LEGAL PUBLICATIONS IN SPANISH
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PRINT EDITION 58

Long Prison Term Is Less So Thanks to Regrets by a Judge

By Ethan Bronner

Providence, R.I. — When Denise Dallaire was arrested at age 26 on charges of selling a few ounces of crack cocaine here a decade ago, she was sentenced to prison for more than 15 years. Last month, shackled inside the same court and facing the same judge, she received an apology and was set free.

The reversal by Judge Ronald R. Lagueux highlights how mandatory sentencing guidelines, though struck down by the Supreme Court eight years ago, continue to keep hundreds of small-time offenders behind bars for longer than many today consider appropriate.

Ms. Dallaire was lucky enough to get herself noticed and for a technical flaw in her case to have surfaced. The result was a moment of courtroom drama and human redemption led by an 81-year-old judge eager to make amends for a decision he had long regretted. "I felt bound by those mandatory guidelines and I hated them," Judge Lagueux (pronounced la-GUEUR) said from the bench as Ms. Dallaire sobbed quietly and the room froze with amazement. "I'm sorry I sent you away for 15 years." He urged her to get home quickly to her ill mother but not to run down the court steps as people do in the movies. "Those steps are dangerous," he told her. Ms. Dallaire got home for her mother's final 11 days. "They were the most amazing 11 days of my life," Ms. Dallaire said in the kitchen of her mother's house in Groton, Conn. "I never left her side."

Like many petty criminals snared by sentencing rules aimed at drug kingpins, Ms. Dallaire had virtually no hope of an early release, even after the Supreme Court's 2005 decision and subsequent Congressional action reducing prison terms in crack cocaine cases. She got there through an exquisitely rare constellation — her exemplary prison record, Judge Lagueux's nagging conscience and the interest of another judge who persuaded a top lawyer to volunteer his time to work for her release. Without those, Ms. Dallaire would still be working three jobs at the Danbury federal prison.

"There are a lot of people like Denise doing bone-crushing time under the old sentencing regime, and we need to try to find ways to help them," said Judge John Gleeson, an outspoken advocate of innovative treatments for drug cases and sentence reductions. He said he had been discussing with a number of interested lawyers the idea of setting up a project whereby lawyers working pro bono would seek relief for inmates like Ms. Dallaire. He suggested it be modeled on the Innocence Project, which seeks to exonerate the wrongfully convicted, and perhaps be called the Mercy Project.

It was a chance meeting with Judge Gleeson that started the chain of events that set Ms. Dallaire free.

Judge Gleeson, who sits on the Federal District Court in Brooklyn and teaches a course in sentencing at New York University Law School, takes his students and clerks every year to the Danbury prison. He was inspired to do so by his mentor, the late Judge Eugene H. Nickerson, who urged him to spend time in a prison at least once a year to keep in mind where he was sending defendants.

As part of those visits, inmates tell the group about their cases and their lives behind bars. For the past several years, Ms. Dallaire has been one of those inmates.

"She was the perfect teaching case," the judge noted in his chambers recently.

Ms. Dallaire's arrest for selling and possessing crack cocaine was not her first. Seven years earlier she had been arrested on possession of a similar amount of crack and while in college she had thrown a glass in a barroom brawl, causing an injury. The result was that at her third arrest she was a "career criminal" under the guidelines, tripling her sentence.

Judge Lagueux, nominated to the bench by President Ronald Reagan, made clear at Ms. Dallaire's original sentencing that he was acting against his own better judgment. "This is one case where the guidelines work an injustice, and I'd like to do something about it but I can't," he said then from the bench.

Ms. Dallaire, who graduated from Central Connecticut State University in New Britain, says that she was never very interested in drugs, only in the pocket cash that dealing them provided. Her parents had divorced, the local economy had tanked and she had fallen in with a bad crowd. "I made a lot of stupid and ridiculous decisions," she said. She declared herself lucky to have been caught and sent to prison — just not for 15 years. "I deserved to go to prison," she said. "Thank God I got time. I got my priorities straight."

Justices, Citing Ban on Unreasonable Searches, Limit Use of Drug-Sniffing Dogs

By Adam Liptak

Published in *The New York Times* on March 26, 2013

The case concerned Franky, a chocolate Labrador retriever who detected the smell of marijuana outside a Florida house used by Joelis Jardines. Based on Franky's signal, the police obtained a warrant to search the house, and they found a marijuana-growing operation inside.

Mr. Jardines moved to suppress the evidence, saying that using Franky to sniff around his residence was an unreasonable search barred by the Fourth Amendment. The Florida Supreme Court agreed, and so did a majority of the United States Supreme Court.

"To find a visitor knocking on the door is routine (even if sometimes unwelcome)," Justice Scalia wrote. "To spot that same visitor exploring the front porch with a metal detector, or marching

his bloodhound into the garden before saying hello and asking permission, would inspire most of us to — well, call the police."

Justice Scalia grounded his opinion in property rights. In a concurrence, Justice Kagan, joined by Justices Ginsburg and Sotomayor, said she would also have relied on a second rationale. "I would just as happily have decided it," she said of the case, "by looking to Jardines's privacy interests." In dissent, the Justices said neither rationale was sufficient to convert a visit by a man and a dog into a search.

"A reasonable person understands that odors emanating from a house may be detected from locations that are open to the public," Justice Alito wrote, "and a reasonable person will not count on the strength of those odors remaining within the range that, while detectable by a dog, cannot be smelled by a human."

For Drug Traffickers, Extradition to the U.S. is Now "Appealing"

Published on *elespectador.com* on March 19, 2013

In the Senate, where this warning was made, it was denounced that many capos, after serving "ridiculous" sentences, have received visas from the United States.

The Senate is gearing up to conduct a profound debate regarding the situation of the extradition treaty between Colombia and the United States.

Amidst the continuous revelations from the media concerning the short sentences that many Colombian drug traffickers receive from the U.S. judicial system, Senator Juan Manuel Galan questioned the current situation.

"Extradition [as a judicial process] has become eroded and has lost meaning and worth…worth as a deterrent for organized crime and drug traffickers," he claimed.

According to Senator Galan, extradition in Colombia has changed from being a dissuading factor to becoming an "attractive" one.

"There has arisen a whole cartel of intermediaries between drug traffickers and the American justice system to coordinate surrenders and cooperation revealing routes, so that sentences of 15 or 20 years wind up becoming on many occasions of even six months," he insisted.

For Galan, that is "absolutely ridiculous and insulting" toward the victims of drug trafficking in Colombia.

"Here we make a great effort to invest a good amount of resources that might otherwise be destined to other social programs in the war on drugs, only to end up sending those capos to serve short sentences in the U.S.," he remarked.

Furthermore, according to Galan, many drug traffickers currently hold visas to the United States, while many Colombians have been denied that same document.

"Many drug traffickers, after having served ridiculous sentences, end up with visas and all kinds of conveniences," he added.

The idea is for the Minister of Justice, Ruth Stella Correa, and the justices of the Supreme Court, with prosecutor Eduardo Montealegre and Solicitor General Alejandro Ordonez, to explain "how they see the 'evolution' of the extradition of Colombians to the United States."

The petition for the Government to respond to questioning regarding the extradition treaty was already made during the plenary session of the Senate.

Timid Use of the Pardon Power

Editorial published in *The New York Times* on March 4, 2013

Last week, President Obama pardoned 17 people who had been convicted of felonies. An Na Peng, a Chinese citizen living in Hawaii, is the first person convicted of an immigration crime to be pardoned in many years. With the pardon, she can now become an American citizen. Lynn Marie Stanek, convicted in a minor drug deal, told her Oregon newspaper that the pardon would allow her to "move beyond my past in a tangible, legal and personally meaningful way."

These women represent the reason the Constitution gives the president the power to grant "pardons for offenses against the United States" — to provide a check on the criminal justice system and the negative consequences of having a criminal record. A pardon does not erase the record, but restores rights lost from the conviction and affirms a person's good character. On the federal books alone, there are 465 laws and 699 regulations that make life harder for people with criminal records.

While pardons for people with minor and old offenses — Ms. Peng's conviction occurred in 1996 and Ms. Stanek's in 1986 — are important, they are also small beans. The Obama administration's criteria for favorable treatment seem narrow and unlikely to cause much political trouble for the president. Of the 17 pardoned, only five spent any time in prison, with the rest sentenced to probation, fines or a few months of home confinement.

The pardon power also allows a president to commute or shorten unjust sentences on a case-by-case basis. Many federal inmates are serving egregiously long prison terms under federal mandatory minimum sentencing schemes. Regrettably, Mr. Obama refused to grant petitions from federal prisoners to commute their sentences.

The president's clemency actions seem to reflect a process still controlled by a Justice Department that is largely anti-pardon. For a president whose approval rate for pardons and commutations is woefully low compared with presidents going back to 1900, these pardons represent a step in the right direction — but a fainthearted, disappointing step.

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