

Harsh Justice

by Swanee Hunt, Scripps Howard News Service, February 4, 2004

In criminal court, "Marta" faced the jurors stoically, a suspect in a violent drug deal. Surely they'd acquit; after all, her boyfriend was the dealer, not Marta. She'd rejected a plea bargain, too afraid to identify her man, the one behind the shooting. But Marta was convicted, a young mother with a ten-year old child and no prior criminal record. She got 25 years to life, without chance of parole. Her boyfriend walked free.

Marta is one of the growing numbers of poor, minority women caught in the net of the nation's mandatory minimum drug sentencing laws. Intended to catch the kingpin dealers, the laws typically nab the girlfriends and wives, nicknamed "drug mules" when they deliver the goods. Since 1980, the number of women in prison has increased seven-fold, from about 12,000 to 96,000 in 2002. Our so-called war on drugs has spawned a war on impoverished women. Many are single mothers, struggling to put food on the table and keep a roof overhead.

"When you arrest these women, you arrest the whole family," says Reverend Annie Bovian, the head of a ministry that works with incarcerated mothers. Families fall apart. Children are sent away to relatives or foster care as their mothers are yanked out of their lives. "They can't believe it," Annie says of the bewildered women. The Reverend was in court the day Marta was sentenced. "She said, 'Reverend Bovian, am I dreaming, am I dreaming? Did the judge say 25 to life?' I said yes, he said 25 to life."

"The skyrocketing numbers of these incarcerated offenders is not caused by women becoming more violent, but by society becoming more punitive," says California law professor Myrna Raeder, an authority on this issue. Mandatory minimum sentences and strict federal guidelines mean judges have little discretion. Mitigating factors, such as pregnancy, child dependents, or the lack of a criminal record rarely come into play. A first-time, non-violent offender suddenly faces five or ten or fifteen years without parole. A tough verdict for women already at rock bottom.

Nearly a quarter of the women in state prisons have a history of mental illness. About sixty percent of women in prison are victims of sexual and other physical abuse. Maybe the reason about the same number use drugs is to "avoid dealing with deeper traumas that have scarred them," says Raeder. Laws

need to allow for treatment, not punishment; counseling and job training, not incarceration. "We're tossing away lives," she says, and we're endangering the children, too. Statistics show that the offspring of offenders are five times more likely to become criminals themselves.

Cries for reform by prisoners' advocates had fallen on deaf ears-until now. Judges themselves are joining the critical chorus. Supreme Court Justice Anthony Kennedy, a Reagan appointee, favors scrapping mandatory minimum sentences for some federal crimes. "Our resources are misspent, our punishments too severe, our sentences too long," he told the American Bar Association last year. Kennedy called for pardons for prisoners serving overly harsh terms. "A people confident in its laws and institutions should not be ashamed of mercy."

One state judge who asked to remain anonymous told me that low-level drug dealers "wouldn't be out there in the first place if they could get a job." She says these are "very needy people with difficult, intractable problems. We should spend money on services that keep them out of jail, like education. We're not making any progress by the way we treat them now, and this is a huge social cost."

State legislators are also calling for more humane treatment in lieu of long sentences: drug rehabilitation, community service, probation. For some, it's an issue of justice, for others, simple math. States no longer have money to build, or run, prisons. Conservatives and liberals alike are calling for reform-and for good reason. Alternative treatments are not only cheaper than prison; studies show many are dollar-for-dollar more effective.

The federal government, however, shows no signs of budging. Attorney General John Ashcroft wants sentencing records of all federal judges tracked; those that show leniency will be duly noted. And Congress hasn't moved to ease harsh penalties, despite legislation introduced by a few determined Democrats. The conundrum, says Raeder, is that neither political party wants to be called soft on crime.

Heavens no, especially not this year. You'll just have to wait, Marta.