

# A CRIMINAL SYSTEM OF JUSTICE

a mandatory minimum drug sentence is a true offense

By REG POTTERTON

Of all the anti-American nations in the long history of xenophobia, it is ironic that the United States itself should prove to be the most anti-American of them all. Hyperbole? Not really.

In its most extreme form, anti-American means killing Americans, and nobody leads us in that field. More Americans have been murdered by other Americans in this century alone than have been killed by enemy action in all the wars we have ever fought, beginning with our Revolution.

If killing is the ultimate expression of anti-Americanism, imprisonment is a close second, and there again we lead the race, having overtaken those champions of mass imprisonment, the Soviet Union and South Africa, in the Eighties. Our incarcerated population at last count was around 1,200,000, with another 3,000,000 on parole or probation, all of which requires a criminal justice system that cost taxpayers more than \$61 billion in 1988 and increases every year.

We now spend more than \$20 billion each year keeping people locked up in local jails and county, state and federal prisons. It's estimated that by 1995, the inmate population will increase by 333,000, or 27 percent.

All this incarceration might be good and justifiable if it reduced the rate of crime in America, but it hasn't. It might be worth doing if it kept habitually violent criminals off the streets, but it hasn't. We could even support it and cry out for more if it reduced the fear

and hatred of race, class, gender and religion that eats away at the American spirit, but, of course, it hasn't.

The introduction of mandatory minimum prison sentences in 1986 was one of the more sinister manifestations of governmental anti-Americanism in this country. When Congress passed the laws that impose statutory mini-

class, the professional informer. In 1989 alone, paid informants received \$63,000,000 and immunity or special consideration for their own crimes.

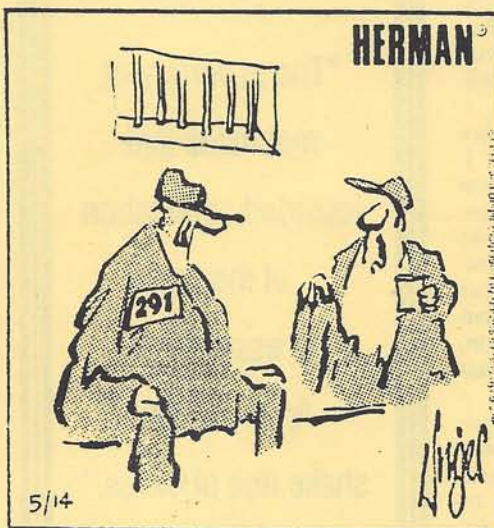
Loren Pogue, a 58-year-old real estate agent, is an example of what this "lock 'em up and throw away the key" policy means. He will spend 27 years in prison because a former business asso-

ciate asked Pogue to help him sell a plot of land on a Costa Rican mountainside to undercover agents who posed as drug smugglers shopping for a place to put an airstrip.

That Pogue had no drug history, that the airstrip was never built and would, even if built, be useless because of its location, played no part in the court's decision. It was enough for the judge to hear that the undercover agents talked of importing a fixed amount of cocaine,

that Pogue was aware of their intention and helped his old pal, a recipient of \$250,000 in government largesse for his information, close the deal to sell the nonexistent airstrip.

Consider that if Loren Pogue lives to serve his 27 years in prison, it will cost the taxpayers \$540,000 in 1992 dollars and far more for the welfare of more than 25 children and foster children he leaves behind. And Pogue is only one of 70,000 federal prison inmates, each of whom costs the government about \$55 a day, or \$20,000 a year. That's an annual total of around \$1.4 billion. In 1995, when the federal inmate population is expected to reach 99,000, it will cost the taxpayers almost \$2 billion.



"The jury found me not guilty, but the judge pleaded temporary insanity and gave me five years."

mums for drug offenses, it simply abandoned the principle that the punishment should fit the crime. With these measures, judges no longer play a role in determining the severity of a sentence. All they do is obey orders. The fundamental rule of mandatory minimums holds that anyone found guilty in a drug case gets a prison sentence for a fixed term without parole, no matter how marginal his involvement and regardless of whether or not he profited from drug deals. Many now go to jail not because they are drug kingpins or even middle-level players or repeat offenders but because their names have been given up by America's newest entrepreneurial

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But forget the numbers. Forget that we spend more on enforcement than on education—that California, for example, laid off 10,000 teachers and used the savings to help build more prisons, or that Texas employs four times as many corrections officers now (about 18,000) as it employed ten years ago. Set aside the fact that violent and habitual criminals are released to make room for nonviolent first offenders convicted on marijuana charges. (The average sentence served for murder in the U.S. is six and a half years, while eight years with no possibility of parole is mandatory for the possession of 700 marijuana plants. It doesn't matter if the plants are seedlings or mature—the federal government treats each as a potential kilo of product.)

Let's forget all of that and think about this: Why is the doctrine of mandatory minimum sentencing opposed by the 12 Federal Judicial Conferences, the American Bar Association, the Federal Courts Study Commission, the National Association of Criminal Defense Lawyers and the Criminal Justice Policy Foundation?

Could it be that these groups are in agreement with federal Judge J. Lawrence Irving? He resigned from the U.S. district court in San Diego, saying he could no longer in good conscience impose mandatory minimum sentences. Maybe they concur with Judge William Wilkins, chairman of the U.S. Sentencing Commission, who said, "There is no evidence that mandatory minimums deter crime."

Or are these individuals and organizations just wrong? The government line, as Attorney General William Barr told a meeting of California district attorneys, is that "the choice is clear. More prison space or more crime."

Right now there is only one full-time organization devoted to arousing public awareness of the new laws—Families Against Mandatory Minimums. Its founder, Julie Stewart, began FAMM after her brother was convicted of growing 360 marijuana plants. A man with no criminal record, he got five years with no parole. His two co-defendants, both with prior drug convictions, escaped with probation after informing on him.

Stewart readily concedes that her brother's crime deserved punishment, but one that fit the crime. "He took his chances, he broke the law, he got caught," she says. "But five years without parole? What good does that do anyone?"

She began researching other cases

and discovered that her brother was one of many first-time offenders to fall afoul of mandatory minimums. The more Stewart dug, the more horror stories she unearthed. Here's a sample of cases from FAMM's files, each involving a first-timer:

John R. got 17 years in Florida last year after undercover agents working with indicted drug informants involved him in a deal to supply marijuana that never materialized.

Ken H., 11 years for conspiracy to sell marijuana. No drugs were found on his person or at his home. The two informants against him received two years apiece. During the trial they said they had heard a third person mention Ken's name in connection with a drug deal.

Tim E., ten years for possession of a gun and conspiracy to manufacture

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methamphetamine. He was solicited by undercover DEA agents while buying materials for a student chemistry set in a store owned and operated by the DEA. For three months the agents called him at work, telling him that there was big money to be made with meth. When Tim finally agreed to meet them at their dummy lab site, the agents suggested he bring a gun for his protection. At the lab the DEA gave him a step-by-step course in the manufacture of methamphetamine. According to FAMM's account of the case, Tim was arrested after mixing chemicals. He got an extra five years for having the gun.

Retired coal miner Bobby J. got six

and a half years after he accompanied his son to a marijuana patch under police surveillance. At the sentencing, the judge said he would prefer to take into account Bobby's black-lung disease but the guidelines left him no choice.

Fifty-two-year-old O. Pound got 20 years for conspiracy to distribute 300 pounds of marijuana. Pound bought the marijuana over a three-year period and was turned in by one of his buyers, a man with a felony record who received immunity and was allowed to keep all his assets despite his confession that he had sold drugs for 15 years. Pound's wife got five years for failing to turn in her husband. The judge said he didn't want to give her the sentence but was obliged to do so by the guidelines.

And one more: Nicholas Bianco of Providence, Rhode Island, described as the "reputed boss of the New England Mafia," was sentenced to 11 years and five months on racketeering charges. An underling received 12 years and seven months for murder. The don got bail and was allowed to spend Christmas with his family. A man from Gloucester, Massachusetts, meanwhile, received 20 years and ten months for growing marijuana. He was carted off to jail from the courtroom as soon as sentence had been imposed. Next time he celebrates Christmas at home with his now four-year-old daughter, she'll be 25.

The government maintains that such lopsided application of the law is essential if America is to shake free of drugs. It is an argument that echoes the claim made by the Army during the Vietnam era that it was necessary to destroy the village of Ben Suc in order to save it. Is this what we want, salvation by destruction? Justice by body count?

We have, almost without being aware of it, built a law-enforcement apparatus that has failed almost totally to deter, prevent or reduce crime. It grows steadily more monolithic with each stroke of the legislative pen, while retreating deeper into isolation from the community it so demonstrably fails to protect or to serve.

Is that what we want? No. We want the punishment to fit the crime, not the crime to meet the marketing agenda of politicians shopping for an extra term. What we want and what we have every right to expect is common sense, logic, integrity and an even-handed observance of the law. As matters stand, we have our criminal justice system. And seldom has there been a more appropriate adjective for U.S. justice than that: criminal.