

TESTIMONY OF THE LEGAL ACTION CENTER

Before

Assembly Standing Committee on Codes
Assembly Standing Committee on Judiciary
Assembly Standing Committee on Correction
Assembly Standing Committee on Health
Assembly Standing Committee on Alcoholism and Drug Abuse
Assembly Standing Committee on Social Services

The Rockefeller Drug Laws – 35 Years Later

May 8, 2008

New York, NY

Presented by Board Member Doug Liman
and
Director/President Paul N. Samuels

Testimony of the Legal Action Center

Good morning. My name is Doug Liman. I am appearing today as a member of the Board of Directors of the Legal Action Center for the past decade. Joining me is the Center's Director/President Paul Samuels. Thank you for inviting us to testify at this most important hearing on the Rockefeller Drug Laws 35 years later.

The Legal Action Center is the only public interest law and policy organization in New York and indeed the United States whose sole mission is to fight discrimination against and protect the privacy of people with criminal records, people in recovery from drug dependence or alcoholism, and individuals living with HIV/AIDS, and to advocate for sound public policies in these areas. The Legal Action Center was established just a few months before the enactment of the Rockefeller-era drug laws, and ever since we have worked to reform these misguided and counter-productive laws.

My father, Arthur Liman, became the founding Chairman of the Board of the Legal Action Center after serving as Chief Counsel to the Commission that investigated the Attica uprising, and served as chair for 25 years. My father also was appointed by Gov. Carey to a commission that considered sentencing reforms. While I am a film director by profession, I share my parents' passion for improving our state's and nation's justice system and am grateful for this opportunity to continue my father's work to reform New York's unfair drug laws.

Throughout his life, my father argued forcefully for reform of drug laws that mandate incarceration even when treatment would be more effective. In the 1970's he argued the case brought by the Legal Action Center that challenged the original Rockefeller drug laws as constituting cruel and unusual punishment. In his memoirs, he said that his opposition to mandatory minimum prison sentences for drug crimes dated to his very first trial as an Assistant United States Attorney in

Manhattan. He wrote:

“Leroy Samuels (no relation to Paul) was a young black man from New York who had served in the Army in Korea and was now a heroin addict. The man Samuels bought heroin from had been caught, agreed to cooperate with the government, and named Samuels. Then an undercover agent had persuaded Samuels to sell him some heroin. Now Samuels was charged with being a dealer...It took less than a day to try Leroy Samuels and even less time for the jury to convict him. But when the jury foreman announced the jury’s guilty verdict, instead of pride I felt only sadness and a great frustration...While I knew he’d broken the law I didn’t believe for a minute that he was a drug kingpin, or even a regular dealer; he was just an addict who’d sold a minor quantity of narcotics to a government agent to support his habit. Samuels needed treatment for his addiction, and help getting and keeping a job, a lot more than he needed a long jail sentence.

When the day arrived for Samuels to be sentenced, I couldn’t remain silent. Having prosecuted him, I now felt somehow responsible. So I explained to the judge that Samuels had served in the Army during the Korean War and was honorably discharged, and that he was a heroin addict who needed treatment more than anything else.

The judge looked perplexed. “Mr. Liman,” he said, “don’t you know that the law requires me to impose a mandatory sentence?” I must have nodded. “Then why are you telling me all this?”... Too late, I realized how I seemed to him – the impertinent young prosecutor reminding him of what he knew all too well: that the sentence he had no choice but to impose was unfairly severe, and ineffective besides.”

All these years later, it is indeed tragic that many tens of thousands of New Yorkers, most of them young people of color, have been incarcerated under the Rockefeller drug laws, and thousands more will be if the state does not take action. The simple fact is that these laws have not succeeded in

reducing drug use, and instead have greatly damaged our communities and society. As my father wrote: “We...persist in the false belief that longer sentences lead to less crime, and we shy away from programs that might make a difference, such as drug treatment and inner-city job creation... Our mandatory sentences for drug offenses defy rationality... Criminal law is based on the premise that an individual is responsible for his or her own conduct and can be deterred from criminal acts by the prospect of punishment. But there are reasons why an individual’s ability to assert self-control may be impaired, among them drug addiction and alcoholism, which are not, however, allowed as defenses in court. Imposing a severe sentence on an addict for possessing the drug he is going to use is not as useful as probation together with supervised treatment.”

Thank you again for the opportunity to testify. The Legal Action Center’s Director/President, Paul Samuels, will outline our recommendations for how New York State should amend its drug laws.

My name is Paul Samuels. I am Director/President of the Legal Action Center. Thank you for this opportunity to testify, and for holding this important hearing.

The Rockefeller Drug laws have been a disastrous failure that has deprived children of their parents, wasted enormous human and financial resources, and failed to address effectively the drug and alcohol problems that underlie most drug offenses. Every year many thousands of people are mandated into prison for minor drug crimes, nearly all of them young African-American and Latino men – African Americans and Latinos comprise over 91% of the people convicted of drug offenses in New York State prisons 91% – even though studies show that whites use drugs at least as often as people of color. Even in the large percentage of the cases where the judge might think that treatment or another community-based sentence would be more effective, the Rockefeller Drug laws require incarceration and do not allow the judge to impose a different sentence. These laws have devastated our state, and especially communities of color, by sending huge numbers of young men to prison

unnecessarily, which increases the chances they will engage in further criminal activity and dramatically reduces their chances of obtaining education and employment by saddling them with both the prison experience and a criminal record. Nor is there any evidence that the drug laws accomplish their purported goal of reducing drug use or sale.

Commendably, the legislature has in recent years ameliorated the harshest of the Rockefeller Drug laws by enacting reforms that made sentences for drug crimes more proportionate with sentences for other non-violent crimes and brought retroactive relief to some individuals sentenced under the Rockefeller drug laws. However, despite that fact that an astonishing 70-80% of individuals involved in the criminal justice system have a drug or alcohol problem, these reforms have done nothing to expand use of mandated community-based treatment for addicted individuals even though numerous studies demonstrate that treatment is both effective at reducing alcohol and drug use and crime and less expensive than prison.

Chemical dependence is one of our State's most serious public health problems with enormous social and economic costs to individuals, families, communities, government, and society as a whole:

- According to a report by the National Institute on Drug Abuse and National Institute on Alcohol Abuse and Alcoholism, addiction, including alcoholism and drug dependence, costs the nation an estimated \$246 billion in 1992, including \$28.75 billion in health care costs, \$176.4 billion in lost productivity, and \$40.5 billion in other costs (such as crime, welfare, and motor vehicle crashes).ⁱ
- A report released in January 2002 by the White House Office of National Drug Control Policy found illegal drugs cost the nation \$143.4 billion from the U.S. economy in 1998 (\$168 billion in 2004 dollars).ⁱⁱ
- According to a February 2001 report by OASAS, 70% of all individuals in the custody of DOCS are subsequently identified as addicted.

Numerous studies have proven that mandatory drug and alcohol treatment is cost effective, reduces recidivism and enhances public safety:

- The Brooklyn District Attorney's office estimates its DTAP program has saved \$36.6 million in

correction, health care, public assistance and recidivism costs, combined with tax revenues generated by DTAP graduates. A report from the National Center on Addiction and Substance Abuse at Columbia University, found that, compared to a matched group, DTAP participants are 67% less likely to return to prison two years after leaving the program, and graduates had re-arrest rates that were 33% lower; had re-conviction rates that were 45% lower; and were 87% less likely to return to prison and three and one-half times likelier to be employed.ⁱⁱⁱ

- According to a recent study of the impact of California’s Proposition 36 conducted by the Justice Policy Institute, California reduced its drug-possession prison population by over 34%, while at the same time experiencing a dramatic drop in violent crime. This study follows one by UCLA that showed that Proposition 36 saves California \$2.50 for every dollar invested in the program. Over a 30-month follow-up period, this represented a savings to state and local government of \$173.3 million.
- A cost benefit analysis conducted by the Legal Action Center found that for every individual diverted from prison to community-based treatment, New York could save approximately \$60,000.^{iv}
- According to a meta-analysis conducted on 78 studies of drug treatment conducted between 1965 and 1996, “drug abuse treatment has both a statistically significant and a clinically meaningful effect in reducing drug use and crime....”^v

In order to make New York State families and communities healthier and safer and save large amounts of state and local tax dollars, New York should:

Recommendations

- 1. Reform our sentencing laws so that judges and prosecutors have expanded opportunities to send appropriate individuals to community-based programs instead of prison.**
 - Probation should be an option for individuals convicted of first time Class B felony drug offenses. When such a person is given a sentence of probation and assessed (by an addiction specialist licensed or certified by OASAS) as having a drug or alcohol dependency problem for which treatment would be beneficial, participation in treatment should be a mandatory condition of sentence.
 - Probation with a mandatory treatment requirement should also be an option for individuals convicted of a first time Class B or predicate Class B, C, D, or E drug offenses involving sale of or possession with intent to sell one eighth of an ounce or less of a narcotic drug or

other controlled substance, who are assessed (by an addiction specialist licensed or certified by OASAS) as having a chemical dependency problem for which treatment would be beneficial. Since possession of less than an eighth of an ounce of a narcotic drug is only a misdemeanor offense, a sentence of probation for sale of or possession with intent to sell that amount is more proportionate, especially when the individual is addicted and in need of treatment.

- There should also be an opportunity for court supervised drug treatment for other individuals charged with first time Class B and predicate Class B, C, D and E drug felonies. If individuals successfully complete treatment, their cases should either be dismissed or reduced to a misdemeanor, depending on the conditions specified by the court.
- Drug Treatment Alternative to Prison (DTAP) programs should be defined and expanded. As is done, for example, by the pioneering DTAP program in Brooklyn, these programs should require clinically determined levels of care and time frames for length of treatment, and deem those who successfully complete treatment to have satisfied all program requirements as per the determination of the treatment program.

2. Make a wider range of defendants eligible for diversion from prison to community-based programs, including addicted individuals charged not just with drug crimes but other offenses as well, and non-addicted individuals charged with non-violent offenses – and expand the category of individuals eligible for retroactive relief. In order to interrupt the cycle of addiction and repeated criminal behavior, a more expansive view of sentencing reform is needed. Judges should have the discretion to send to treatment or other community supervision and services not just individuals who are addicted and charged with drug offenses, but also those who are addicted and charged with other offenses. Similarly, judges should have the discretion to divert other individuals who, by the nature of their offense or other personal characteristics, would be appropriate to receive sentences other than prison, such as people who are developmentally disabled, mentally ill, or have HIV or AIDS.

3. Expand treatment funding and capacity substantially so that providers are able to serve the increasing numbers of people who will be diverted as a result of these sentencing

reforms and the special needs of the criminal justice population. Such funding should include an initial investment of at least \$25 million, with funding in future years for treatment, as well as prevention and criminal justice programs, coming from the monetary savings generated by increased diversions. To fully realize savings, New York State should close prisons that are no longer needed.

4. Expand the identification of addicted individuals. Mechanisms should be in place to ensure that individuals charged or convicted are assessed to determine if they have a drug or alcohol dependence problem and should be sent to treatment.

- Before individuals are sentenced, they should be given an assessment to determine whether they have a drug or alcohol dependence problem. If such a problem is identified, then those individuals should be sent to treatment, either in a court supervised or DTAP program. Only if the court finds that such a sentence would not be appropriate should the case then proceed.
- All drug and alcohol assessments should be conducted by a chemical dependence treatment professional located in a community-based program licensed or authorized by OASAS using criteria approved by OASAS.
- In order to ensure that treatment is being offered to the full universe of eligible offenders, a statewide screening process should be developed to identify addicted defendants.^{vi}
- Diversion into treatment should be based on a diagnosis of chemical dependency, regardless of whether the primary diagnosis is alcoholism or substance abuse and regardless of the age of the defendant.
- Judges should be trained in issues relating to alcohol and drug dependency through a curriculum approved by OASAS.

5. Consider and utilize all treatment modalities when determining the appropriate treatment option for an individual. As recommended by the National Institute of Drug Abuse (NIDA)

Principles,^{vii} this should include long and short term residential treatment programs, standard and intensive out-patient services, and drug free and medication assisted programs, including methadone maintenance and other approved medications. All treatment services should be gender and culturally appropriate. New York State should also ensure that there are adequate treatment services appropriate for women.

- 6. Develop new models of treatment to accommodate the complex needs of offenders.** These should include residential methadone programs and more programs that address the needs of specific populations – such as programs that treat dually diagnosed individuals, trauma survivors, women and children, individuals with medical or mental health problems, offenders with special language needs, and adolescents.
- 7. Recognize that relapse is part of recovery.** Clients mandated by the criminal justice system sometimes will relapse and should be given an opportunity to remain in treatment as long as the provider determines that they are making progress toward recovery and do not pose a risk to community safety.
- 8. Enact legislation that would permit the conditional sealing of certain non-violent criminal records.** This would give qualified people with criminal records a true “second chance” to become employed, responsible members of society by:
 - Sealing of many drug convictions and some other non-violent convictions so that it will be easier to obtain jobs, education, and other necessities of life;
 - Giving prosecutors notice of the record-sealing provisions and an opportunity to express their support or opposition to the filing;
 - Making sealing of these records conditional. If an individual is subsequently arrested for a crime, the record is conditionally unsealed. If the arrest results in a conviction, the sealing order would be vacated. If the case is dismissed, it would be reinstated.

- Rendering ineligible individuals whose records contain a conviction for a sexual offense as defined in § 130 of the Penal Law.
- Deeming a conviction that has been conditionally sealed a nullity. Employers and others may thus only inquire about convictions of crimes that have not been sealed.

9. Utilize graduated sanctions, similar to those used in Drug Courts. These can include writing assignments, increased monitoring, attendance at extra court sessions, and movement to an earlier phase of treatment or a more intensive level of care. Prison should not be the only sanction.

10. Use a holistic approach in addressing clients' multiple needs. Most addicted individuals involved with the criminal justice system have a wide range of problems. Services such as practical life skills, educational services, vocational counseling and training, and parenting classes should be provided and funded or made available through referral as part of the treatment process.

11. Expand the use of treatment and prevention in the reentry process. Provide the full continuum of alcohol and drug treatment services and prevention initiatives both for individuals inside prisons and jails and for those under supervision in the community.

We commend the Assembly for its long-standing leadership in advocating for reform of New York State's drug laws. Thank you for continuing that leadership by holding these important hearings. Reform of the drug laws and is long overdue and will be welcomed all over the state when it finally arrives.

Endnotes:

ⁱ "The Economic Costs of Alcohol and Drug Abuse in the United States, 1992", Rockville, MD: May 1998. Updated figures from "Economic Benefits of Drug Treatment: A critical Review of the Evidence for Policy Makers", February 2005 by Steven Belenko, Ph.D., Principal Investigator, with Nicholas Patapis, Psy.D., Research Scientist, and Michael T. French, Ph.D., Treatment Research Institute at the University of Pennsylvania.

ⁱⁱ "The Economic Costs of Drug Abuse in the United States; 1992 - 1998", Office of the National Drug Control Policy, September 2001.

ⁱⁱⁱ "Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to-Prison (DTAP) Program", a federally-funded five-year evaluation of the DTAP program.

^{iv} Some savings will only be generated if the operational costs of prisons are reduced. This would occur if entire prisons or certain sections of these facilities are closed down.

^vPrendergast ML, Podus D, Chang E, Urada D. The effectiveness of drug abuse treatment: a meta-analysis of comparison group studies. *Drug Alcohol Depend.* 2002 Jun 1;67(1):53-72.

^{vi}Recommendation of the NYS Commission on Drugs and the Courts.

^{vii} The NIDA *Principles of Drug Addiction Treatment: A Research Based Guide* can be found at: <http://www.nida.nih.gov/PODAT/PODAT1.html>.