

Clemency Initiative Favored Male Repeat Offenders Over Women with No Prior Convictions

Nothing sums up President Obama's Clemency Initiative¹ better than Charles Dickens' passage from a *Tale of Two Cities*:

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair . . .

Ironically, I read *Tale* in the late 1990s while serving a 24-year sentence for drug conspiracy charges and while waiting to learn my own fate, having filed for clemency under the Clinton administration. On July 7, 2000,² after I'd served 9 years and 3 months, my nightmare suddenly ended and my new life, as an activist, began.

I immediately swung into action to get more women out of prison before President Clinton left office by writing letters to the Office of the Pardon Attorney³ (OPA) and the White House, and talking to the press about select cases, such as my roommate, Lau Ching Chin, who was serving 17 years for a "drug conspiracy" case because she had passed a phone message to her boyfriend, not realizing the message was from a working informant who'd entered into a plea agreement, requiring him to send someone else to prison to escape, or diminish, his own demise. Having written Chin's clemency petition while we were roommates, I was determined to reunite her with her children, who'd been sent to live with relatives in Hong Kong. The last day of Clinton's presidency, Chin's sentence was commuted,⁴ convincing me that I'd discovered the formula to successfully free more women.

I started the CAN-DO Foundation,⁵ Clemency for All Nonviolent Drug Offenders, and focused only on women until President Obama's Clemency Initiative kicked in. Although we started adding men to the website for such an historic event, my heart was devoted to the women, as evidenced when the New York Times⁶ asked me to comment on who should get priority for clemency. Without hesitation, I underscored the importance of giving women, especially *mothers*, top priority, and explained why. I also wrote an OpEd⁷ urging President Obama to focus on female applicants, and urged the media to cover stories of women we'd identified as ideal candidates, such as the

women I'd compiled on the CAN-DO's Top 25 Women Who Deserve Clemency⁸ list.

Early on, I was pleased to see several ladies coming off the Top 25, including friends I'd served time with, such as Barbra Scrivner⁹—an excellent clemency candidate due to her exemplary conduct, and bolstered by the support of her Sentencing Judge, Prosecutor, U.S. Attorney, and Congressman Earl Blumenhauer.¹⁰ Ironically, her petition was denied twice, first by President George W. Bush in 2008,¹¹ and absurdly, by President Obama in his first term, on November 19, 2011. If everyone associated with Barbra's conviction and sentencing wanted her set free, then who at either OPA or the Department of Justice (DOJ) wanted to keep her in prison, and why? Despite the fact there was no new information to add to Scrivner's previous clemency petitions, she was among one of the first clemency recipients after the administration's clemency initiative was launched. The only difference is that Deborah Leff¹² was the new, and much welcomed, Pardon Attorney who replaced Ronald Rogers. Her two predecessors, Roger Adams¹³ and Ronald Rodgers,¹⁴ had received separate scathing reports in unprecedented back-to-back audits by the Inspector General's office, which ultimately led to both of their resignations.

At the inception of the administration's clemency initiative, a number of clemency recipients, myself included, went to our nation's capitol and met Deborah Leff at the OPA; possibly a first-time occasion. Ms. Leff could not have been more welcoming, warm, and genuinely interested in our individual experiences and concerns. I personally raised the issue of cases such as that of Danielle Metz.¹⁵ My concern was that women like Danielle would not get a fair shake because the criteria set by the DOJ and embraced by CP14 stated that applicants had to be "low-level" and "non-violent." Violence had occurred within Danielle's conspiracy case, yet not by her hand or knowledge. Even Metz's U.S. Attorney for the Eastern District of Louisiana, Kenneth Polite Jr.,¹⁶ supported her clemency, stating she had nothing to do with the violence, nor did she pose any risk to society. This is a common plague for women who've been ensnared by the conspiracy net. Violence committed by *male* co-conspirators, even if one has never met them, can brand a low-level, non-violent woman with a scarlet letter, because the conspiracy law transfers illicit behavior from one co-conspirator to another, thus making low-level



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participants equally culpable to main organizers. Only those who provide “substantial assistance”¹⁷ can escape the mandatory sentences, which many women are not in a position or inclined to do. Although Leff could not comment on any particular case, she listened in earnest and noted our concerns that “lifers,” such as Metz, should be given special consideration.

The number of women in prison has outpaced¹⁸ that of men by nearly two to one¹⁹ over the last 30 years—driven by drug-law violations, the focus of President Obama’s clemency program. In my view, the expansion of the conspiracy law, coupled with mandatory sentences, has stimulated the women’s prison population to grow by 800 percent over the last 30 years compared to men, whose population grew by 416 percent²⁰ during the same timeframe. Understanding how this came about is *critical* to comprehending why women were failed miserably by the promise of mercy that tragically alluded many of the most deserving clemency candidates.

In the late 1980s and ’90s, there was a battle cry fueled by both Democrats and Republicans to combat drug use and tackle the so-called “crack epidemic.” Prosecutors were under pressure to prove that DOJ was seriously combating a scourge destined to destroy our society, per the sentiment back then. Women were the low-hanging fruit used to fatten the ranks of individuals indicted in any given drug conspiracy case.

Women, such as Rita Becerra²¹—a first offender who has served 22 years on a 27-year sentence for conspiracy related to drugs sold by her boyfriend of nine months. Rita was a hair dresser for 21 years prior to her arrest. Her boyfriend started selling drugs just before they moved in together, was busted several months later, cut a deal, and received 9 years. Rita, who never had any desire to sell drugs, complied with his request that she accompany him on drug buys and put the drugs in her purse—virtually using her as a human shield, assuming that if they were caught, she would get in trouble, not him.

She was never offered a deal, or even de-briefed, because the prosecution didn’t believe she had any additional information other than what her boyfriend shared. Even more insulting, he received a sentence reduction, in part, by sharing details that incriminated Rita; so essentially, he introduced her to the illicit drug trade, then earned a sentence reduction at her expense. Rita was told to plead guilty so she would get less time, but instead of receiving the benefit of a guilty plea, she was given three enhancements that added seven points to the sentencing guidelines, resulting in an additional 19 years to her sentence. Adding insult to injury, Rita received a letter from CP14 stating she didn’t qualify for help because she was getting out “too soon”—even though imminent release was never mentioned in the CP14 criteria, and numerous people, such as Mandy Martinson,²² received clemency with even less time left to serve than Rita. Rita’s clemency was denied on August 8, 2016. But it gets worse: she will be deported to Mexico even though her entire family lives in Texas. Her

children have never been to Mexico, do not speak Spanish, and she has no relatives outside the United States. She came to the U.S. as a child, grew up here, and her children are American citizens.

I spent nine years getting to know these women during my own incarceration, reviewing many of their cases in the law library and hearing their stories. I’m not implying that all women are victims. I also met some Queen-pins and even shared a cell with one. But for the most part, Rita’s case is not the exception—it’s the norm.

Extreme poverty, or a hopeless home environment like Rose Summers²³ had, is another factor. Her mother was a drug user, then became a dealer, and her supplier lived with them. Rose was offered a sentence reduction if she would testify against her mother, but at 26, she couldn’t fathom sending her mother to prison, and ended up with more time than anyone because her mother and the supplier cut deals at the last minute, betraying Rose in the process. Prison helped Rose understand the tragic consequences of this lifestyle, so she started taking every educational course available and even earned three college degrees while in prison. Rose was denied clemency on January 6, 2017. Her experience is why we need accountability and transparency at OPA to determine why male, repeat offenders, leap-frogged over a first offender, like Rose, who did everything in her power to redeem herself.

Possibly, the most common manifestation that lands women in prison is some form of crisis that destabilizes an otherwise sound environment. Lisa Hanna²⁴ lost her only son, who died of a cerebral palsy seizure in his sleep, Lori Kavitz’s²⁵ husband committed suicide, and Beth Cronan’s²⁶ husband divorced her. These tragic circumstances can send a person into a depression spiral, causing some women to self-medicate and enter a social environment that can place them at risk, surrounded by bad actors. It’s not my intention to make excuses for illicit behavior, because ultimately we are all responsible for our decisions, but bad decisions come in many forms, including the ones made by our legislators who were reckless when they hastily passed legislation in a race to one-up the other party with “tough on crime” rhetoric in the 1980s. One of the more offensive decisions removed a judge’s ability to perform a job their title mandates. If judges can no longer *judge* the mitigating circumstances surrounding the case of the person standing before them, let’s stop calling them “judges”, since they merely act as prosecutorial aides—an insult to their profession and the so-called separation of powers our forefathers included in the Constitution. Those who passed bad laws that unnecessarily destroy lives should also answer for their misguided actions and correct the problem, posthaste. Basically, President Obama performed elementary triage on a broken criminal justice policy run amok, responding to our law makers’ lack of expediency to fix a nightmare of their making. Executive clemency was the best solution, or so we had hoped.

Deborah Leff resigned on January 15, 2016. Her resignation letter²⁷ to then Depute Attorney General Sally Yates

sent shockwaves, or should have, through the hearts of everyone devoted to seeking justice through clemency. The letter confirmed that DOJ was not advancing her favorably recommended petitions to the White House, and that her ability to communicate with the White House had been severed, a departure from previous protocol. Leff's alarming letter was not leaked to the press until after she was replaced by Robert Zauzmer,²⁸ yet another former prosecutor, touted as the man who could get the job done. I was skeptical.

Understandably, some would argue that the percentage of female clemency recipients hovered close to the percentage of women in prison, versus the men, at 6.7 percent. But that percentage changes when we focus strictly on drug cases and on the *reasons* why women end up with long sentences, versus the men. Men are commonly offered plea bargains that women, such as Rita, are not, because women have less intel to offer. I can't count the number of women CAN-DO has assisted who were the *least* culpable and yet the *only* one still serving time; the male co-defendants were free! And a large number of women in federal custody are there due to criminal activity committed by their men, whereas very few men are in prison due to a criminal enterprise led by a woman. For this reason, I began to panic over the lack of women receiving clemency, so I wrote more OpEds,²⁹ performed vigils³⁰ in front of the White House, and, as a founding member of the National Council of Incarcerated and Formerly Incarcerated Women and Girls, I authored an Open Letter to President Obama³¹ covered by Business Insider,³² suggesting that he switch to an amnesty program and reconsider some of the more egregious denials—women such as Nancy Ferneau,³³ Mary Ziman,³⁴ and Patricia Cooney,³⁵ all of whom are over 60 years old and suffering from numerous illnesses.

Possibly the most damning evidence of gender prejudice is anchored in the number of male repeat offenders who had 922(g)³⁶ gun charges in addition to drug charges, yet were favored over women with no prior convictions or gun charges. No less than 141 men³⁷ charged as “felons in possession of a firearm” received sympathy over a long list of female first offenders. Indeed, more men in that one category were forgiven than all the women, combined! Only a paltry 105 out of 1715 commutes³⁸ were women.

Although it's horribly disappointing that so few deserving women received commutations, it must be noted that out of 105 women who were chosen, the CAN-DO Foundation profiled 44 clemency recipients³⁹ who experienced the *best of times* thanks to Obama's merciful Clemency Initiative. Yet for thousands, it remained the *worst of times*, when once again, dreams were shattered, hearts were broken, and self-esteem flat-lined.

The Clemency Initiative was the *age of wisdom* for Ramona Brant,⁴⁰ a domestic abuse survivor, filmed by Fusion⁴¹ as she walked out of MDC Brooklyn⁴² after serving 21 years of a life sentence for drug conspiracy. Within three months, on March 30, 2016, Ramona had lunch with President Obama⁴³ and became the case in point⁴⁴ that he

would often reference when stressing the importance of clemency. She is still prominently featured on the Obama White House website⁴⁵ and was referenced in his Harvard Law Review article.⁴⁶

But it was the *age of foolishness* for Alice Johnson,⁴⁷ a first offender who lost her job at FedEx and, in an effort to support her family, agreed to be a “telephone-mule” who passed messages between a drug dealer and his buyer. She did not live a lavish lifestyle or have any assets to seize; there was no violence, no guns, and yet she was given a life sentence based on the quantity of drugs attributed to a large network of co-conspirators. Alice has served over 20 years and has an unparalleled record of achievement post-conviction. She produces, writes, and directs all the plays in the women's prison at FCI Aliceville.⁴⁸ She has the support of the Warden, additional Bureau of Prisons staff, three members of Congress, and the National African American Mayors Association,⁴⁹ and an endless list of media sources have covered her story. Even her prosecutor now agrees she has served enough time. On January 6, 2017, Alice's clemency petition was denied. There are no words in the English language to express how Alice and her family are currently feeling.

It was the *epoch of belief* for Danielle Metz,⁵⁰ the aforementioned friend who received clemency after serving 23 years, but it was the *epoch of incredulity* that Michelle West⁵¹ was denied. Like Metz, Michelle was held responsible for the actions of a violent co-defendant. The hitch is that the murderer in West's case was given full immunity if he would testify against others, and in doing so escape punishment for *his* crime. Michelle rejected a plea agreement out of concern for the safety of her 10-year-old daughter, Miquelle, who now runs the #FreeMichelleWest⁵² campaign. Because Michelle went to trial, she was held responsible for the actions of the murderer, resulting in a sentence of double life, plus 20 years.

It was the *epoch of belief* for Angie Jenkins,⁵³ whose faith in God never wavered. Post-clemency, she is happily married and works at Crossing the Jordan,⁵⁴ a thrift store that funds a faith-based foundation and residential program for men, women, and children in need of diversion from a destructive path or circumstances. Angie was given a Second Chance at Life.⁵⁵

But it was the *epoch of incredulity* for Lori Kavitz,⁵⁶ Lavonne Roach,⁵⁷ Missy Trigg,⁵⁸ Elisa Castillo,⁵⁹ whose cases are just a few that fit all the criteria announced by the Deputy Attorney General, yet were denied clemency. Lori's Sentencing Judge, Mark Bennett, stated on record that her sentence was “idiotic, arbitrary, unduly harsh and grossly unfair.” He repeated this in his support letter, adding,⁶⁰ “I beg you, Mr. Kupers, to urge the President to right this grave injustice.” The four aforementioned women had no prior convictions and were chosen by Yale law students who vetted their cases and featured them in an OpEd published in Mic.⁶¹

It was the *season of light* for Josephine Ledezma,⁶² yet another first offender serving life whom I met in prison,

but the *season of darkness* for her best friend, Eva Palma Atencio.⁶³ Also a first offender, Eva was certain she would follow in Josie's footsteps, since their cases were so similar in nature, yet sadly, Eva will now serve the rest of her life in prison without some form of intervention.

It was the *spring of hope* for Pauline Blake,⁶⁴ a former meth addict who not only received mercy but is now going to college, paid for by her church. Yet it was the *winter of despair* for Crystal Munoz,⁶⁵ serving almost 20 years for marijuana. Clemency would have reunited her with her husband, Ricky, who is raising their two young daughters alone, while Crystal suffers a mother's worst nightmare: separation from her babies, who made posters in anticipation of their mother's freedom. Crystal and her family's prolonged suffering serves no one; it's only a reminder of how the drug war destroys far more lives than illicit drug use, especially pot.

In conclusion, the clemency process is brutal, secretive, extremely flawed, and currently no better than a lottery—except lottery-losers understand why they were not chosen. Furthermore, our nation's disgraceful ranking as the world's leading incarcerator is an abhorrent chapter in our history and a testament to how insincere our leaders are, who feign concern, yet refuse to correct it—including President Obama, who half-heartedly tried, via clemency, but chose to bunt when the crowd was cheering him on, expecting a home run that was *easily* within reach. On January 20th, I joined thousands of fans in a collectively sigh of disappointment.

Notes

- * President of Harm Reduction Productions. Writer/Director of the award-winning film, *420—The Documentary* (2013), at www.420documentary.com. Special thanks to Professor Berman's truth-seeking devotion, no matter on which side of the aisle it originates, lands, or how controversial it might be. And to Mark Osler who asked me to share my insights with regard to the many wonderful women who were passed over by the clemency initiative.
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