



RHODE ISLAND FED

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DEBATE OVER CRACK COCAINE SENTENCING FOCUSES ON RI

Does a sentencing judge have the authority to restructure the disparity between federal sentences for crack cocaine and those for powder cocaine?

A three-judge panel at the First Circuit Court of Appeals said no and returned two cases to U.S. District Court in Rhode Island for resentencing.

Under federal sentencing law, it takes 100 times more powder cocaine than crack for a defendant to fall into the same sentencing category. For instance, 500 grams of powder nets the same sentencing range as five grams of crack. The U. S. Sentencing Commission has proposed several times to lessen the disparity, most recently in 2002, when it proposed a 20-1 ratio. However, Congress has not acted on the proposal.

In January 2005, however, the Supreme Court changed the way federal sentences are devised, holding, in U.S. v. Booker, that sentencing guidelines are advisory, not mandatory. In the wake of that decision, federal judges in Rhode Island reasoned that they could depart from the sentencing guidelines for crack and thus reduce the disparity.

In two unrelated crack-trafficking cases, Chief U.S. District Court Judge Ernest C. Torres adopted the 20-1 ratio that the Sentencing Commission proposed in 2002. He sentenced **Sambath Pho** to 64 months in prison and **Shawn Lewis** to 188 months.

The government appealed both sentences, arguing that, in a drug law that passed in 1986, Congress instituted the 100-1 ratio and it is therefore up to Congress and not the Courts to change it. During oral argument, Assistant U.S. Attorney Donald C. Lockhart said, "It's not merely a Sentencing Commission decision, it's an act of Congress and it's a judgment of Congress about how severely crack cocaine should be treated relative to powder cocaine."

"It's a judgment of Congress."

Sending the cases back for resentencing, Appeals Court Judge Bruce M. Selya wrote, "...in the absence of constitutional infirmity, federal courts are (*continued, page 3*)



FEDERAL DRUG CASES

Latin King drug dealer is sentenced to 15 years

Juan Guerrero was one of a dozen members and associates of the Latin Kings charged federally as a result of Operation Royal Flush, a multi-agency drug-trafficking investigation. Guerrero managed to flee Rhode Island before he could be arrested but Deputy U.S. Marshals tracked him to Colorado, where Denver Police arrested him in February. He pleaded guilty in Rhode Island to a crack-cocaine trafficking conspiracy and was sentenced to 15 years in prison. Guerrero's coconspirator, **Joel "Joey Crack" Francisco** was previously sentenced to life imprisonment. *Assistant U.S. Attorneys Mary E. Rogers and Stephanie S. Browne*



15 years for cocaine conspiracy

In 2001 **Robert Nardolillo** agreed to provide security for cocaine shipments. The man he was working with was an undercover FBI agent and the shipments were actually fake cocaine provided by the FBI. Nardolillo pleaded guilty to cocaine trafficking charges and was sentenced to 15 years in prison. *Assistant U.S. Attorneys James H. Leavey and Adi Goldstein*

Appeals Court upholds life sentence for crack cocaine trafficker



The Burnside Avenue house where Charles Brown sold crack

After a judge sentenced **Charles Brown** to life in prison for a crack cocaine conspiracy, Brown appealed. The Court of Appeals affirmed the sentence, noting that it was mandated by Congressional statute. Brown's two prior drug trafficking convictions and the amount of crack cocaine he was caught with – 164 grams – made the life sentence mandatory. The court remanded the cases of two codefendants for resentencing because their sentences were based on guidelines, which were then considered mandatory but have since been ruled to be advisory. *Assistant U.S. Attorneys Donald C. Lockhart and Adi Goldstein*

Pair sentenced in seizure of 62 kilograms of cocaine

A federal judge sentenced **Pedro Gonzales** to 196 months in prison and **Julian Sahagun Rodriguez** to 135 months for a 62-kilogram cocaine conspiracy. DEA agents and Providence Police approached a car that had just arrived at a Lenox Avenue address and seized three duffel bags containing cocaine. Rodriguez, who was in the front passenger seat, pleaded guilty and a jury convicted Gonzales, the driver. The jury acquitted a third man who greeted the two when they arrived at the Lenox Avenue location. It was one of the largest cocaine seizures ever made in Rhode Island. *Assistant U.S. Attorneys Stephanie S. Browne and Adi Goldstein*

FEDERAL GUN CASES



Gun hidden under a toy truck

When Providence Police officers approached a group of men on Robinson Street, one man broke from the group and stashed a gun under a toy truck in a nearby driveway. Officers retrieved the gun, a .380 caliber handgun, and arrested the man, **James Wiggins**, who had prior drug felony conviction. Wiggins pleaded guilty to being a felon in possession of a firearm and a federal judge sentenced him to 42 months in prison. *Assistant U.S. Attorney Zechariah Chafee*

15 years for Armed Career Criminal

William Bennett sold a gun to a man in Westerly. Westerly Police had been alerted to the sale, monitored the transaction and arrested Bennett, whom they knew to be a previously convicted felon. The gun had been stolen in a housebreak in Westerly. Because Bennett had several prior violent felony convictions, he was deemed an Armed Career Criminal under federal sentencing law and was sentenced to 15 years in federal prison. *Assistant U.S. Attorney Zechariah Chafee*

Gun stuffed in a chair leads to ten year sentence

Providence Police officers saw **Ronald Hall** run into a house on Chester Street, carrying a gun. They followed him into the house and found the gun stuffed under the cushion of an upholstered chair. They also found another gun in the same room. Hall pleaded guilty to being a felon in possession of a firearm and was sentenced to ten years in federal prison. *Assistant U.S. Attorney Peter F. Neronha*

***Project Safe Neighborhoods reaches out
to the community...and to ACI inmates — page 6***

(Crack Sentencing ... continued from page 1)

bound by Congress' policy judgments, including judgments concerning the appropriate penalties for federal crimes." The Court also held that, because Judge Torres based the sentences for Pho and Lewis on wholesale digression from the guidelines and not on the individual circumstances of the defendants, the sentences were inconsistent with the Supreme Court's ruling in Booker.

During the oral arguments, Judge Selya noted that Rhode Island had become "Ground Zero" in the debate over crack sentencing, which he called a "guerilla war" that has been going on in federal courts for 20 years.

CRIMINAL DOCKET SHEET

“Survivor” winner is convicted of tax charges

A federal jury found **Richard Hatch** guilty of tax evasion for failing to report to the IRS about \$1,027,000 he won for winning the “Survivor” television series and about \$391,000 in other income. Hatch had two accountants prepare three different returns for 2000 and filed one that did not include his “Survivor” earnings or rental income. For 2001, he failed to disclose additional rental income plus income for radio appearances. *Assistant U.S. Attorneys Andrew J. Reich and Lee H. Vilker*



Bank robbers sentenced for “note jobs”

John Choinere was sentenced to 46 months in prison for robbing \$1,002 from a teller in a Citizens Bank branch. **William DeLuca** was sentenced to 70 months for a robbery at a Sovereign branch in Providence. **Jarette Falcione** was sentenced to 151 months for a robbery at a bank branch in a Pawtucket supermarket. All the robberies were “note jobs,” in which the robber showed a teller a threatening note demanding money but did not display a weapon. They were prosecuted under a federal initiative called Operation Bank Safe, which focused on so-called note jobs. *Assistant U.S. Attorney James H. Leavey*

Counterfeit note passer is sentenced



Christian Sarria tried to pass 20 counterfeit hundreds to a bank teller in Providence. Spotting the phonies, the teller contacted the manager, who called Providence Police. Providence police officers and Secret Service agents later found an additional \$16,500 in bogus hundreds in Sarria’s car and hidden under a wheelbarrow behind his house. A jury found Sarria guilty of possessing and passing counterfeit bills and a federal judge sentenced him to 18 months in prison. *Assistant U.S. Attorney Adi Goldstein*

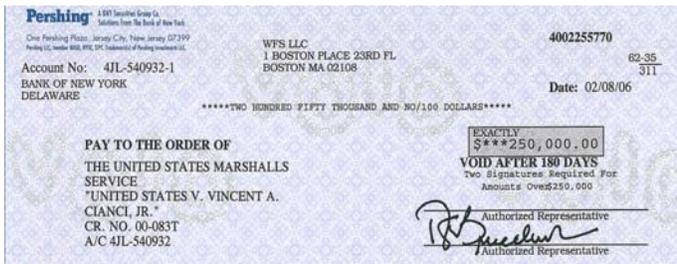
CIVIL DOCKET SHEET

Public Corruption—Cianci campaign money forfeited to the government

When Chief U.S. District Court Judge Ernest C. Torres sentenced former Providence Mayor Vincent Cianci and two codefendants to prison for racketeering, he also ordered the forfeiture of \$250,000 in campaign contributions that the defendants had extorted from Providence tow truck operators. That forfeiture recently became final and Friends of Cianci remitted \$250,000 to the U.S. Marshals Service. Evidence presented during (*next page*)

CIVIL DOCKET SHEET (CONTINUED)

Cianci's public corruption trial showed that mayoral aide Frank Corrente and tow-truck contractor Richard Autiello required other tow—truck operators to contribute a certain amount of money annually to Cianci's cam-



A replica of the \$250,000 check satisfying the forfeiture of Cianci campaign funds

campaign so they could stay on the city's tow list. Firms on the tow list – about a dozen of them – rotated calls from the Providence Police Department to tow abandoned, stalled, or confiscated vehicles (The city has since abolished the tow list). The Cianci campaign organization appealed that forfeiture but the First Circuit affirmed it as appropriate because the money stemmed directly from the extortion of the tow operators. The \$250,000 goes into the Department of Justice Asset Forfeiture Fund to be used for law enforcement purposes. *Assistant U.S. Attorney Michael P. Iannotti*

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Child molester is subject to deportation after jail

The First Circuit Court of Appeals has rebuffed a convicted child molester's efforts to avoid deportation because of a provision that existed in the immigration laws when he pleaded guilty. Shortly after **Ramiro Fernandes Pereira**, a citizen of Portugal, was sentenced in 1995 to 18 years in state prison for first degree child molestation and sexual assault, immigration officials began proceedings to have him deported for having been convicted of an aggravated felony.

Pereira immediately applied for relief under a provision that then allowed offenders– on a case by case basis – to avoid deportation if they'd spent less than five years in prison. Before his application could be acted on, however, Congress amended the immigration law in 1996 and eliminated the provision that allowed serious felons to apply for relief from deportation.

Thus began several trips through the courts. Pereira first said the 1996 amendment could not be applied retroactively and the Supreme Court, ruling in another case, agreed. But by then Pereira's incarceration had gone beyond five years, the time frame for applying for relief from deportation. He then claimed that, because he had applied for the relief in time, his application should still be considered. However, a First Circuit panel concluded that Congress more than likely intended that the five-year exemption was for offenders sentenced to less than five years, not those like Pereira who might apply within the window of opportunity but are actually serving sentences longer than five years. (*Pereira v. Gonzales*, 2005WL 1692877, 1st Cir. July 21, 2005). The Circuit subsequently denied Pereira's petition for a review by the full court of the panel's decision.. *Assistant U.S. Attorney Robin E. Feder*

GETTING THE MESSAGE OUT...

To Offenders



Prosecutors caution inmates, parolees about federal gun laws

There are 105 federal prisons in the United States but none in Rhode Island. So, if you are convicted of a federal gun crime, you will go to a prison far from home, which means, among other things, you won't see your family very often.

That is the message that Assistant U.S. Attorney Peter F. Neronha imparts to previously convicted felons – those about to be released from state prison and those already out on parole or probation. It's part of the Department of Justice's Project Safe Neighborhoods initiative, which focuses on enforcement of gun laws and community outreach to reduce gun crime.

The objective of these outreach sessions is to warn previously convicted felons that the law will come down heavily on any offender caught carrying a gun. One of the consequences, Neronha cautions, is imprisonment far from home.



Federal Correctional Institution, El Reno, Oklahoma

“El Reno, Oklahoma — Herlong, California — Pollock, Louisiana – those are some of the places you can get sent to,” Neronha says during his presentations. “How often do you think your mother, father, sister, wife, or children will come to visit you in Pollock, Louisiana?”

The federal gun crime most often prosecuted in Rhode Island is a felon in possession of a firearm, which carries a maximum prison term of ten years. Multiple violent offenders caught with guns are considered Armed Career Criminals, subject to even longer sentences, 15 years at the minimum.

The ACI sessions are held monthly. Sessions are held four times a year at the Providence Police Department for offenders who are on probation or parole. Neronha also brings the message quarterly to students at the Rhode Island Training School.

ON GUN CRIMES AND GUN VIOLENCE

To Students



U.S. Attorney speaks to Mount Pleasant HS students

“Homicides of teens and young adults are much more likely to be committed with guns than homicides in other age groups,” U.S. Attorney Robert Clark Corrente told students at Mount Pleasant High School recently. He was at Mount Pleasant as part of the outreach effort of Project Safe Neighborhoods. One objective of the program is to deter gun violence. It is the flip side of the intensified prosecution of federal gun crimes.



Mount Pleasant High School



U.S. Attorney Robert
Clark Corrente

The visit to Mount Pleasant came in the wake of a rash of shootings, including four homicides in 2005 involving Mount Pleasant students. U.S. Attorney Corrente countered those tragic incidents with the story of a successful Mount Pleasant student, a young woman who graduated with honors after a challenging childhood that involved a drug addicted mother and foster care. Teachers believed in the girl and, as a result, she applied herself, graduated Mount Pleasant with honors, then from URI, and is now pursuing a masters degree at Rhode Island College.

The U.S. Attorney also profiled 15 recent cases in which gun offenders went to federal prison – all young Providence men between 21 and 29 years old.

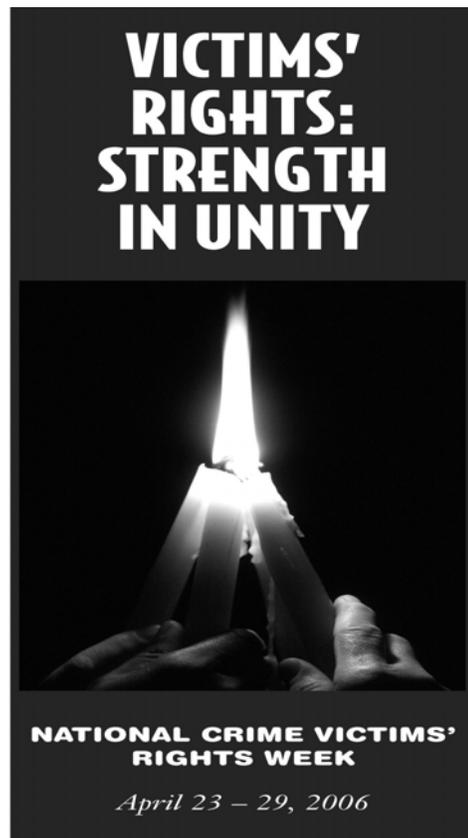
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