

Pardon me, please



Before turning out the lights, Mr. President

By Eric E. Sterling

In a few weeks Bill Clinton will walk out the door of the White House.

He will leave behind a legacy for historians to debate. Part of his legacy will be the doubling of the number of people incarcerated in federal prisons, part of America's climb to the summit of the world's incarceration. However, he still has time to shape his legacy in this regard. The sentence in the Constitution that names him commander in chief also gives him the power to reprieve federal prisoners.

Since Clinton entered the White House the number of federal prisoners doubled from 73,000 to 146,000, about 86,000 of whom are drug offenders. Since 1995, the Clinton administration has sent more than 100,000 drug offenders to federal prison. Twenty-eight percent of those imprisoned, according to a 1994 Department of Justice study, are low-level drug offenders with no prior offense, no violence on their records and no involvement in sophisticated criminal activity. That is about 24,000 such prisoners today—equal to the entire federal prison population in 1980 when President Reagan was elected.

Recently, more than 650 leaders of America's clergy, gathered as the Coalition for Jubilee Clemency—bishops, church presidents, heads of congregations—wrote to President Clinton asking him to free low-level, non-violent federal drug prisoners.

Among Christians, 2000 is a Jubilee year, in which debts are forgiven and prisoners are set free. As part of the Jubilee year, Pope John Paul II has called upon governments for "a gesture of clemency" to the imprisoned.

To find some of those drug offenders who deserve to be released, Clinton should appeal to the more than 600 federal trial judges, asking each to name at least one defendant whom he or she was required by mandatory sentencing laws to sentence to a term he or she thought was unjust—the kinds of cases that the judges lost sleep over.

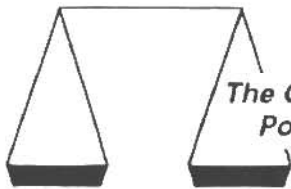
These low-level, non-violent drug offenders are people such as Kemba Smith, a sheltered college girl who

was ensnared in a crack dealer's web of charm and abuse. She helped him buy a car, rent an apartment, hide out. She got a 24-year sentence.

Another example is Dorothy Gaines, a widow, mother of three and grandmother of two, whose boyfriend was a recovering crack addict. He relapsed, began dealing, and turned on her when caught. His fellow informants—who all got reduced sentences for their testimony—said she once delivered three packets of crack from the ring-leader to his street sellers. There was no other evidence—no money, no drugs, no drug paraphernalia, no beeper or cell phone, no controlled deliveries, no wiretaps. She got a 19-year sentence. Congress created mandatory minimum drug sentences in 1986 during the violence and fear of the crack epidemic and when each party was using the war on drugs to fight for control of the Congress. Congress blundered by setting too low the quantities of drugs, which trigger mandatory sentences intended for high-level dealers. These laws have been applied mostly to low-level offenders and overwhelmingly to black or Hispanic suspects. Unjustly, many federal drug prisoners are serving kingpin-level sentences, even though they were nowhere near kingpins in the drug trade. These long sentences for low-level offenders have been called "manifestly unjust" by federal judicial councils. It was to correct these types of injustices that the framers of the Constitution gave the reprieve and pardon power to the president.

Congress made a partial fix in 1994. A judge could depart from these mandatory sentences in very limited cases through a "safety valve"—but Congress did not make the law retroactive. There are more than 350 prisoners who would now be free if they had been sentenced after Sept. 13, 1994. Surely they qualify for a presidential commutation of sentence.

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