

Tuesday, November 28, 2006

### **What is cocaine base?**

The 100-to-1 crack to powder cocaine disparity in federal sentencing actually arises from statutory language (e.g., 21 USC § 841(b)(1)(A)(iii)) distinguishing "cocaine base" from powder cocaine. What, then, is the difference between cocaine base and powder cocaine? The statutory language is ambiguous; some federal courts have equated cocaine base interchangeably with crack, and others have looked at the smokability of the substance, as discussed further below. Cocaine base and powder cocaine are pharmacologically indistinguishable from each other. *U.S. v. Brisbane*, 367 F.3d 910, 911 (D.C. Cir. 2004), cert. denied, 543 U.S. 938 (2004); *U.S. v. Gunter*, 462 F.3d 237, 240 (3d Cir. 2006). Cocaine "is usually processed for importation into the United States by dissolving the cocaine base in hydrochloric acid and water to create a salt: cocaine hydrochloride, C<sub>17</sub>H<sub>22</sub>C<sub>1</sub>NO<sub>4</sub> (powder cocaine). Powder cocaine may then be converted back to its base form by cooking it with baking soda and water... In numerous trials before this Court, the Government's forensic chemists have testified that powder and crack cocaine are the same chemical substance, just in a different form." *U.S. v. Hamilton*, 428 F. Supp. 2d 1253, 1257 (M.D. Fl. 2006). The generally more conservative Fourth Circuit treats cocaine base and crack interchangeably. *U.S. v. Ramos*, 462 F.3d 329, 434 n2 (4th Cir. 2006). The District of Columbia Circuit, however, has ruled that a conviction for cocaine base -- rather than for powder cocaine -- requires proof that the cocaine base is smokable. *U.S. v. Brisbane*, 367 F.3d at 914. I agree with the many people who have attacked the unfairness of the federal 100-to-1 crack to powder cocaine sentencing disparity, which hits minority criminal defendants disproportionately hard. Some so-called tough-on-crime advocates have suggested closing this sentencing gap by increasing the penalties for powder cocaine. I say that the entire drug enforcement system must be completely overhauled to focus more on a harm reduction approach that includes marijuana legalization, a heavy reduction of penalties, the elimination of mandatory minimum sentencing, and the end of sentencing guidelines that are anything but completely voluntary. Jon Katz.

Posted by Jon Katz in Drugs at 01:00