

“Stupid
and
Irrational
and
Barbarous”:
*New York Judges Speak Against
the Rockefeller Drug Laws*

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The Correctional Association of New York is a non-profit policy analysis and advocacy organization that focuses on criminal justice and prison issues. It is the only private entity in New York State with legislative authority to visit prisons and report its findings to policy makers and the public.

The Correctional Association's Public Policy Project develops proposals for practical and meaningful reform on critical issues such as conditions of confinement inside prisons and policies affecting the use of prisons. The Project's key purpose is to educate the press, policymakers, and the public regarding ways to make the criminal justice system more fair, efficient, and humane.

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For more information about the issues covered in the report or other Correctional Association projects, please visit our website at www.correctionalassociation.org or the *Drop the Rock* website at www.droptherock.org. *Drop the Rock* is the state-wide campaign aimed at repealing the Rockefeller Drug Laws.

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BACKGROUND

The role of judges is to enforce the law impartially and see that justice is done. When these two imperatives conflict—when a law itself proves unjust—judges often become frustrated by their powerlessness to ensure a fair outcome. Over the years, many judges have voiced such frustration in regard to the mandatory minimum sentencing provisions of New York State's Rockefeller Drug Laws.

Conceived and actively promoted by then Governor Nelson Rockefeller, the New York Drug Laws were enacted in 1973. They instituted lengthy prison sentences for a wide range of drug offenses. Although the law was amended in 1979 (mainly to reduce the penalties for offenses involving marijuana), the punishments these laws require for the possession or sale of heroin, cocaine, and other hard drugs still rank among the most severe in the nation.

The harshest provisions require a judge to impose a prison term of no less than 15 years to life for anyone convicted of selling 2 ounces or possessing 4 ounces of a narcotic substance. The penalties apply without regard to the circumstances of the offense or the individual's character or background. Whether the person is a first-time or repeat offender, for instance, is irrelevant.

When forced to sentence a man to a 15 year minimum term in 1996, Bronx County Supreme Court **Justice Frank Torres** expressed his thoughts this way:

The court, as much as it would like to on a humanitarian basis, as much as it would like to set aside the verdict in order to avoid the sentence that must be imposed, does not find the legal basis for doing so and, therefore, must accept with resignation the determination by the jury of the defendant's guilt.

The court notes that this particular classification, criminal possession of a controlled substance in the first degree, carries with it the minimum sentence of 15 to life and a maximum of 25 to life which is essentially the same sentence which is imposed on a person who is convicted of taking a human life. In other words, **the mere possession of 4 ounces of this controlled substance is considered by the State of New York to be just as serious as the taking of a human life.**

That to me is an absolute atrocity, an absolute barbarous atrocity on the part of the State of New York to require that a person for the mere possession of a quantity of controlled substance of this magnitude, that he should have to go to jail and be

in jail as if he had committed the most serious crime that can be committed; namely that of taking a human life.

However, I am obliged to enforce the law however **stupid and irrational and barbarous** it be and the law of the State of New York does say that for a conviction of possession of a controlled substance in the first degree, that the minimum is 15 to life.¹

Justice Torres spoke for many of his fellow judges and other observers within and outside the criminal justice system. Today there is widespread consensus that these statutes have caused rather than solved problems.

PROBLEMS

The Expense

As of December 31, 2000, more than 21,000 drug offenders were locked up in New York State prisons. It cost the state nearly \$2 billion to construct the prisons to house these people. The operating expense for confining them comes to nearly \$700 million per year.

To accommodate the tremendous growth in the inmate population caused in large part by the Rockefeller Drug Laws, the state has spent extraordinary sums of money each year to build new prisons. Since 1981, the State has added more than 46,000 beds to its prison system, for a total capital expense, not counting debt service, of more than \$4.5 billion.

Prison Overcrowding

Despite these enormous expenditures, New York's prison expansion has not kept pace with the increase in the number of inmates. The State's corrections system is hobbled by crisis conditions. Prisons are overcrowded; there are not enough programs to occupy prisoners productively; and idleness and tension levels are high. The system has been forced to double bunk or double cell over 12,000 inmates—an especially hazardous arrangement given the incidence of tuberculosis in prisons and its potential to spread among inmates and staff.

Skewed Law Enforcement

All too often, the Rockefeller Drug Laws result in the arrest, prosecution, and long-term imprisonment of addicts, minor dealers, or persons only marginally involved in the drug trade. Major traffickers usually escape the sanctions of the laws. The problem is that the Rockefeller Drug Laws place the main criterion for culpability on the weight of the drugs sold or in a person's possession when he or she is apprehended, not on the actual role played in the narcotics transaction. Aware of the law's emphasis, drug kingpins are rarely foolish or reckless enough to be carrying narcotics; whereas a teenage mother, employed as a courier by that same kingpin, is more likely to be picked up on the street and charged with a serious felony for having a relatively small amount of drugs in her possession.

Another criticism of the law is that major dealers often take advantage of provisions permitting lifetime probation sentences in exchange for cooperation in turning other drug offenders over to authorities. Less culpable persons generally do not possess information that would be useful to prosecutors. They often decline to plea bargain and insist on a trial instead. If these persons are found guilty, they frequently must be sentenced to a mandatory minimum term of 15 years to life in prison.

Thus, this statute, as a principal weapon of the so-called “war against drugs”, results directly in the following misguided practice: law enforcement agencies focus their efforts on minor offenders who are the most easily arrested, prosecuted, and penalized, rather than on the middle- and high-level criminals who are the drug trade’s true masterminds and profiteers.

Racial Inequities

The drug laws have a harsh and disproportionate impact on communities of color. Government studies have consistently shown that whites make up the vast majority of people who consume and sell drugs. Yet, about 94% of the people doing time in New York State prisons for a drug offense are African-American or Latino. As of January 1, 2001, African-Americans comprised 51.3% of the drug offenders in state prison; Latinos, 42.5%; whites, 5.4%.

If larger numbers of whites participate in buying and dealing drugs, why are so many more blacks and Latinos in prison for these crimes? The problem—and it is a problem that is at least

partially a function of having the drug laws on the books—is that law enforcement efforts focus almost entirely on inner city communities of color. In New York City, for example, police squads carrying out recent anti-drug initiatives have been sent principally into such areas.

Much of the drug activity among white people takes place behind the closed doors of offices and living rooms. By contrast, most of the drug trade in black and Latino neighborhoods is carried out on the streets where it is much easier to make arrests.

In addition, more violence is involved in the drug trade in low-income, inner city communities. The drug trade there is more visible and more disruptive, and the call for a police response is therefore greater.

Finally, white middle- and upper-class people involved in the drug trade often have the resources and political influence to resist law enforcement attempts to punish them. Well-paid, high-powered attorneys, for example, can successfully derail the effective prosecution of their clients' crimes.

Commander Charles Ramsey, head of the Chicago Police Department's Narcotics Division, could have been speaking for urban police leaders everywhere when he said:

There is as much cocaine in the Stock Exchange as there is in the black community. But those guys are harder to catch. Those deals are done in office buildings, in somebody's home, and there is not the violence associated with it that there is in the black community. But the guy standing on the corner, he's almost got a sign on his back. These guys are just arrestable."¹¹

The rationale for the policy that produces this outcome might make sense superficially, but the practices are ultimately discriminatory and have a devastating impact on communities of color by uprooting individuals and breaking up families.

A System Imbalance

Finally, these sentences have a fundamentally negative effect on the administration of justice. Mandatory sentencing schemes do not abolish discretion; they remove it from the judge's hands and place it in the prosecutor's office. Whoever sets the charge (the district attorney) determines

the outcome of the case. In our adversarial criminal justice system, these laws stack the deck in favor of one side.

As **Justice James Yates** of the New York County Supreme Court stated:

If some defendants are to receive lesser sentences than others for the same crime, the question becomes, “how do you decide who will receive the benefits of a reduction?” Under current law, that determination is made by an assistant district attorney who is not bound by written public guidelines or standards, is not compelled to hear arguments in favor of reduction, is not required to explain or justify the decision, is not held accountable by the public or through judicial processes and the decision is not reviewable by any court

[In contrast], in a system where a judge has authority to set sentences, there are proceedings on a record in public, with advocacy on both sides and a decision by a neutral party who must explain his or her decision and can be held accountable.ⁱⁱⁱ

STATEMENTS BY JUDGES

More and more judges are adding their critical voices to the debate about the mandatory sentencing provisions of the Rockefeller Drug Laws. The following is a sample of what some have said over the years about these statutes when they have had to apply them in trial court or in the appellate courts. The report concludes with relevant comments judges have made about these laws in settings outside the courtroom.

Trial Court

Judge: Florence M. Kelley, Supreme Court, New York County

Case/Conviction: Juan Barriento, who had one previous arrest for drug possession, is convicted of Criminal Sale of a Controlled Substance in the First Degree.

Sentence: 15 years to life. (1974)

Quote: “[I sentence the defendant] with a great deal of reluctance . . . and I will state I think it's an inappropriate sentence and an outrageous one for what was done in this case.”^{iv}

Judge: Ernest H. Rosenberger, Supreme Court, New York County

Case/Conviction: Bernice Lane, a woman with no prior convictions (but two arrests for possession), is convicted of Criminal Sale of a Controlled Substance and Conspiracy in the First Degree.

Sentence: 15 years to life and 0 to 7, to be served concurrently. (1977)

Quote: “I do not feel that the acts of the defendant . . . warrant life imprisonment.”^v

Judge: Mary Johnson Lowe, Supreme Court, Bronx County

Case/Conviction: Chris Askew, while in the process of pleading guilty to cocaine possession and sale, told the judge that he was not, in fact, guilty of the crime. He had been offered probation if he took the plea. The court rejected the plea on the basis that a defendant cannot plead guilty

while saying s/he did not commit the crime. Askew was convicted at trial. Although the mandatory sentence that Askew should have received was 15 years to life, the trial court, recognizing that the mandatory sentence under the drug laws was excessively harsh and did not fit the crime, imposed instead a sentence of 1 year. On an appeal filed by the District Attorney, the sentence of 1 year was upheld.

Sentence: 1 year. (1978)

Quote: “To paraphrase the words of Mr. Justice Marshall in Furman v. Georgia, to the extent that New York State uses the life imprisonment provisions of the new drug laws to encourage confessions and guilty pleas, such penalties are not being used for punishment purposes. If not used for legitimate punishment purposes, they contravene the cruel and unusual constitutional interdictions

“[L]ife imprisonment is mandated if the defendant exercises his constitutional right to go to trial and loses, while probation may be imposed if he pleads guilty Can one truly say that a defendant who opts for the plea plus probation has made a ‘voluntary choice’ or has the state so loaded the dice that the hazard of the roll chills the free exercise of the trial alternative?

“This court cannot find any valid penological purpose to be served in inflicting on this defendant the second most severe punishment in this jurisdiction, for the same offense the legislature decreed a sentence of 1 year or less would adequately protect society had this defendant pleaded rather than chosen a trial alternative

“The infliction of punishment, particularly where its severity serves no valid penological purpose, is cruel and inhuman.”^{vi}

Judge: Eugene Bergin, Supreme Court, Monroe County

Case/Conviction: Jan Warren, a single mother who had no prior criminal history, is convicted of Criminal Sale of a Controlled Substance.

Sentence: 15 years to life. (1987)

Quote: "I don't want to do this." The judge later told the defendant's attorney that the situation was "a travesty."^{vii}

Judge: Leslie Crocker Snyder, Supreme Court, New York County

Case/Conviction: Jose Garcia, a 60 year-old man with heart disease, is convicted of Criminal Possession of a Controlled Substance in the First Degree. He died in prison in August 1999.

Sentence: 15 years to life. (1991)

Quote: "Sorry we both find ourselves in this situation. I can only hope your health won't suffer too much."^{viii}

Judge: Richard Lowe III, Supreme Court, New York County

Case/Conviction: Leah Bundy, who had one prior misdemeanor conviction, is convicted of Criminal Possession of a Controlled Substance in the First Degree.

Sentence: 15 to life. (1991)

Quote: "I believe that this is a harsh sentence and if it wasn't required by law, perhaps this Court would not impose such a harsh sentence."^{ix}

Judge: Steven Fisher, Supreme Court, Queens County

Case/Conviction: A first offender, Miguel Arenas, who sold a quantity of drugs just barely over the limit to compel the harshest mandatory sentence, is convicted of Criminal Sale of a Controlled Substance in the First Degree.

Sentence: 15 years to life. (1994)

Quote: "The wisdom of the drug laws is, of course, not for me to decide." After the trial, in an interview, Judge Fisher stated, "When the amount is just slightly over the threshold and you're sentencing someone to the same sentence they would get if they had been convicted of intentionally taking someone's life, sometimes you feel compelled just to comment."^x

Judge: Jeffrey G. Berry, Supreme Court, Orange County

Case/Conviction: Abraham Arroyo, who had no prior criminal history, is convicted of Criminal Possession of a Controlled Substance in the First Degree.

Sentence: 15 years to life. (1994)

Quote: “I will go on record saying that a sentence, even the minimum sentence on this defendant in this case, the 15 to life, is not a fair sentence . . . I'm not condoning narcotic trafficking. I'm in total support of the enforcement of those laws. My mere position is sometimes we have to have some compassion in life It's a very unfair situation . . . I welcome . . . the Court of Appeals to reverse me and make a more lenient sentence if they wish.”^{xi}

Judge: Seymour Rotker, Supreme Court, Queens County

Case/Conviction: A. G. is convicted of the sale of one packet of heroin.

Sentence: 4 1/2 to 9 years. (1995)

Quote: “What we keep doing is putting more money into prisons and less money into caring and help. And I really, truly believe—I've said this before, this is not the first time I've said it—that we really have to put more money up front to try to help people who are involved in narcotics as users, so-called user sellers with regard to this situation [The law regarding these] small pusher-type people in the street is draconian.

“The so-called Rockefeller laws, I don't know, I think maybe even Governor Rockefeller, had he been back on the streets today, would maybe have a change of mind as to what should be done with regard to these people I think more money should be spent trying to deal with these people as opposed to spending 25 or 30 or \$40,000 a year to keep them housed. That is all it is, housing, in an institution.

“But the bottom line is that I am handcuffed as a matter of law, so I have to do what the law says I have to do, because I cannot violate the law. But I am not going to give your client more than the minimum sentence. My recommendation would be that he get whatever treatment is afforded to him. And I direct that he get that treatment. If they want to put people in jail based

upon the harsh mandatory sentences, then they have to provide the individuals institutionally with a way of trying to rehabilitate themselves.

“Because right now, rehabilitation, I think, is basically a farce within our criminal justice system They have to spend more money, time and effort with regard to that so that the people when they are turned out of prison do not again go back into the same milieu or environment or attitudinally have the same feelings they have when they went in.”^{xii}

Judge: Martin E. Smith, Supreme Court, Broome County

Case/Conviction: A guest brought drugs into the house of Lance Marrow, who is then convicted of Criminal Possession of a Controlled Substance in the First Degree.

Sentence: 15 years to life. (1999)

Quote: “In my book you clearly have no criminal record to speak of at all. In my book, knowing what I know about this case, knowing as the prosecution knew and I knew from the evidence presented, these were not your drugs They belonged to another individual; you were allowing him to store those drugs in your house When I say the law is draconian, in your case it is. I am required by law to impose a sentence that in my view you don't deserve.” In an interview, the judge later said, “You impose the sentence that the case calls for, that the evidence calls for, that the defendant's prior record calls for. Usually that works out. Every once in a while you run into a [defendant like the one in this case]. There's no way in the world that man deserved to get a 15 to life sentence.”^{xiii}

Appellate Court

Case/Conviction: A 24 year-old employed first offender, Imogene Broadie, is sentenced to 1 year to life for sale of cocaine. The case is appealed and combined with several other cases to become the first test of whether or not the Rockefeller Drug Laws are unconstitutional on grounds of cruel and unusual punishment. The court upholds the law.

Sentence: 1 year to life. (1975)

Quote: In an opinion upholding the Rockefeller Drug Laws, **Chief Judge Charles Breitel** of the New York State Court of Appeals was nonetheless dubious about the statutes: “The drug offenses, concededly, are punished more severely and inflexibly than almost any other offense in the State. Only for murder in the first degree is a greater penalty, capital punishment, prescribed by statute. Only arson in the first degree; kidnapping in the first degree; and murder in the second degree carry the same life terms

“[T]he court does not necessarily approve or concur in the legislature's judgment in adopting these sanctions. Their pragmatic value might well be questioned, since more than half a century of increasingly severe sanctions has failed to stem, if indeed it has not caused, a parallel crescendo of drug abuse.”^{xiv}

Case/Conviction: Winnie Jones, a 37 year-old woman with no prior convictions, is convicted of criminal possession of a dangerous drug in the first degree after being found with several pounds of heroin on the premises where she had worked to help package the drugs for sale. The “higher-ups” on the scene received 5 years and the boss received 8 1/3 to 25 years. The other low-level employees (known as “millhands”) received sentences of 3 years—because they were willing to plead guilty to a reduced charge. Jones was not willing to plead guilty to a reduced charge, went to trial, and received the mandatory minimum sentence of 15 years to life. Although Jones’ sentence was upheld on appeal, then Governor Hugh Carey commuted her sentence to 3 years, 3 months and 10 days to life.

Sentence: 15 years to life, commuted by the governor to 3 years, 3 months and 10 days to life. (1976)

Quote: In an angry dissent, **Chief Judge Charles Breitel** wrote, “The mandatory sentence of life imprisonment, really lifetime parole, imposed in this case is unconscionable and barbaric because of the gross inequality of treatment of like persons involved in the identical crime. Since the earliest conscious evolution of justice in western society, the dominating principle has been that of equality of treatment of like persons similarly situated, a principle at the root of any rational system of justice. That principle is ravaged in this case by force of a mandatory statute.

“[A]lthough offered the same opportunity to plead as the other “millhands”, [Jones], claiming innocence, instead exercised her right to trial. Upon her conviction by a jury, the sentencing court, against its conscience and its judgment, but because it was mandated by statute, sentenced [her] to life imprisonment with a minimum of 15 years

“I would suggest that the revulsion felt by the trial court, the prosecutor, the Appellate Division, and the governor, at this gross inequality of sentencing is shared by all the members of this court, except that the majority is unable to wrest itself from what it accepts as the command of a statute. But there is a constitution, a law higher than the legislature and the courts

“There is no rational basis justifying the gross disparity in the sentences in this case; indeed, the only basis would be the impermissible one of penalizing [a] defendant for going to trial

“The only fact which distinguishes the defendant from her fellow “millhands” is that she chose to stand trial. For this she undoubtedly merited a more severe sentence, but not one with a discrepancy as great as that imposed by command of the statute. Apart from a gross violation of the principle of equality, such a discrepancy could serve the purpose of discouraging an innocent person from standing trial.”^{xv}

Case/Conviction: A 32 year-old divorced mother of three small children, Dolores Donovan, who had one prior conviction (for disorderly conduct at age 19), is convicted of Criminal Sale of a Controlled Substance for picking up cocaine for her boyfriend. As Donovan’s boyfriend was significantly more involved in drug trafficking than Donovan, he was able to provide information to prosecutors in exchange for the ability to plead to a lesser charge for which he received lifetime probation. Being only on the periphery of the drug operation, Donovan did not know any drug dealers, so she could not provide information to help prosecutors and thereby receive a reduced sentence.

Sentence: 15 years to life. (1980)

Quote: The majority of the Appellate Division, Second Department, while upholding the sentence, nonetheless wrote: “Although we are sympathetic to the defendant's argument that the sentences . . . are particularly severe and harsh under the circumstances of this case, we are constrained by People v. Broadie, in which the mandatory sentencing statutes for drug-related offenses were found not to be so disproportionate to the offense as unconstitutional.”

In a written dissent, **Justice Milton Mollen** wrote, “Like the majority, I, too, am ‘sympathetic to the defendant’s argument that the sentences imposed [upon her] . . . are particularly severe and harsh.’ I would go further, however, and hold that, under the circumstances of this case, the sentences offend the constitutional proscription against cruel and unusual punishment.”^{xvi}

Case/Conviction: Darryl Ramsey is convicted of Criminal Sale of a Controlled Substance and Criminal Possession of a Controlled Substance for selling two vials of crack for \$10.00 to an undercover narcotics officer. The sentence is upheld on appeal.

Sentence: concurrent sentences of 7 to 14 years and 2 to 4 years.

Quote: In a dissenting opinion, **Justice John Carro** stated, “I believe the sentence of 7 to 14 years imprisonment imposed on the defendant . . . is unduly severe Clearly [the defendant] is not a profiteer in the drug trade who chose to sell penny ante quantities of drug in open view on the street, with all of its attendant dangers, instead of finding gainful employment. Of course that choice always exists, at least in theory. The reality, however, is that in too many of our communities, jobs are simply not available. As a consequence, homelessness, hopelessness and poverty rend the fabric of our society, and drive many of the lesser situated of our people to drugs

“There are those among us who may believe that one solution to the problem of illicit drug use and sale lies in warehousing offenders in our prisons for extended periods of time. I am not one of them The sentence should fit the crime, and the offender, giving due consideration to the protection of our society and a reasonably calculated deterrence factor. After weighing these

considerations, I believe that the sentence imposed in this case was disproportional and excessive^{»xvii}

Case/Conviction: A 63 year-old drug addict, Nelson Perez (who had previous drug convictions) was convicted of Criminal Sale of a Controlled Substance for selling two vials of crack to a narcotics officer for \$10.00. Perez was sentenced to 10 to 20 years. The sentence was reduced after appeal to 6 to 12 years.

Sentence: 6 to 12 years. (1993)

Quote: While upholding the conviction of Perez, the majority opinion of the Appellate Division nevertheless stated that, “Although we find no ground to reverse the conviction, we consider the 10 to 20 year sentence . . . to be unduly harsh.”

In a concurring opinion, **Justice John Carro** wrote, “In considering this sentencing issue, I cannot help but question whether the hemorrhage of taxpayer funds used to warehouse thousands of low-level drug users and sellers for long periods of time in our dangerously over-crowded prisons, at a cost of \$35,000 per year per inmate in addition to the capital expenditure of \$180,000 per prison cell, could not be more productively and humanely directed toward prevention, through education, and treatment of drug addiction. The increasingly unavoidable conclusion that with the passage of time is becoming more widely recognized and articulated by respected representatives of our criminal justice system, is that the primary method currently utilized to deal with the drug epidemic, essentially an effort to eliminate the availability of drugs on our streets, while increasing inordinately the length of prison terms for low-level drug offenders, has failed.”^{»xviii}

Case/Conviction: A 17 year-old girl, Angela Thompson, is convicted of Criminal Sale of a Controlled Substance in the First Degree. The trial judge refused to impose the mandatory minimum of 15 years to life and instead sentenced her to 8 years to life. The New York State Court of Appeals remanded the case to the trial court with the direction to sentence Thompson to a mandatory term of 15 years to life.

Sentence: 15 years to life. (1994)

Quote: In a dissent, **Judge Joseph Bellacosa** of the New York State Court of Appeals wrote that the trial court had found the sentence to be so cruel and unusual as to “shock the conscience.” He quoted the trial court's opinion: “‘Notwithstanding the legislative desire to create mandatory minimum sentencing guidelines for the State of New York, I think it's still the law of this country that the punishment must fit the crime The question is whether or not the defendant is the type of person, by the facts presented in this case, such that, constitutionally, this would be inappropriate, to serve 15 years to life’”

“The Court rules that this more severe sentence is required to effectuate the will of the legislature, expressed more than 20 years ago as part of the frustratingly decried, yet intractably operative, Rockefeller Drug Sentencing Laws.

“We agree with the courts below that this new fate visited upon [the defendant]—a near doubling of her minimum sentence from 8 years to 15 years—is not jurisprudentially required. Indeed, when this Court facially upheld the constitutionality of this draconian sentencing scheme, it expressed the qualification that wise adjudication on an as-applied basis should deal with cases that crossed the line of cruel and unusual punishment, denominated generically at that time as rare exceptions.

“The only issue before the Court, on the People's appeal in this case, is whether sentencing this woman to less than the mandatory term of 15 years to life imprisonment is warranted. We conclude that the circumstances of this case support the prior courts' rulings that the lesser period of incarceration is warranted because the mandatory sentence inflicts a grossly disproportionate penalty on the defendant

“The mandatory minimum sentence of 15 years with the prospect of incarceration for life represents one of the most severe penalties prescribed under New York State law. It reflects society's and the legislature's high level of condemnation for the most reprehensible crimes and the most serious offenders, e.g., murder in the first and second degrees, kidnapping in the first degree, and arson in the first degree.”

While upholding the sentence, the majority nevertheless wrote, “That is not to say that we disagree with the strongly held convictions of our dissenting colleagues and of the majority at the Appellate Division in the instant case that the harsh mandatory treatment of drug offenders

embodied in the 1973 legislation has failed to deter drug trafficking or control the epidemic of drug abuse in society, and has resulted in the incarceration of many offenders whose crimes arose out of their own addiction and for whom the cost of imprisonment would have been better spent on treatment and rehabilitation.

“Prosecutors, as Executive Branch officers, should not enjoy the power to shackle judicial responsibility while they zealously seek to incarcerate masses of criminal drug offenders A balanced judicial role . . . exercised by prudent trial judges whose sentences would remain subject to the leavening, harmonizing review by the Appellate Divisions on appeal by prosecutors, is necessary.”^{xix}

Case/Conviction: Dennis Easton, a working man who had three young daughters and no prior criminal history, is convicted of Criminal Possession of a Controlled Substance in the first degree and sentenced to 15 years to life. The sentence was reduced to 3 years to life after appeal.

Sentence: 3 years to life. (1995)

Quote: On sentencing, Supreme Court of New York County Justice Renee White had expressed unease, citing Easton's “excellent background” and that “he'd been a hard working man all of [his] life with the exception of this particular incident.” **Presiding Justice Francis Murphy**, in an opinion of the Appellate Division, First Department, wrote, “We do agree, however, that under the particular circumstances presented herein, the imposition of the minimum sentence of 15 years to life was grossly disproportionate to the crime for which it is exacted and constitutes cruel and unusual punishment in violation of defendant's constitutional rights.”^{xx}

In Other Settings

Judge: Ernest Signorelli, Supreme Court, Suffolk County

Case/Context: *New York State Bar Journal* Article (1974)

Quote: “An inherent potential for injustice is built in these laws by placing the judge in a straitjacket where he is deprived of sentencing alternatives and is precluded from evaluating each case on its own merits, to be merciful or harsh as the particular case may warrant. Are we really accomplishing the ends of justice when we mete out the same kind of punishment to the insignificant street pushers we would to the heavy dealer of drugs?”^{xxi}

Judge: Andrew G. Celli, Supreme Court, Monroe County

Case/Context: George Prendes, a man with no previous criminal history, is convicted of Criminal Possession of a Controlled Substance in the First Degree for agreeing to carry a pound of cocaine from New York to Rochester. He is sentenced to 15 years to life. (1977)

Quote: Interviewed after sentencing, Justice Celli stated, “I felt, frankly, that it didn't warrant [15 years to life]. His record was clean and very frankly there was a question of [the degree of involvement]. Because of those reasons, I thought the sentence was too harsh.”^{xxii}

Judge: Robert S. Kreindler, Supreme Court, Kings County

Case/Context: A first offender, Jose Ayala, is sentenced to 15 years to life (and 6 to life to run concurrently) for Criminal Sale of a Controlled Substance in the First Degree and Criminal Sale of a Controlled Substance in the Second Degree. (1977)

Quote: Interviewed after sentencing, Justice Kreindler said, “I don't approve of drug sales but that's a murderously high sentence. If I had to impose a sentence, it would be a good deal less . . . He'd go to jail all right, but maybe a sentence with a maximum of 5 years—especially in view of the fact that it was his first offense.”^{xxiii}

Judge: Ann B. Dufficy, Supreme Court, Queens County

Case/Context: Donna Charles, a young mother with no criminal history, is convicted of Criminal Possession and Sale of a Controlled Substance in the First Degree, after being caught at LaGuardia Airport with a package of cocaine. She had agreed to take it to Memphis after her husband threw her and her children out of their home and she was denied new housing from social services. (1987)

Quote: Interviewed after sentencing, Justice Dufficy stated, “She should not be in here; it's a waste of taxpayers' money.” In another interview after her retirement, Dufficy said, “I feel Donna has done her time and that she is completely rehabbed.”^{»xxiv}

Judge: George F.X. McInerney, Supreme Court, Nassau County

Case/Context: Interview

Quote: In an interview commenting on a case in which he was forced to sentence the offender to 15 years to life, Justice McInerney said, “It's probably a better gamble to kill somebody, perhaps in an understandable situation, than sell cocaine.” He later told a lawyer who had complained about the sentence, “Write to your legislator.”^{»xxv}

Judge: Burton B. Roberts, Chief Administrative Judge, Supreme Court, Bronx County

Case/Context: Interview (1998)

Quote: “The legislature should not make the sentencing decision with respect to minimums. The prosecutor should not make the decision with respect to minimums. It is the judge, the neutral magistrate, who traditionally imposes individualized justice, who must make that decision.”^{»xxvi}

Judge: Jerome Marks, Supreme Court, New York County

Case/Context: *Poughkeepsie Journal* Article (2000)

Quote: “I think it is the most unjust law enacted in my time.”^{xxvii}

Judge: Jeffrey M. Atlas, Supreme Court, New York County

Case/Context: Memorandum re: New York State County Lawyers Association Drug Law Report (2001)

Quote: “As a state trial judge for the past twenty-one years there are a couple of things about the drug laws I know to be true. First, the current laws, in denying sentencing discretion to give reduced sentences or . . . alternative treatment, at times cause considerable unfairness in the disposition of common drug sale and possession cases (ordinarily class “B” felonies). Second, in my view, the sentencing provisions often place unconscionable pressure on our most vulnerable offenders to enter felony pleas.”^{xxviii}

CONCLUSION

In a May 30, 2001 interview with Terri Derikart, Director of the New York State Chapter of Families Against Mandatory Minimums, **Appellate Court Justice Leo Hayes** summed up many judges' views:

I am totally against mandatory minimum sentencing. In my experience on the bench, I have seen sentences that are ridiculous. Judges should reserve it to themselves to impose sentences. DA's should have input, but judges should retain ultimate control. There are many sentencing alternatives available through the Probation Department. Judges should have discretion in deciding who goes to prison versus an alternative sentence.

These laws were initially passed because DA's were dissatisfied with the disparity in sentencing. DA's do play an important part in the process. They often know things about the defendant that we don't know. They should work with the court and make their recommendation. But ultimately, sentencing court judges should decide, not DA's. The Rockefeller Drug Laws don't work and they should be changed.^{xxix}

ENDNOTES

- ⁱ People v. R.H., (Bronx Co. October 30, 1996).
- ⁱⁱ Harris, Ron, “Blacks Feel Brunt of Drug War,” *Los Angeles Times*, April 22, 1990.
- ⁱⁱⁱ Interview, James A. Yates, New York Supreme Court Judge, New York City, November 21, 1996, “Cruel and Unusual: Disproportionate Sentences for New York Drug Offenders,” Human Rights Watch, March 1997.
- ^{iv} The Correctional Association of New York, “Case Histories Project: Do They Belong in Prison? The Impact of New York's Mandatory Sentencing Laws on the Administration of Justice” (“Case Histories”), 1985.
- ^v *Ibid.*
- ^{vi} People v. Askew, 93 Misc. 2d 754, 403 N.Y.S.2d 959 (Bronx Co. 1978).
- ^{vii} Women in Prison Project, The Correctional Association of New York, “Mandatory Injustice: Case Histories of Women Convicted Under New York's Rockefeller Drug Laws”, 1999.
- ^{viii} Purdy, Matthew “For Judges, Drug Laws Can Mean Having to Say You're Sorry,” *New York Times*, May 21, 2000.
- ^{ix} “Mandatory Injustice,” *supra* note 7.
- ^x Purdy, *supra* note 8.
- ^{xi} *Ibid.*
- ^{xii} People v. A.G., (Queens Co. April 27, 1995).
- ^{xiii} Purdy, *supra* note 8.
- ^{xiv} People v. Broadie, 37 N.Y.2d 100 (1975).
- ^{xv} People v. Jones, 39 N.Y.2d 694, 385 N.Y.S.2d 525 (1976).
- ^{xvi} People v. Donovan, 89 A.D.2d 968, 454 N.Y.S.2d 118 (2d Dep’t 1982).
- ^{xvii} People v. Ramsey, 178 A.D.2d 269, 578 N.Y.S.2d 521 (1st Dep’t 1991).
- ^{xviii} People v. Perez, 194 A.D.2d 455, 599 N.Y.S.2d 269 (1st Dep’t 1993).

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- ^{xix} People v. Thompson, 83 N.Y.2d 477, 611 N.Y.S.2d 470 (1994).
- ^{xx} People v. Easton, 216 A.D.2d 220, 629 N.Y.S.2d 15 (1st Dep’t 1995).
- ^{xxi} Signorelli, Justice Ernest, “A Judicial Analysis and Critique of the New Drug and Sentencing Laws,” *New York State Bar Journal*, January 1974, at 18.
- ^{xxii} “Case Histories Project,” *supra* note 4.
- ^{xxiii} *Ibid.*
- ^{xxiv} “Mandatory Injustice,” *supra* note 7.
- ^{xxv} Purdy, *supra* note 8.
- ^{xxvi} Interview, *Criminal Justice Journal*, Vol. 6, No. 2, Winter 1998.
- ^{xxvii} “Revise New York’s Drug Laws Now,” *Poughkeepsie Journal*, November 15, 2000.
- ^{xxviii} Memorandum written by Justice Jeffrey M. Atlas to Malvina Nathanson re: New York County Lawyers Association Drug Law Report, July 13, 2001.
- ^{xxix} Interview with Terri Derikart, Director, New York State Chapter, Families Against Mandatory Minimums, May 30, 2001.