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Judges Voice Anger Over Mandatory U.S. Sentences Courts: Critics cite example of woman's 10-year term for first drug offense. But law has strong support.

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In fact, [Richard A. Gadbois Jr.] is just one of several federal judges in Los Angeles who have publicly voiced anger about the mandatory minimums. U.S. District Judges Terry J. Hatter Jr. and J. Spencer Letts each have publicly attacked the mandatory minimums, and Hatter went so far as to confront [Janet Reno] about the issue when she recently visited Los Angeles.

About the only way to get a lighter sentence is to provide substantial assistance to prosecutors. But in Drake's case, her lawyer says the only person she knew was [Fred Haley], and he died shortly after she was arrested. That left Drake with no one to give information about, and no way to escape the mandatory minimum.

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Full text: Tonya Denise Drake is both criminal and victim—a criminal, she concedes, by virtue of her brief involvement in the crack cocaine trade; a victim, according to her family, lawyer and the judge who sent her to prison, of a cruel and indifferent federal sentencing system that is coming under increasing attack nationwide. Her friends and family acknowledge that Drake, a 28-year-old welfare mother of four, broke the law when she agreed to mail a package for a man she barely knew and which turned out to contain crack cocaine. But even though Drake got all of \$47.40 for the task, the congressionally approved mandatory minimum sentence for her offense is 10 years in federal prison.

There is no parole, so even with the modest federal credit for good behavior, Drake will not be out of prison until after the year 2000.

"This woman doesn't belong in prison for 10 years for what I understand she did," U.S. District Judge Richard A. Gadbois Jr. said in imposing her sentence. "That's just crazy, but there's nothing I can do about it."

With those remarks, Gadbois became another in an ever-growing number of federal judges to publicly take issue with the federal mandatory minimum sentences. Atty. Gen. Janet Reno also has questioned the laws, and this week told a group of federal judges meeting in Santa Barbara that she expects to send a report to Congress on the subject next month.

Critics of the mandatory minimums have powerful opponents, however. Many law enforcement leaders and legal scholars believe that mandatory minimums are an important deterrent to crime, and they say that any dilution of the minimum sentences would weaken the national commitment to fighting drugs and violent crime.

"The only way to get a real hammer effect on some crimes is to set a floor below which the judge cannot go," said former Atty. Gen. William P. Barr, a strong supporter of mandatory minimums. "I think that as a philosophical matter the punishment ought to fit the crime. The drug problem is a national scourge that has cost us more blood, treasure and national spirit than all our foreign wars."

Most members of Congress appear to agree, and efforts to scrap the mandatory minimums have made little progress so far. Still, even some backers of the mandatory minimums—including Rep. Charles E. Schumer (D-N.Y.), who chairs a key congressional subcommittee—have shown a willingness to amend a sentencing system that is sending scores of first-time drug offenders to long terms in crowded federal prisons.

The mandatory minimums have struck hardest at black defendants, who make up nearly 40% of all inmates serving mandatory sentences, according to one recent study. (The same study found that the overall federal prison population was 28% black. African-Americans make up 11.7% of the U.S. population.)

Because the minimum sentences apply only to a few kinds of offenses-almost all of them related to drugs or guns-the people who break those laws face far more rigid sentences than other offenders.

In the Rodney G. King beating case, for instance, Los Angeles Police Officer Laurence M. Powell and Sgt. Stacey C. Koon each received sentences of 2 1/2 years-substantially below federal guidelines-because there is no mandatory minimum for violating another person's civil rights. There is one for selling or transporting crack cocaine, however, and that's why Drake's four young children will grow up without her.

"The law stinks," Gadbois said in Drake's case. "I don't know a judge who thinks otherwise."

In fact, Gadbois is just one of several federal judges in Los Angeles who have publicly voiced anger about the mandatory minimums. U.S. District Judges Terry J. Hatter Jr. and J. Spencer Letts each have publicly attacked the mandatory minimums, and Hatter went so far as to confront Reno about the issue when she recently visited Los Angeles.

Hatter has bitterly criticized a sentencing system that he said gives more discretion to young prosecutors than it does to experienced judges. Hatter is a liberal appointed by President Jimmy Carter, but Gadbois and Letts are moderate conservatives appointed by President Ronald Reagan. Both are sharply critical of the mandatory minimums. At a recent sentencing, Letts said the system is "worse than barbaric, it is uncivilized."

Mandatory minimum sentences are hardly new. They have been on the books for centuries and cover a range of offenses, from refusing to testify before Congress to failing to report seaboard saloon purchases. But few of those laws are enforced, and the vast majority of mandatory minimum sentences are handed down for drug and weapons violations.

In the 1950s and 1960s, much scholarly attention was focused on judicial discretion in sentencing and rehabilitation of criminal offenders. That gave way more recently, however, to a harder-line approach, particularly with respect to drug crimes.

In 1984, Congress enacted a slew of mandatory minimums in response to mounting frustration over what many elected officials saw as wide disparities in sentencing and excessively lenient judges. The mandatory minimums, according to proponents, provide strong deterrence by convincing would-be criminals that they cannot rely on a soft judge to escape harsh punishment.

Schumer, the New York Democrat, is a liberal on many issues. But as head of the House subcommittee on crime and criminal justice, he views mandatory minimums as an important part of federal sentencing. Schumer opposes a bill by Rep. Don Edwards (D-San Jose) to repeal the mandatory minimums.

Still, Schumer and some other supporters of the mandatory minimums have been distressed by what they consider to be egregious examples of the sentences being imposed on relatively minor criminals. But unlike Edwards, who supports outright abolition of the sentencing laws, Schumer hopes to create a safety valve that would allow judges to depart from the minimums in extraordinary cases, while requiring compliance the rest of the time.

Barr, however, disagrees with even that modification. "I'm against a safety valve at this point because I don't think the case has been made that it's needed," Barr said. "The notion that there are a lot of hapless, semi-responsible people out there . . . is a myth."

That view prevailed in the Justice Department under Presidents Reagan and George Bush, but Reno lately has sounded a different tune.

"I have a concern because there may be situations in which minimum mandatorys are causing federal offenders to serve 10 or 15 years for being minor participants on a drug boat deal," Reno said in May. Earlier this week, speaking at the U.S. 9th Circuit Court of Appeals judicial conference in Santa Barbara, Reno said she had examined the crowding situation in the federal prison system and concluded that too many cells were being

taken up by drug offenders convicted of relatively minor crimes.

The judges greeted Reno with a standing ovation at the opening and close of her remarks.

Minor defendants should be given incentives to "work their way out of what might be minimum mandatories, at least for first offenders, and at least second offenders who may not have serious prior histories," Reno added.

Those were welcome words to the friends and family of Tonya Drake.

In 1990, Drake was living in Inglewood, trying to support four young children-their ages ranged from 1 to 6-on the payments she received from the Aid to Families With Dependent Children program. Some members of Drake's family had occasionally run into trouble with the law, but her only offenses were traffic violations.

On June 21, Drake was at a swap meet when she ran into a man named Fred Haley in the parking lot. She had seen Haley around and had wondered about him: He drove new, fancy cars, and Drake suspected he might be a drug dealer.

So when Haley asked Drake if she would mail a package for him, she concedes she was a little suspicious. "I didn't know for sure, but I thought something was up," Drake told police. "I thought there might be cocaine in the package, but I wasn't sure."

Drake agreed to mail the package anyway because Haley handed her a \$100 bill and told her she could keep the change-\$47.40 after postage. "I need money for my children, so I took the chance," she said.

But when Drake showed up at a nearby Airborne Express office, she was so nervous that a security guard got suspicious. He watched her fill out the address form for the package, then discreetly followed her to her car and wrote down her license plate number. Inside, the guard and another employee opened the package and found a suspicious plastic bag inside a box of laundry soap.

They called the Los Angeles Police Department and officers conducted a field test on the contents of the bag. It contained 232 grams of crack cocaine.

Had it contained powder cocaine, Drake would have been facing less than three years in prison for her role in mailing the package, and no mandatory minimum sentence. That is because of a second controversial aspect of federal drug laws: For the purposes of sentencing defendants, each gram of crack cocaine is considered the equivalent of 100 grams of powder.

Drake's package, however, did not contain powder cocaine. It contained crack. So instead of facing a sentence of roughly the same length that Powell and Koon received, she was subject to the federal mandatory minimum for possession of more than 50 grams of crack: 10 years. No exceptions, no room for a judge's discretion.

About the only way to get a lighter sentence is to provide substantial assistance to prosecutors. But in Drake's case, her lawyer says the only person she knew was Haley, and he died shortly after she was arrested. That left Drake with no one to give information about, and no way to escape the mandatory minimum.

Drake's family was dumbfounded.

"I told Tonya: 'They'll probably give you about six months and three years probation,'" her brother, Michael Drake, said in an interview this week. "That'll teach you. You'll never mail another package."

In fact, if Drake had been convicted in state court, the sentence would almost certainly have been less than she received.

Terry Amdur, a Pasadena lawyer who represented Drake at trial and through her appeals, researched a number of state crack cases and produced several examples as part of her defense.

In one case, Edwin Moren, who had prior drug and robbery convictions, pleaded guilty to possessing 102.4 grams of crack. He received a one-year jail term and a four-year suspended sentence. Had he been convicted in federal court, he would have faced a 10-year mandatory minimum.

Another suspect, Vicki Williams, pleaded guilty to possessing crack for sale. Williams, who also had a previous criminal drug conviction and was on probation at the time of her arrest, had 105 grams of crack when she was arrested. The federal mandatory minimum in her case would have been 20 years; instead, she was convicted in state court, where she received a three-year sentence.

One of the factors that goes into deciding whether to charge a suspect with a state or federal crime in a drug case is the amount of drugs involved, and prosecutors point out that neither of those suspects possessed as much crack as Drake did. But both of them had previous records, and no evidence suggested that Drake had any previous drug history.

Police searched the home where Drake was living at the time and found no drugs or drug paraphernalia. They did find two handguns, but both weapons were legal and belonged to Drake's brother-in-law, who also lived at the house with Drake's sister and their family.

"Tonya's case is a perfect example of the kind of egregious cases that we often hear about," said Julie Stewart, president of Families Against Mandatory Minimums, a Washington-based group that lobbies against such laws. "These are not isolated cases. They're happening all over the country."

Supporters of the mandatory minimums dispute that, saying the overwhelming majority of such sentences are handed down to defendants who are deeply involved in drug or weapons violations. The Justice Department study that Reno ordered is expected to explore that question. Stewart and other opponents of the mandatory minimums hope it will give them new ammunition in their fight to change the current laws.

For Drake, those efforts are gratifying, but they have little real meaning. Her appeals were exhausted in June, and she reported to the Bureau of Prisons on June 7 to begin her 10-year sentence. Today, she occupies a cell at the Federal Correctional Institution in Dublin, Calif.

Her current attorney, Robert C. Campbell III, says he is hoping Drake might get a pardon. That is a long shot, he concedes. But at this point, it is his client's only hope.

"We're a tightknit family," Michael Drake said this week, as his father and Tonya Drake's four tiny children nodded sadly. "We're still together. But where's the justice in this? . . . If you break the law, you get what you deserve. Give my sister what she deserves. She does not deserve 10 years."

Mandatory Minimums

Thousands of federal prisoners, most of them charged with drug and weapons violations, are serving mandatory minimum sentences. The number has grown in recent years, and minority defendants are disproportionately affected by the mandatory minimums.

Number of defendants imprisoned under mandatory minimum sentences:

1989: 13,402

Race of federal defendants:

Sentenced to mandatory minimums

Anglo: 34.8%

Black: 38.5%

Hispanic: 25.4%

Other: 1.3%

All federal defendants

Anglo: 46.9%

Black: 28.2%

Hispanic: 22.0%

Other: 2.9%

Notes: "Hispanic" includes white and black Hispanics, so all statistics underreport black defendants.

"Other" includes American Indians, Alaskan natives and Asian and Pacific Islanders.

Sources: U.S. Sentencing Commission, Special Report to Congress; Mandatory Minimum Penalties in the Federal Criminal Justice System, August, 1991.

Illustration

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