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Comments by
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At an Advance Screening of
“Without Bias”
a May3rd Film
in connection with ESPN films
to be broadcast nationwide on ESPN
Nov. 3, 2009, 8:00 p.m., EST

Hosted by the National African American Drug Policy Coalition
E Street Cinema, Washington, DC

I want to thank Judge Arthur Burnett, Sr., National Executive Director of the National African American Drug Policy Coalition, for sponsoring this screening this afternoon at the kick off of the 2009 Legislative Weekend of the Congressional Black Caucus Foundation here in Washington, and for inviting me to make a few remarks to you.

When basketball star Len Bias died in June 1986, I was responsible for overseeing and writing Federal drug laws for the House Judiciary Committee. I wrote the first drafts of the infamous mandatory minimum drug laws enacted in the wake of his death at my desk in the Cannon House Office Building.

All of us are here because we are very concerned about the problem of drug use and abuse in our society. Len Bias was not a “drug abuser.” Nevertheless his use of cocaine and alcohol was fatal. His tragic death was a sobering warning to many of his generation about the dangers of drugs.

Many of us are also here today because we want to fix the 1986 federal crack mandatory minimum laws because we see the extreme racial disproportionality in how they are enforced, and we see the unjustly long sentences that are imposed. We see in federal court, for every white crack cocaine defendant, 10 African-American crack cocaine defendants. We see that for possession of 5 grams of crack cocaine (imagine 5 packages of Sweet N Low, at one gram each) a federal mandatory minimum prison sentence of 5 years, with no parole allowed. For selling 5 grams, the mandatory prison sentence is a minimum of 5 years up to 40 years. For selling 50 grams of crack cocaine – the weight of a typical candy

bar, still a very small quantity of drugs – there is a mandatory minimum prison sentence of 10 years, up to life imprisonment. We know that crack cocaine is made from powder cocaine. Yet we see that those who sell similar quantities of powder cocaine don't face mandatory minimum sentences – they get much, much lower sentences. They would have to sell a quantity of powder cocaine that is one hundred times greater than a quantity of crack to get the same harsh sentence. Those outcomes and those laws are profoundly unjust.

We know that the law was grounded on some myths about the harmfulness of crack cocaine that were debunked long ago. We also know that the law, the way it is enforced, and our critique of the law and its enforcement, are based on two meta issues in our culture: Race and Partisan Politics.

Regarding myths, the movie addresses one of the prevailing myths that Len Bias died because he was using crack cocaine. He was snorting powder cocaine, reportedly of a very high purity, and drinking alcohol, always a bad combination.

This afternoon, let me quickly dispel three important myths about the law enacted after Len Bias's death that are often repeated.

Myth number 1 regarding racism: The 1986 crack law was not intended to be racist or racially discriminatory. The quantities that trigger mandatory sentences for crack cocaine and powder cocaine were not picked because of race. No Member of Congress consciously wanted to punish Blacks more harshly than whites for crack or cocaine offenses.

Myth number 2 regarding the politics behind the law: Yes, House Speaker "Tip" O'Neill and the Democrats saw the political advantage to Democrats in doing something about the drug problem, and crack cocaine was then the tip of the iceberg of the problem. Partisan combat and the political calendar led to the haste in writing the law which led to the serious mistakes in the law.

Democrats DID NOT come up with mandatory minimums. Mandatory minimums were not their idea. The mandatory minimums came from Republicans like Rep. Bill McCollum (FL), the ranking Republican member; Rep. Clay Shaw (FL) and Rep. Dan Lungren (CA). They brought along two Southern Democrats, Ron Mazzoli (KY) and Larry Smith (FL).

Myth number 3 regarding the 100 to 1 ratio in the quantity triggers between powder and crack cocaine: Congress did NOT create a 100 to 1 ratio because it

thought crack was more dangerous than powder. The quantities were picked because Congress thought these quantities were the quantities that signaled a dope dealer's place high up in the drug pipeline. They wrongly thought that a 5-gram crack dealer was an important, significant dealer. They wrongly thought that a 50-gram crack dealer was a major dealer.

Okay, let's turn to the question, "how do we fix this bad law?"

For twenty years, the focus of our efforts to fix these laws has been to mobilize revulsion at the egregious racial disparity in the application of this law. Generally black dope dealers are prosecuted more frequently than white dope dealers by the U.S. Department of Justice, and prosecution of black crack dealers is the worst example of this. Because of the length of the sentences for crack quantities, black dope dealers who deal crack are sentenced more harshly than dope dealers who deal other drugs.

Those who make the arguments about the injustice of disproportionate punishment are factually correct in identifying the problem of race in drug enforcement, but they have missed the forest for the trees.

For white America, it is not a problem that black dope dealers are more harshly punished than white dope dealers *because the role of the war on drugs is to maintain white privilege.*

Briefly, what is the explicit role or mission of the war on drugs? It is to:

- * save lives,
- * protect kids from getting their hands on drugs,
- * stop dope dealers, and
- * reduce crime.

On each of these explicit factors, the war on drugs has been a failure for years. Everyone knows that, white and black.

But despite its well-known failure, the war on drugs remains popular. Why, if it is such a failure, does it remain popular? Because it is successful in carrying out its unstated, almost unconscious role in our society.

You can see this role clearly when you consider the origin of the modern war on drugs in the late 1960s. The end of the 1960s was the end of what great movement in American history? The civil rights movement, of course.

For three decades – the 1940s, 1950s and 1960s – a critical element of American society worked to bring down legal segregation. Those were the laws and related customs that forbade blacks from:

- * serving in the Armed Services and government,
- * living in most neighborhoods,
- * shopping in most stores,
- * working in many jobs and professions,
- * attending many schools,
- * engaging in recreation in many facilities,
- * traveling freely without hassle from state to state, and
- * voting in many elections.

These were all privileges reserved for whites, and it was finally, by the end of the 1960s, that those laws and customs were struck down or outlawed, after a long and bloody struggle. Did the retrograde social forces in white America that fought to preserve white privilege simply give up? After 1970, did most of white America become enlightened to the many ways its skin privilege was still preserved and work conscientiously to eliminate it? Or were social and legal forces realigned to maintain a status quo that continued to favor whites in their neighborhoods, schools, and jobs?

It was simultaneous with the triumph of the civil rights movement that the war on drugs was being socially created in the society and legally by President Nixon and a Democratic Congress. On its face it is racially neutral. But the unconscious objective (actually expressed explicitly by President Nixon in a confidential White House conversation) has been to link blacks to the deviance and degradation of drugs. The memes of the drug problem are: Black youth are “youth at risk.” Black neighborhoods are open air drug markets. Black entrepreneurs are dope dealers. Black people are especially, even genetically vulnerable to drug abuse.

The underlying social role of the war on drugs in American society is to create an association between the drug problem and people of color, and in those terms, it succeeds very well. And locking up a disproportionate number of blacks in prison is part of that success. For most of America, this is NOT a problem.

So, given my analysis, is it any surprise that our arguments for the past 20 years – that the crack cocaine sentencing law is unfair and is not working – have had negligible political traction? Is it really a surprise that, even with Barack

Obama in the White House, no bill to repeal this law has been introduced in the U.S. Senate ten months into a 24-month-long Congress? Is it really a surprise that no more than a handful of white Members of the House are cosponsors of repeal legislation?

Sadly, I predict that if the Scott or Rangel bills that would equalize the quantity triggers for the mandatory minimum prison terms at the 500 and 5000 gram levels now used for powder cocaine were to pass, there will be no difference in the pigmentation or number of those being arrested and sent to prison. Only the length of the sentences they typically serve *after* they serve the mandatory minimum might be reduced.

So let me conclude that while our cause is just, our politics have failed. We have not used an argument that is compelling for most Americans, at least white Americans.

One such argument might be that our current crack laws are wasting our precious law enforcement resources. By focusing federal agents on 5-gram and 50-gram dope dealers, America is letting the big shots who arrange for million-gram loads of cocaine to avoid investigation and prosecution.

Congress has given federal investigators and prosecutors a road map that leads in the wrong direction. If we tell the American people that we need to give law enforcement the necessary tools to find and punish real high-level dope dealers, I think we have a message that works to support changing the quantity triggers will result in real changes in enforcement practices in our neighborhoods. I think that means quantity triggers need to be closer to 100 or 500 kilograms of cocaine, not the measly 5 kilos that can fit in a briefcase or student book bag, as provided in the current reform bills. At the level that involves millions of dollars of drugs, no one cares about the pigmentation of the defendants, because they are truly international criminals. They will no longer be street-level drug dealers who belong in state criminal courts, who could benefit from rehabilitation and jobs, not mandatory minimum sentences.

Now, if we want to end the consequences of the racism that is at the core of the war on drugs, we have to end drug prohibition. Obviously that is a much different struggle than fixing this bad and unjust law. But that is *the struggle we must undertake* if we want to realize and fulfill the dreams of the civil rights movement.

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