



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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**TESTIMONY OF GARY PUDUP,
ON BEHALF OF THE GENESSEE VALLEY CHAPTER OF THE
NEW YORK CIVIL LIBERTIES UNION**

before

**THE NEW YORK STATE ASSEMBLY COMMITTEES ON CODES,
JUDICIARY, CORRECTION, HEALTH, ALCOHOLISM AND DRUG ABUSE,
AND SOCIAL SERVICES**

Regarding

THE ROCKEFELLER DRUG LAWS

May 15, 2008

My name is Gary Pudup. I am the director of the Genesee Valley Chapter of the New York Civil Liberties Union, a state affiliate of the American Civil Liberties Union. My office, located here in Rochester, serves nine upstate counties: Genesee, Livingston, Monroe, Ontario, Orleans, Steuben, Wayne, Wyoming and Yates. Our mission is to preserve and protect the Constitutional freedoms guaranteed in the Bill of Rights for all who live in America.

I have been the director of the Genesee Valley Chapter for one year. In my previous life I was a member of the law enforcement community for 29 years. At the beginning of my career in law enforcement I worked for the New York State Attorney General as a criminal investigator. I went on to serve as an officer in two local police departments: Rochester and Irondequoit. But I spent the bulk of my career — 20 years — with the Monroe County Sheriff's Department as a watch commander and the commander of the internal affairs unit. When I retired, I held the rank of lieutenant.

I am a veteran of drug law enforcement in upstate New York, and it has been my opinion for quite some time that the state's approach to the drug problem has been ineffective and harmful. If the individuals arrested, prosecuted and incarcerated for Rockefeller Drug Law violations had been given treatment and rehabilitation services, many if not most of them would never have become enmeshed in the criminal justice

system in the first place. One of my highest priorities since becoming director of the Genesee Valley NYCLU has been to oppose the Rochester Police Department's recently adopted Zero Tolerance Initiative which targets predominantly poor communities of color for aggressive drug law enforcement.

Last week you heard from my colleague Robert Perry, the legislative director of the NYCLU, about why our organization supports major changes in the state's drug sentencing laws. To briefly summarize:

- First, mandatory minimum sentences subvert the integrity of our system of criminal justice by relegating the judge to the role of bystander in the courtroom and giving undue power to one of the adversarial parties — the prosecution. This results in the incarceration of many nonviolent defendants, including first time offenders, addicts, and people who played extremely peripheral roles in a drug transaction. Most persons incarcerated for drug offenses in New York have been convicted of low-level, non-violent offenses.
- Second, contrary to the claims of some prosecutors, the Rockefeller Drug Laws have been ineffective in reducing crime or enhancing public safety. A quick look at the New York Crime Index Rates bears this out.¹ In 1973 there were 11 homicides per 100,000 inhabitants of our state. By 1990, after 17 years of vigorous Rockefeller Drug Law enforcement, there were 14.5 homicides per every 100,000 New Yorkers. The same trend is seen in robbery rates, another important index crime. In 1973 there were 442 robberies per 100,000 inhabitants; by 1990 the rate had increased to one of the highest recorded rates — 625 per 100,000. This represents failure, not success.
- Third, New York State's drug laws have caused many unintended and avoidable harms. They have diminished the opportunity for economic and life success for many thousands of formerly incarcerated persons who suffer extremely high unemployment rates. They have contributed to the disintegration of already vulnerable families. And through the constant removal and return of prisoners, they have destabilized our most vulnerable inner-city neighborhoods and communities.

I would like to spend the remainder of my testimony focusing on what is perhaps the most disturbing aspect of drug law enforcement in our state: the extraordinary racial disparities we see at every stage of the criminal justice process, from arrest through imprisonment. As you have heard from others who have testified before you, more than 90 percent of persons incarcerated for drug offenses in New York are black or Latino, in spite of the fact that the population that uses and/or sells drugs mirrors the demographics of the general population.

¹ New York Law Enforcement Agency Uniform Crime Reports:
<http://www.disastercenter.com/crime/nycrime.htm>

In a relatively recent government study, a total of 1.8 million adults in New York (about 13 percent of the total adult population) reported using illegal drugs in the preceding year. Of those reported users of illicit drugs, 1.3 million – or 72 percent — were white.² Moreover, research indicates that whites are the principal purveyors of drugs in the state. When the National Institute of Justice surveyed a sample of more than 2,000 recently arrested drug users from several large cities, including Manhattan, the researchers learned that “respondents were most likely to report using a main source who was of their own racial or ethnic background regardless of the drug considered.”³ Upon closer analysis these findings reveal that there are, indeed, many more drug sales in white communities than there are in communities of color, but the transactions that occur in white communities tend to escape detection because they take place behind closed doors in homes and offices.⁴

According to the most recent census, whites outnumber African Americans in Monroe County by 81 percent to 15 percent. If the drug laws were being applied evenhandedly, we would expect that many more whites than blacks would be admitted to prison for drug offenses. But that is not the case. In fact, only six out of every 100,000 white county residents are in prison for a drug offense compared to 175 out of every 100,000 black county residents. This represents a ratio of 29-to-one.⁵

Rochester: Racial Disparities in the Population Incarcerated for Drug Offenses

In coordination with the Justice Mapping Center, the NYCLU has analyzed prison admissions for drug offenses for the city of Rochester. As discussed above, many empirical studies demonstrate that the demographics of the population that uses or sells drugs reflects the demographics of the general population. However, there are stark racial and ethnic disparities in the rate of incarceration for drug offenses.

² Carol L. Council, Weihua Shi, Laurel L. Hourani, “Substance Abuse and Mental Health in New York, 2001,” Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, May 2005, at 5. “Illegal drugs” include, in order of popularity, marijuana, hashish, non-medical use of prescription drugs, cocaine, heroin, hallucinogens, and inhalants.

³ K. Jack Riley, “Crack, Powder Cocaine, and Heroin: Drug Purchase and Use Patterns in Six U.S. Cities,” National Institute of Justice and the Office of National Drug Control Policy, Dec. 1997.

⁴ The Riley study found that powder cocaine users, who tend to be more affluent than heroin or crack users, “reported that they typically made indoor purchases in places of business more frequently than did other users.” Criminologist Alfred Blumstein, the nation’s leading expert on racial disparities in criminal sentencing practices, has concluded that with respect to drug offenses, the much higher arrest and conviction rates for blacks are not related to higher levels of criminal offending, but can only be explained by other factors, including racial bias. See Alfred Blumstein, “Racial Disproportionality of U.S. Prison Populations Revisited,” *University of Colorado Law Review*, Vol. 64, No. 3 (1993).

⁵ Justice Policy Institute, “The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties,” December 2007.

Following is a demographic snap shot of the Rochester communities from which most persons are sent to prison for drug offenses. (See attached: *Prison Admissions Per 1000 Adults, Rochester, 2006*.)

- Twenty-five percent of adults sent to prison from Rochester come from areas with just 7 percent of the city's adult population. Almost one in three is admitted for drug offenses and 92 percent are black or Latino.

In analyzing the racial and ethnic disparities in the population incarcerated for drug offenses, we have focused on two Rochester communities that have comparable numbers of inhabitants: Sector 6 which comprises the Highland neighborhood; and Sector 9, known as the Northeast neighborhood.

- Just 24 percent of the population in Sector 9 is non-Latino white. In other words, the area is populated largely by persons of color. In 2006, at least 204 residents of the district were incarcerated; 61 of those individuals (30 percent of the total) were sent to prison for drug offenses.
- The demographics of Sector 6 are quite different: 65 percent non-Latino white. In 2006, just 19 persons living in the sector were sent to prison. Of those, only three — or 16 percent — were sent to prison for drug offenses.
- Sector 8 is especially interesting. The west side, where prison admissions are high, is poor and black. The east side, where prison admissions are much lower, is the upper class Winton Road neighborhood, where the mayor lives.

It is instructive to examine the financial burden of incarcerating individuals for drug offenses in light of these data.

- New York State taxpayers will spend more than \$27.5 million to imprison Rochester residents convicted of drug offenses in 2006 – accounting for over 22 percent of incarceration costs for all Rochester residents sent to prison that year. More than \$6.5 million will be spent to incarcerate the 61 drug offenders from Sector 9, while \$400,000 will be spent to incarcerate the three people from Sector 6.

I appeal to you, the state's legislative leaders, wearing both of my hats. As the director of the NYCLU's Genesee Valley Chapter and as a recently retired law enforcement official, I urge you to do what you can to create a sentencing structure that restores judicial discretion, expands eligibility for alternatives to incarceration, establishes a comprehensive ATI rehabilitative model, and that reinvests in our most vulnerably neighborhoods the enormous savings that will be realized from cutting the costs of incarceration.

Thank you.