

CRACK COCAINE REFORM

“There has been more activity on the issue of crack cocaine reform in the past two weeks than there has been in the past two decades!” That was the sense of long-standing NCBL member Nkechi Taifa, on the heels of a unanimous decision by the U.S. Sentencing Commission to make its adjustment to the sentencing guidelines for federal crack cocaine cases retroactive, which followed a 7-2 decision by the U.S. Supreme Court which broadened judicial discretion to impose more reasonable sentences in crack cases. “Now,” she states, “the only stumbling block to complete reform of the 100-to-1 quantity disparity between powder and crack cocaine is the mandatory minimum statute. The ball is in Congress’s court, front and square. Congress must now expeditiously step up to the plate and legislatively fix this decades-long crack in the U.S. justice system.”

NCBL, being on the cutting edge of change, was in the forefront calling for crack cocaine reform during the early years of advocacy on this issue as a leading member organization of the first coalition to educate the public and Congress about this unwarranted disparity. As part of that original coalition, NCBL helped to convene a national symposium in 1993, “The 100-to-1 Ratio: Racial Bias in Cocaine Laws.” Aired by C-SPAN, the symposium brought together experts, criminal justice professionals, civil rights advocates, religious leaders, and family members. The near unanimous consensus from those assembled was that the sentences for crack cocaine are not medically, scientifically or socially supportable, are highly inequitable against African Americans and, thus, represent a racially discriminatory national drug policy. The Coalition also sponsored a legislative briefing which culminated in Representative Charles Rangel (D-NY) introducing a bill to eliminate the disparity and make the sentences of those convicted of crack cocaine offenses equivalent to the current sentences for powder cocaine. NCBL’s Nkechi Taifa consistently testified before the U.S. Sentencing Commission on behalf of the Coalition during the early 90’s, culminating in the bipartisan Commission’s recommendation to Congress that the disparity be eliminated.

The disparity in penalty triggers between crack and powder cocaine is one of the most notorious illustrations of racism in the criminal justice system. Federal law requires a mandatory minimum five year sentence – without parole – for a first-time offender’s simple possession of five grams of crack cocaine. It takes trafficking in 100 times as much powder cocaine – 500 grams – to trigger the same five year sentences. In 2002, 81.4% of those convicted of crack cocaine offenses in federal courts were African American. Although there are larger numbers of documented White crack cocaine users, federal law enforcement and prosecutorial practices have resulted in the war on drugs being targeted at inner-city communities of color. This has caused an overwhelming number of arrests from these communities, with Blacks disproportionately impacted by the facially neutral yet unreasonably harsh crack penalties. It has been reported that the higher proportion of African Americans charged with crack offenses is the “single most important difference” accounting for longer sentences imposed on them, relative to other racial groups. “Revising this one sentencing rule,” the Sentencing Commission concludes, would do more to reduce the sentencing gap between Blacks and Whites “than any other single policy change.”

Crack and powder cocaine are pharmacologically identical and have similar effects, differing only in their manner of ingestion. Both forms of the drug are dangerous, but one is not more dangerous than the other. The term “crack baby” is now widely understood to be a misnomer, with research indicating that the negative effects of both prenatal crack and powder cocaine exposure are identical and significantly less severe than previously believed. And the rate of HIV infection is nearly equal between crack smokers (due to risky sexual practices) and powder injectors (due to risky needle sharing). However, even if crack were more dangerous than powder, increased penalties ought not to be justified on that basis. A mere frying pan and baking soda stands between powder and crack cocaine. Thus, to apply a stiffer penalty for cocaine that is sold directly as crack, as opposed to powdered cocaine easily transformed into crack, is irrational.

Although families have been ravaged by drugs, they have also been subject to the devastations wrought by draconian crack sentences. Over two decades of crack sentencing has not abated or reduced cocaine trafficking, nor improved the quality of life in deteriorating neighborhoods. What it has done, however is incarcerate massive numbers of low-level offenders, predominately Black and increasingly women, who are serving inordinately lengthy sentences at an enormous cost to taxpayers and society, with no appreciable impact on the drug trade.

Nkechi Taifa is again in the forefront of crack reform sentencing advocacy. She led the successful effort for an historic hearing on mandatory minimum sentences, focused on the crack cocaine disparity, before the Inter-American Commission on Human Rights. She leads the Justice Roundtable’s lobbying campaign for legislative reform on this issue. Today, in addition to the Rangel bill on crack cocaine reform, there are also two additional bills related to crack cocaine in the House and three pending in the Senate. She states that the bills with the most progressive approach are the Rangel, Biden, and Jackson Lee bills, as they each would completely eliminate the disparity without any adjustment to powder cocaine trigger quantities.

Nkechi concludes, “twenty-one years of discriminatory crack cocaine sentencing are enough. NCBL has been in the fight for fifteen of those years. The studies are completed. The research is compelling. The analysis is sound. Both the Supreme Court and the U.S. Sentencing Commission have spoken. It is past time that Congress fix it.”