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Schoolyard Drug Law Bias Charge to Be Probed Justice: A federal court hearing begins today on whether the U.S. attorney's office has selectively targeted blacks and Latinos under a 1986 law.

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Abstract (Abstract): Three federal judges in Los Angeles are scheduled to hold a rare joint hearing today to consider defense arguments that the U.S. attorney's office has selectively targeted blacks and Latinos for prosecution under a 1986 law that requires stiff prison terms for dealing drugs near school grounds.

"The U.S. attorney's office . . . never considered minority status as a criterion for filing cases," said Special Assistant U.S. Atty. Susan Bryant-Deason, who is on loan from the Los Angeles County district attorney's office to head the schoolyard prosecution effort.

Defense attorney [Mary Gibbons] contends that Los Angeles police targeted low-income, minority neighborhoods for the sweeps and other arrests under the schoolyard program. She also said the U.S. attorney's office, whose jurisdiction includes seven counties, has not attempted to generate schoolyard prosecutions in predominantly white areas.

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Full text: Three federal judges in Los Angeles are scheduled to hold a rare joint hearing today to consider defense arguments that the U.S. attorney's office has selectively targeted blacks and Latinos for prosecution under a 1986 law that requires stiff prison terms for dealing drugs near school grounds.

U.S. District Judges W. Matthew Byrne Jr., Terry J. Hatter Jr. and Mariana R. Pfaelzer plan to question prosecutors about defense statistics showing that 96% of the defendants tried in federal court in Los Angeles under the new law have been minorities.

Defense lawyers in nine pending cases filed motions alleging that 89 of the 93 people prosecuted in federal court have been black or Latino, whereas whites arrested under the same law have been prosecuted in state court.

The judges were asked separately by defense attorneys to dismiss charges against their clients. Because of the similarity of the cases, the judges will hold a joint hearing to save time. It is not clear whether they will immediately rule.

The "schoolyard law," passed by Congress as part of the Controlled Substances Act three years ago, provides stiff penalties for people who sell drugs within 1,000 feet of a schoolyard or 100 feet of a playground or video arcade.

The decision on where a defendant is prosecuted is critical because penalties for convicted narcotics traffickers are considerably stiffer in federal court. In some instances, a defendant could get a 20-year sentence in federal court for an offense that would bring only a six-month term in state court across the street.

Virtually all arrests in these cases have been made by local police officers who then consulted with the U.S. attorney's office about whether the defendant should be prosecuted in state or federal court.

"The disproportionate indicting of indigent minority defendants under the schoolyard statute shows invidious and intentional discriminatory prosecution," said Deputy Federal Public Defender Denise Meyer, who represents a defendant in a pending case. "It looks like a heinous case of discrimination."

Prosecutors have vigorously denied the allegation, saying the decisions on whom to prosecute have been based on criteria that have nothing to do with race and include the quantity of drugs sold and the prior criminal record of a defendant.

"The U.S. attorney's office . . . never considered minority status as a criterion for filing cases," said Special

Assistant U.S. Atty. Susan Bryant-Deason, who is on loan from the Los Angeles County district attorney's office to head the schoolyard prosecution effort.

"We take these charges very seriously and we are anxious to rebut them in court," said Assistant U.S. Atty. Steven G. Madison, who will argue the case today for the government.

Acting U.S. Atty. Gary Feess would not comment specifically on the charges but said he thought that publicity about the law's stiff penalties had deterred some traffickers from dealing drugs near school-yards.

Criminal law experts say that it would be highly unusual for an indictment to be dismissed on grounds of selective prosecution.

"It's very difficult to prove selective prosecution," said Erwin Chemerinsky, professor of constitutional law at USC Law School.

However, at an earlier hearing in one of these cases, Judge Pfaelzer told a federal prosecutor that he should take the selective prosecution charges "seriously" because the percentage of blacks and Latinos indicted under the law was so high.

Courts have required a defendant to establish two things to sustain a selective prosecution claim. The defendant must prove that other people in similar circumstances have not been prosecuted for the same conduct and that the government's selection of a defendant was based on impermissible grounds such as race or religion.

The first challenges to the law were filed by public defender Meyer and Mary Gibbons, a North Hollywood criminal lawyer. They jointly researched the prosecutions.

The research showed that 62 people indicted were black, 27 were Latino and four were white.

Almost half of those indicted were arrested in two sweeps of reputed drug-selling "hot spots" by Los Angeles-area law enforcement officers in October, 1988, and June, 1989.

The first sweep was launched near 15 schools in the Los Angeles Police Department's Newton, Hollenbeck, Northeast and Rampart divisions, all in heavily minority areas. That sweep netted 83 arrests and resulted in 21 federal indictments.

Using 1980 U.S. Census data, the defense attorneys found that 14 of the 15 schools were in neighborhoods where 73.95% of residents are black or Latino.

The seven schools targeted for the June, 1989, sweep were in neighborhoods where 82.12% of residents are black or Latino.

Among the cases at issue today is that of Bobbie Marshall, a 37-year-old black man who was arrested in May at his mother's house in Pacoima, near Vaughn Street Elementary School. Marshall and two co-defendants allegedly participated in a conspiracy to sell crack cocaine. The drugs were purchased by undercover police officers.

Another case being challenged involves Jose Bellido, who was arrested in June in MacArthur Park after he allegedly sold crack cocaine to an undercover police officer within 100 feet of a playground. Bellido was one of 177 people arrested in a three-day police sweep of drug "hot spots" near schools and parks.

Of the 177 people arrested, federal charges were filed against 24 under the schoolyard law. The other 153 were referred to state court.

The defense lawyers have asked the judges to order prosecutors to give them information about all those arrested for selling drugs near a schoolyard whose cases were referred to state court. This would enable the defense to determine the race of defendants whose cases were sent to state court.

Defense attorney Gibbons contends that Los Angeles police targeted low-income, minority neighborhoods for the sweeps and other arrests under the schoolyard program. She also said the U.S. attorney's office, whose jurisdiction includes seven counties, has not attempted to generate schoolyard prosecutions in predominantly white areas.

To prove that whites are not being prosecuted in federal court under the schoolyard law, the defense attorneys

cited four white defendants who were arrested in Burbank for allegedly selling drugs within 1,000 feet of a schoolyard. They were prosecuted in state court, where penalties are much lighter.

They said Burbank is predominantly non-minority and added that no Burbank case has been brought in federal court under the schoolyard law.

Prosecutors responded that the statistics cited by defense attorneys prove nothing. They also said that none of the people arrested in Burbank fit the guidelines the U.S. attorney's office has established under which defendants would be subjected to federal charges.

The high percentage of minorities charged under the law "demonstrates only that there is a serious narcotics trafficking problem near schools in certain minority communities," Bryant-Deason wrote in a court declaration. She said the decision on whether to prosecute a defendant arrested for selling drugs near a schoolyard, playground or video arcade in federal court depended on whether the individual had a prior felony narcotics conviction or was out on bail for dealing drugs. Among the other criteria for referring a case to federal court is that the defendant is supposed to have sold 5 grams or more of crack cocaine or 500 grams or more of powder cocaine.

Former U.S. Atty. Robert Bonner, who headed the office when the two sweeps occurred, said in a court declaration that prosecutors in those sweeps waived the guidelines on drug quantities when deciding who to charge federally.

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