary cocaine type; Latino/a men ages 30 to 49 were split exactly 50–50 between crack and snorting; and black cocaine users ages 30 to 49 were clearly *least* likely to have crack as their primary cocaine type. In fact, among cocaine users ages 30 to 49 interviewed on the street, it was not crack but injection cocaine that was the primary cocaine type much more likely among blacks than among whites and Latinos/as.

The treatment groups present an even more complicated picture. Over 40 percent of the adolescent respondents used cocaine primarily by snorting, as did more than 20 percent of all women and all Latinos/as. Further, a significant minority of respondents in an apparently random selection of gender, age, and ethnicity subgroups used such a variety of cocaine forms that no one type accounted for 75 percent of their total use. This pattern of “No Primary Cocaine Type” was not seen for even one street respondent. Thus, crack use was clearly less common among the cocaine users in treatment than among their counterparts interviewed on the street, with a particularly strong contrast between users under age 30.

In a follow-up analysis, correlates of having crack as a primary cocaine type were computed. The results indicate that in this sample of 699 cocaine users, the only significant crack/ethnicity correlation indicates that Latino/a males are less likely to prefer crack. That is, being black (or white, for that matter) was unrelated to having crack as a primary cocaine type. Being younger or female, in contrast, was related to a preference for crack use. Street respondents were also much more likely than treatment respondents to have crack as a primary cocaine type.

For still another way of looking at the crack/black connection, correlates were computed for amount of crack used in the last 90 days by only the 499 respondents who were primary crack users. The prior analyses suggest *among cocaine users*, being black is *not* associated with being a crack user. This analysis asked whether *among crack users*, blacks use *more* crack than whites and Latinos/as. The results showed no relationship between amount

of crack used and ethnicity or gender. Amount of crack used by primary crack users was significantly, although weakly, correlated with being in treatment, and was clearly related to being older.

The second question of interest is that of whether the crack/crime relationship documented in prior studies is indicative of a more general cocaine/crime association, or whether crack users are actually more crime-involved than other cocaine users. Analysis of only the 298 primary crack users interviewed on the street indicated that the crack/crime correlation among this subgroup is stronger than the general cocaine/crime correlation for all 699 cocaine users. These results suggest that the crack/crime association reported by other researchers is more than just a part of some general correlation between cocaine use and crime.

Given a definite crack/crime connection but only a very weak crack/black connection, the question for analysis necessarily shifts to that of whether there are differences in the crack/crime relationship for crack users of different ethnicities. Far too many crack users are *not* black for the crack/crime association to be a black phenomenon. Thus, is the white or Latino/a crack/crime connection different in degree or type from that for blacks?

This more detailed analysis of the crack/crime relationship was done for only the 298 primary crack users ages 13 to 49 years who were interviewed on the street. As seen in Table 22.1, respondents on the street—regardless of gender or ethnicity—were much more consistent than any other subgroup of cocaine users in preferring crack as their primary cocaine type. Confining further analysis to this subsample thus permits the clearest view of the crack/crime/race-ethnicity relationship because complications of treatment status can be ignored. Further, youth and adult crack users who are not in treatment are also the crack users who present the most obvious problem to policy makers and the criminal justice system, as well as to their families and neighborhoods. Thus, the “street crack user” subsample is arguably also the most appropriate and important one in which to more closely examine the crack/crime relationship.

Table 22.1 Type of Crime Committed in the Last 90 Days by 298 Primary Crack Users Interviewed

Crime Type Committed	Male			Female	
	Black (n = 59)	White (n = 65)	Hispanic (n = 50)	Black (n = 56)	White (n = 68)
Violence-Related	19	16	12	22**	12
Major Property	8	13	16	2	0
Petty Property	39	43	41	50	56
Prostitution/Procuring	1	0	0	39**	29
Drug Trafficking	0	0	0	1	0
Drug Dealing	59	65	50	54	65

**Chi-square significant at $p = .05$.

The criminal involvement of this subsample is extensive, as shown in Table 22.1. Over 96 percent of each gender/race-ethnic category is involved in dealing drugs, most respondents committed petty property crimes, and some also committed major property crimes (burglary or motor vehicle theft) or violent offenses (robbery, assault, or weapons use). However, gender and race-ethnic differences also appear—more prostitution and procuring for women, and especially black women; more major property crimes for men, and especially Latino/a men; more petty property crimes among women; and more violent offenses among black women.

The extent to which these gender and ethnic variations in level of criminal involvement are related to amount of crack used varies greatly by crime type. In fact, strong correlations were found between amount of crack used and involvement with drug sales in most gender and ethnic subgroups. Prostitution was also correlated with amount of crack used for both black and white women. Violence-related offenses, in contrast, were related to the amount of crack used only among white females. Major property crimes, petty property crimes, and drug trafficking were not significantly related to amount of crack used for any of the subgroups.

A final question is why this apparent pattern of ethnic differences in the crack/crime relationship exists. While no differences are apparent among male respondents, the contrast between white and black female respondents seen in Table 22.1 is what would be expected in a sample if the difference were

primarily one of differing socioeconomic status. In Miami, as in many other cities across the country, general socioeconomic indicators, such as income, education, and residential patterns, show markedly greater poverty among blacks than among whites.

One aspect of ethnic socioeconomic differences is the availability of economic resources. When respondents in this study were asked about sources of legal income or support, results indicated that job income was highly unusual. In the female street crack user subsample, current job income was reported by only one of the women ages 13 to 49. Welfare, disability, or other assistance were also rare; such income was reported by four of the 124 women ages 13 to 49 (3.2 percent of this subgroup). Unexpectedly, some kind of investment income was actually more common—15 of the respondents in this subsample reported this type of income. Unlike job income or government assistance, furthermore, reports of investment income were significantly more likely among white than black women. Thus, total numbers of female respondents with employment, assistance, and investment income indicate that whites were more likely to have such conventional economic resources than were blacks.

Most respondents, however, did have some legal source of support—most commonly, parents, spouse, or other people. Thus, only one in four of the female street crack user subsample reported obtaining over half of her living expenses from crime. However, economic support from parents, spouse, or other people may have a very different

kind of crack/crime relevance—some persons who help pay for a crack user's living expenses may also help support a crack/crime lifestyle. Respondents were asked three questions about living circumstances: (1) Persons lived with last week, including (a) parents (with or without siblings), (b) spouse/opposite-sex partner, and (c) other people; (2) Do any of these people use crack or other cocaine?; and (3) Do any deal it? All co-residents reported as dealers were also reported as users. Results in the female street crack user subsample indicated that every respondent living with a spouse or person other than a parent reported living with another cocaine user. In contrast, only 47.8 percent of those living with their parents reported living with other cocaine users.

For the total 124 female street crack users, co-residence with a cocaine user was significantly related to race-ethnicity: 92.9 percent of black respondents reported co-resident cocaine involvement while only 45.6 percent of white respondents did so. In fact, black women were over 15 times more likely than white women to reside with a cocaine user. The relevance of greater cocaine involvement of co-residents is demonstrated by its marked correlations with other crack/crime indicators. Female respondents who reported greater cocaine involvement of co-residents were also significantly more likely to report obtaining more living expenses from crime and more overall crime.

Although no causal inferences can be made from this analysis, it does suggest that crime and crack use are part of a more general lifestyle that includes such everyday elements as persons with whom one lives and ways of meeting living expenses. The results also indicate that ethnic differences—particularly black/white differences—exist in both elements of that lifestyle and influences upon it. White respondents had less apparent need to commit crimes in order to pay for living expenses and were also less likely to reside with other cocaine-involved persons. Black respondents tended to show the opposite pattern—more living expenses paid for by crime, and more cocaine involvement

among co-residents. These results suggest that differences that appear to be ethnic are in fact socioeconomic in nature. That is, it is socioeconomic factors such as (1) the degree of access to income sources other than crime and (2) the likelihood of living in a high drug/crime-rate environment that are important for understanding the crack/crime connection.

Discussion

In the 1991 case of *State v. Russell* (477 N.W.2d 886 [Minn. 1991]), the Minnesota Supreme Court invalidated a state law that punished the possession of crack-cocaine more harshly than that of powder-cocaine. The court invalidated the differential punishment largely on the grounds that it constituted an "illicit racial discrimination"—most people convicted of possessing powder-cocaine were white, while most of those convicted of possessing crack were black.

More specifically, under Minnesota Statute 152.023(2), a person is guilty of a "third-degree" offense if he or she possesses three or more grams of cocaine base ("crack-cocaine"). Under the same statute, a person must possess ten or more grams of cocaine powder to be guilty of the same offense. A person who possesses less than ten grams of powder is guilty of a fifth-degree offense (Section 152.025). Pursuant to these statutes, possession of three grams of crack carries a penalty of up to 20 years in prison, while possession of an equal amount of powder-cocaine carries a penalty of up to five years in prison.

In *State v. Russell*, five African American men who were charged with violating Section 152.023(2) jointly moved the trial court to dismiss the charges on the grounds that the statute had a discriminatory effect on black persons and violated the equal protection guarantees of both the Minnesota and U.S. constitutions. The trial court noted that crack was indeed used primarily by African Americans, and powder-cocaine primarily by whites. Among the many statistics provided to the trial court were those showing that of all people charged with possession of cocaine base in 1988, 97 percent were

black; of those charged with possession of powder-cocaine, 80 percent were white. The trial court agreed with the defendants and invalidated the sentencing scheme.

On an appeal brought by the state, it was contended that the state legislature had a permissible and legitimate interest in regulating the possession and sale of both crack- and powder-cocaine, and that it was reasonable for lawmakers to believe that the three grams of crack/ten grams of powder classification would regulate the possession of those drugs by the "street level" dealers at whom the statute was primarily aimed. The Minnesota Supreme Court was not persuaded, however, and affirmed that the sentencing scheme was in violation of the state constitution on equal protection grounds.

On the basis of the analysis in this chapter, is it possible that the Minnesota Supreme Court's holding in *Russell* was wrongly decided? Harvard law professor Randall Kennedy has argued that the Minnesota case was erroneously decided, and on several grounds (Kennedy 1994). Primarily:

The portrayal of Minnesota's sentencing statute as a "burden" to blacks as a class is simplistic. Assuming that one believes in criminalizing the distribution of crack cocaine, punishing the conduct is a public good. It is a "burden" on those who are convicted of engaging in this conduct. But it is presumably a benefit for the great mass of law-abiding people. (pp. 1266–1267)

And Professor Kennedy added:

The Minnesota Supreme Court condemned the statute as imposing a racially discriminatory burden. But what is "racial" about punishment? Justice Wahl [writing the opinion for the court] writes as though the punishment falls upon blacks as a class. But to the extent that the heavier punishment for possession of crack falls upon blacks, it falls not upon blacks as a class but rather upon a subset of the black population—those in violation of the law who are apprehended (p. 1269).

Whether or not one agrees with Professor Kennedy's contentions, the analysis in this chapter

suggests that crack may not be an "African American drug" and powder-cocaine a white American drug. The difference is not a race-ethnic matter, but one of socioeconomic status. However, one could argue that the research data presented here are from but one study and from one community, collected in a manner that may not be representative of the crack and cocaine using populations. Indeed, this would be a legitimate criticism, for drug users in Miami are certainly not representative of the nation as a whole. But nevertheless, other data are accumulating which tend to corroborate the Miami findings. In fact, a reanalysis of data from SAMHSA's 1988 *National Survey* compared race-ethnic group differences in crack smoking (Lillie-Blanton, Anthony, and Schuster 1993). The findings provided evidence that given similar social and environmental conditions (neighborhood, education, income, age, and gender), crack use does not depend on race-specific factors. This would clearly suggest that race-specific explanations of crack use likely obscure the role that social and environmental factors play in the overall epidemiology of crack use.

Most recently, the striking down of the Sentencing Guidelines by the U.S. Supreme Court as mandatory in *Booker* gave many critics of the 100-to-1 policy hope that the penalties for crack and powder cocaine would become more equal and more fair. Blog networks that cover legal issues, like *Sentencing Law and Policy* and *stopthedrugwar.org*, track almost every new crack case in which a judge attempts to sentence defendants outside of the policy. In fact, however, *Booker* has had a minimal effect in reducing sentences for crack offenses, as appellate courts have held that the power to change the Sentencing Guidelines and mandatory minimum sentences for drug offenses rests with Congress and not the courts. In this regard, the best hope for change may be the introduction of a bill in July 2006—*The Drug Sentencing Reform Act of 2006*—by a bipartisan group of U.S. senators that would reduce the disparity in federal sentencing guidelines from 100-to-1 to 20-to-1. No action has been taken by the Congress so far, however, and it is quite possible

that the new bill will suffer the same fate as a similar effort that failed in 2002.

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