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**NEW YORK
CITY BAR**

TESTIMONY OF THE HONORABLE LESLIE CROCKER SNYDER
ON BEHALF OF THE NEW YORK CITY BAR ASSOCIATION
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My name is Leslie Crocker Snyder. I am a former prosecutor (Manhattan District Attorney's Office and special anti-corruption assistant attorney general), a former defense attorney and a retired judge. As a judge in Manhattan Supreme Court for over 20 years, I presided over many drug cases including many of the City's most violent drug gangs and drug-related murders. I am appearing before you today on behalf of the New York City Bar Association to discuss the reforms that have been made to the Rockefeller drug laws, as well as the changes that still need to be made in order for us to meet our goal of meaningful and positive reform of New York's drug laws.

Chief among the reforms that need to be made to current drug sentencing laws is to allow judges additional discretion in sentencing, so that they are not bound by mandatory minimum sentences which pay no regard to a defendant's history and individual circumstances. Too often, judges of the trial courts of this State decide cases where a sentence of drug treatment and rehabilitation, and not prison, is the most appropriate sentence for a particular felony drug offender, but they are unable to impose such a non-incarceratory sentence under current law without the consent of the prosecutor.

Trial judges are in the best position to determine the appropriate punishment for the defendant before the Court, with the input of both the prosecutor and the defense attorney. Certainly, non-incarceratory treatment is not the solution for every drug defendant, but, by the same token, we have seen over the past 35 years that mandatory prison time for every drug defendant does not yield a fair or just criminal justice system that truly addresses the needs of the communities it serves.

The key to any meaningful reform of our drug laws is to give trial judges the flexibility to impose appropriate sentences based on the particular circumstances of the case and the defendant, with or without the consent of the prosecutor. Through legislative reform, the Legislature should empower trial judges to

identify those defendants most in need of rehabilitation and then divert them from prison to treatment. The City Bar therefore supports reforming the current legislative structure to restore sentencing discretion to trial judges in most or all drug cases and abandon conditions of prosecutorial consent.

In addition, any reform must recognize the reality that some of the individuals most in need of treatment may come before a judge with an existing criminal record. The City Bar therefore advocates allowing a drug defendant to be eligible for treatment even with a prior non-violent felony, while giving the judge the power to determine in his or her discretion those most deserving of the opportunity for treatment and not imprisonment.

Of course, a necessary part of any drug law reform package would be sufficient funding of substance abuse treatment programs to ensure that every defendant whom a judge determines deserves the chance at diversion from prison would have the opportunity to enter treatment and to put drugs and crime behind him. Also, training for judges to give them the tools they need to make informed decisions about sentencing would also be a vital component of any drug law reform which truly addresses the problem of drug-related crime.

I would also note that the reforms we advocate today would not soften the sentences for any violent drug offenders.

The New York City Bar Association believes, as I do, that the time has come for us all to work together to further reform the drug laws in this state so that we can achieve justice for victim and offender--justice for all.

Judicial Discretion

We need judicial discretion.

Judges, not prosecutors, must be able to determine which defendants are eligible for deferred sentence and treatment programs. Why judges? Judges are not advocates and represent neither side. They are the neutral arbiters. Judges are concerned about what is best for society and for the defendant, weighing all arguments from both sides. We must allow judges to judge.

Having been a judge for over 20 years until recently, I'd like to reassure you that most judges can judge --- and fairly too.

Under the - new and old - law, only prosecutors can make the determination of eligibility for a drug treatment program on B felonies. However, judges, as well as prosecutors, should determine who goes into drug treatment and other alternatives to incarceration programs.

As a former judge with a tough reputation, in many cases I was able to convince a reluctant prosecutor to place a defendant who I believed deserved a second chance into a non-DTAP deferred sentence program, such as Abraham House, a holistic rehabilitation program of which I am now a Board member. But without the consent of the prosecutor, I would have been unable to do that. The defendants would have faced a jail sentence and not been able to get the much needed substance abuse treatment and job training they needed.

Judicial discretion in using an alternative to incarceration program would be based upon a detailed assessment of the defendant by an independent expert. After reading the assessment and listening to the arguments of both the prosecutor and the defense attorney, the court would make its decision independent of the prosecutor's position but would be required to place its reasons on the record for allowing any defendant to enter any alternative program.

Alternatives to Incarceration

We know that many drug offenders -- and especially female offenders -- currently incarcerated could have received drug treatment instead of prison -- at great monetary savings. More importantly, they might have been rehabilitated.

Clearly, we have not been addressing the underlying problems of any of these prisoners.

Holistic Rehabilitation Programs

We need to have holistic programs which not only provide substance abuse treatment, but job training, counseling and education. A good example of the type of alternative to incarceration program we need is Abraham House.

Abraham House is a rehabilitation program located in the South Bronx. It is in the center of the most impoverished congressional district in the country. Abraham House has an intensive, holistic and community-based approach to rehabilitation. The program was started in 1993 by Sister Simone Ponnet and Father Peter Raphael - both chaplains at Rikers Island for twenty years. Abraham House offers offenders what the prison system can not: a structured lifestyle designed to educate and train, so that offenders can become productive members of society rather than more skilled criminals. It has successfully reintegrated more than 165 graduates. Of those who have completed the program, less than 1% has returned to jail.

By sending fewer people to jail and for shorter sentences, much of the money saved can be utilized to fund programs like Abraham House – so that there will always be programs for those who should be in treatment.

The safety of New York City depends on programs which recognize that a criminal victimizes not only his/her intended target but also those in the family – children- s/he leaves behind while in prison. For example, in 2005:

- There were more than 80,000 children in New York who have a parent in the New York State Prison System.
- Twenty-two percent of all minor children with a parent in prison were under five years old.
- The average minimum sentence for a female offender in New York State was 62 months, which deprives a child of a parent for 5 years.

It is essential that those who are close to the offender be given the tools to break the cycle that leads to incarceration. This requires that the families of offenders, especially their children, be provided with the resources and direction to avoid the conduct and fate of their parent(s).

Court authorized alternatives to incarceration programs – sound and carefully structured – must be a component of successful drug law reform. The following elements are critical:

First, the deferred sentence model is necessary. The defendant must plead guilty to the crime before entering the program. I required that all defendants plead guilty to a top count or crime before they were released into a program. Not only is the potential sentence on the plea if they do not complete treatment successfully a major incentive to success, but it protects society from anyone who rejects alternatives to incarceration and returns to criminal behavior.

Second, we must provide the defendant with tools for reintegration into the community after completion of the program. Any successful program must be a holistic treatment program that incorporates substance abuse treatment, job training, educational/GED and family counseling. To stop the cycle of recidivism, we must address more than the individual who has committed the crime. This is the approach of programs like Abraham House, as discussed.

It should be noted that this court authorized alternative to incarceration program would not be available to violent felony offenders; defendants charged with sale of narcotics to minors; defendants who use children or guns in their narcotics activities or kingpin defendants.

After successful completion of the 18-month program AND after one to five years successful post treatment supervision – more if the Court deems it necessary –, the charges will be reduced or dismissed. The Supervision will be monitored by the Court and will require that the defendant appear in court once a month with a report from the program on the defendant's progress.

This is the ultimate incentive for treatment and rehabilitation: the chance to begin again without any criminal record, having proven that you have been rehabilitated. In order to balance this reward with the interests and protection of society, the case will remain unsealed for 5 years from the time of dismissal. Dismissal based on diversion will be available to a defendant only once.

Kingpin Statute

Finally, a kingpin statute is a necessary component of drug law reform.

Just as there is a need for court authorized treatment programs for lower level and non-violent offenders, we must remember that drug "kingpins" need to be and must be treated very differently.

When we discuss the reduction of narcotics sentences, "kingpins" and/or drug businessmen, managers and enforcers should not be the beneficiaries of the lower sentences. These "kingpins" are individuals who run, supervise or manage drug organizations, often violent operations. I presided over the trials of many of these violent drug organizations, like the Wild Cowboys and the Gheri Curls. These drug organizations took over entire neighborhoods and buildings and held the residents hostage to their drug operations. They sucked in children as young as 6 and 8 and destroyed families. Our children cannot be placed in peril because of the violence and the greed of these drug kingpins. We cannot tolerate that in our great state. Thus, we must safeguard our children and our communities by sentencing appropriately those who run large scale drug organizations, or even small scale drug organizations as a business, a business in which violence is an implicit and usually explicit partner.

Several drug kingpin statutes have been proposed, although none has been enacted. Each sets forth some basic principles that must be considered when drafting a kingpin statute.

The important principles for the statute are:

- It should be directed at the leaders, enforcers and managers or any individual in a supervisory position of an ongoing drug business that sells a significant quantity of cocaine or heroin, e.g. one kilogram or more over a defined period of time.
- It should be directed at those individuals who use one or more persons under the age of 16 in any capacity in the drug organization.
- It should be directed at those individuals who use guns of any kind in their criminal organization.
- It will be no defense (similar to the Conspiracy in the First Degree Statute - Penal Law Section 105. 17) that he or she did not know that the person was under 16. He or she need only know that the person was a member of his/her organization.

We need to balance a tough sentencing policy for those kingpins with judicial discretion for those who need a holistic alternative to incarceration program.

Conclusion

In our system there is a place for tough sentencing, a place for leniency and a place for rehabilitation. We have made progress toward one of our goals in the reduction of the sentences of non-violent drug offenders. However, we still need to reach two other goals: judicial discretion that would allow for more holistic rehabilitation options and tough sentences for the drug kingpins that prey on our communities and our children. Further reform of our drug laws, which would provide for all of these options, should be everyone's goal.

APPENDIX

One Previously Proposed Kingpin Statutes:

Conducting a Controlled Substance Organization

A person is guilty of conducting a controlled substance organization when, as a member of a controlled substance organization, such person:

occupies a supervisory position within such controlled substance organization that, within any period of twelve months or less, sells, or possesses with intent to sell, a total of one or more preparations, compounds, mixtures or substances containing a narcotic drug and such preparations, compounds, mixtures or substances are of a total aggregate weight of one kilogram or more; or

Occupies a supervisory position in such controlled substance organization and within any period of twelve months or less derives proceeds having an aggregate value of \$50,000 or more from the sale or sales of a controlled substance or controlled substances by such controlled substance organization.

Definitions:

Controlled Substance Organization means 6 or more persons sharing a common purpose to engage in conduct that constitutes or advances the commission of an offense under this article as an ongoing activity.

Supervisory Position means and includes the principal administrator, organizer or leader of a controlled substance organization or one of several principal administrators, organizers, or leaders of a controlled substance organization.

The Assembly, in one of its earlier bills, proposed the following:

Trafficking Through a Controlled Substance Organization:

A person is guilty of trafficking through a controlled substance organization when he or she engages in three or more class B or higher controlled substance sale offenses defined in this article, in the manner specified in paragraphs b and c of subdivision 4 of the section 460.10 of this chapter, in each or which he or she (a) directed the activities of such organization and supervised more than three accomplices engaged in such conduct; and (b) derived profits exceeding \$50,000.