

## **Attorney general angers judges, setting up federal sentencing skirmish**

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### **Body**

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A debate over appropriate punishments for federal crimes and how cases should be pursued by prosecutors has made unlikely foes of conservative **judges** and **Attorney** General John Ashcroft.

When similar cases are handled differently a drug peddler in San Diego might get 12 months in jail while one in Texas is sent away for six years. Ashcroft says he wants more uniformity, but **judges** say his ideas for achieving that will harm a system already struggling with more cases than it can handle.

It's turning into a particularly contentious chapter in the long-running dispute over sentencing.

Last week, federal **judges** urged repeal of a law that was sought by Ashcroft earlier this year making it more difficult for them to impose lighter sentences than specified in guidelines approved by Congress more than 15 years ago.

The Judicial Conference of the United States, headed by conservative Chief Justice William H. Rehnquist, voted unanimously to support overturning the law, which also requires reports to Congress on any **judge** who departs from the sentencing guidelines. Rehnquist had complained about the law when it was passed.

In another development last week, Ashcroft limited the freedom of prosecutors to strike plea bargains in criminal cases. He said that U.S. **attorneys** must seek the toughest punishment possible in nearly all cases, using plea bargains only in special situations.

Now, fewer than 5 percent of federal cases go to trial.

"If there were no guilty pleas, the courts could work 365 days a year, 24 hours a day and not try all the cases," said senior U.S. District **Judge** Neal Biggers Jr. of Oxford, Miss., named to the bench in 1984 by President Reagan.

As for departing from the guidelines, **judges** are not giving out light sentences willy-nilly, Biggers said. It's prosecutors who request lighter sentences in plea bargains to reward cooperative defendants, he added.

Michael O'Neill, a member of the U.S. Sentencing Commission, applauds Ashcroft's goal but said **judges** have legitimate concerns about interference with their authority.

"You're seeing some push back by the **judges**, as they perceive things to be unfair," said O'Neill, whose commission periodically revises the guidelines.

A Justice Department spokeswoman said Monday the department does not generally respond to **judges'** comments.

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In July, Ashcroft wrote in a memo that the Justice Department "has a solemn obligation to ensure that laws concerning criminal sentencing are faithfully, fairly and consistently enforced."

The guidelines set out a range of possible prison terms, usually leading to sentences much shorter than the maximum a defendant could have received. In addition, for some crimes Congress has established minimum prison sentences, known as mandatory minimums. For example, someone who uses a gun in their crime or is caught with a certain amount of a drug faces a minimum amount of time in prison.

Mandatory minimum sentences have especially **angered** some **judges**.

Supreme Court Justice Anthony M. Kennedy, a moderate conservative named to the bench by Reagan, told lawyers in August that mandatory minimum sentences should be abolished and the guidelines should be revised downward.

"Our resources are misspent, our punishments too severe, our sentences too long," Kennedy said.

Kennedy's comments to the American Bar Association have spurred the nation's largest lawyers group to start its own strategy for changes. A commission will be formed in Kennedy's name and hopes to have recommendations by next summer.

Stephen Saltzburg, a criminal law professor at George Washington University who will head the group, said presidential candidates and Washington leaders are not embracing Kennedy's views.

"Law and order, tough on crime, tough on sentencing is still the popular way to go," he said. "It doesn't make it right."

Other **judges** are speaking out.

Justice Stephen Breyer recently echoed the criticism of mandatory minimum sentences. "There has to be room for the unusual or the exceptional case," Breyer said in a speech.

Earlier this year, a federal **judge** in New York quit over the latest clash between the judicial branch and Washington, citing in part the new law that limited **judges'** discretion in sentencing.

"Congress is mandating things simply because they want to show how tough they are on crime with no sense of whether this makes sense or is meaningful," U.S. District **Judge** John S. Martin, a former federal prosecutor, said after announcing his resignation in June.

In Wichita, Kan., criminal defense **attorney** Dan Monnat said **judges** may have some influence in persuading Congress to revise the guidelines. **Judges** have lifetime appointments, so they can be independent.

"The federal **judges** don't have to worry about looking soft on crime, but the politicians do," Monnat said.

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On the Net:

Justice Department: <http://www.usdoj.gov/>

Sentencing Commission: <http://www.ussc.gov/>

## Graphic

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## Classification

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