

'Tough' N.Y. Drug Law Tested

By MARGARET CONNOLLY

Legal machinery has been put in motion here to topple New York's "life imprisonment" drug law.

A Rochester County Court judge has refused twice to impose sentence under the new law, using instead the law that it superseded. His challenge has been taken up by the Monroe County District Attorney.

Judge Andrew Celli declared the law unconstitutional. It violates the Eighth Amendment prohibition against cruel and unusual punishment, he said in a 13-page opinion. It is vindictive, and it offends the conscience of the Court. Moreover, the sale of narcotics is punished more severely and inflexibly than any other offenses in the State of New York, and no state has a law so "tough" as New York's.

He sentenced a defendant to three to six years in Attica, under the old law. D.A. Jack Lazarus called this action illegal, and filed an appeal.

Judge Celli's opinion came out of the case of a Vietnam war veteran charged with "criminal sale of a controlled substance, in the third degree." The defendant, Larry Charles Mosley, 27, had sold two decks of heroin to an undercover police officer, he admitted in court July 19.

Under the law effective Sept. 1, 1973, Judge Celli had no recourse, he said, but to sentence the man to "an indeterminate term, up to life imprisonment." Whether the man would be paroled — and it would be lifetime parole — would depend on the judgment of six individuals, not judges, but appointed through the political process," the judge explained in an interview.

His opinion was written in response to a motion by the public defender, Peter Yellin, who described his client as a twice-wounded, often decorated veteran, afflicted with a drug habit.

Under the law, Celli observed in his opinion, there is "no possibility of civil commitment to the Drug Abuse Control Commission, despite a finding of addiction."

Tracing the concept of cruel and unusual punishment back to 17th Century England, he said, "it is clear that the prohibition is a dynamic concept to be continually evaluated and re-evaluated in light of a continually changing society."

"We are not to ask ourselves what was cruel and unusual (when the Eighth Amendment was adopted) in 1791," he said, "but what is cruel and unusual today."

He noted that "lifetime parole itself may constitute cruel and unusual punishment."

Citing cases, he said it had been settled that "proportionality of the punishment to the offense in question" must be considered in the light of the Eighth Amendment stricture.

The circumstances of the individual case are "purportedly removed from consideration" by the statute, he wrote.

"The Court is not permitted to take into consideration the quantity of narcotic sold, whether a single fix, a thousand bags or a million dollar shipment. Life imprisonment is required. This Court is not allowed to consider the nature of the transaction, whether a sale for money, an exchange, a gift or unaccepted offer. Life imprisonment. Nor can the Court consider the relationship of the parties, nor the motivation of sale, nor the seller's status in the narcotic distribution system, whether importer, kilo connection, ounce man, street dealer, pusher, or non-seller passing a needle. Life imprisonment is required in all cases, and in all cases the law thus presumes the worst."

Commenting on this presumption, Judge Celli posed the hypothetical case of one's own son or daughter being in-

nocently in the company of those who possessed drugs, perhaps riding in a car stopped for any reason, and searched. If there are drugs stashed in the car, all occupants are implicated, he said.

He pointed out that this objection was brought at the time the law was under discussion.

"Half the people disagreed with the Legislature, but there was such a hue and cry at the time for law and order, the governor thought something had to be done."

"It seems incomprehensible to the Court," the opinion states, "that a man involved in the sale of narcotics at the four corners in Rochester may be prosecuted in Federal Court, one block to the north, and may under Federal law

receive a probationary sentence, but if he is prosecuted in this Court, one block to the south, he must receive a mandatory maximum of life imprisonment."

Concluding his arguments, Judge Celli stressed the "Conscience of the Court" as a test more important than the others.

"It is a tribute to our system that the more fundamental a question becomes, the more human and less legalistic becomes the source of the answer," he wrote.

"The Court does not need precedent to comprehend the effect upon a defendant of a life sentence. The Court must react as a man as well as a jurist. This life sentence provision is a statute without mercy. It is a statute without the possibility of mercy."

It is without compassion. It is vindictiveness, retribution. It offends the conscience of the Court and beyond reasonable doubt the principles inherent in our Constitution."

Requests for copies of this opinion have come from as far away as Chicago and Los Angeles, Celli said, and it will be distributed widely by the Matthew Bender Publishing Co. and in numerous journals, including the Cornell Law Quarterly and publications of the Buffalo Law School and the Bar Association of the City of New York.

The case meanwhile will go through the state appeals procedure. If the New York Court of Appeals rejects Celli's decision, it doubtless will be carried to the U.S. Supreme Court, he said.

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Unity Mass Held

Horseheads — "This will be a unique experience. My advice is to relax and let it happen." With those words in mind from Father David Fedor, associate pastor, more than 350 persons entered St. Mary Our Mother Church, recently, to celebrate a renewal liturgy whose theme was Unity in Christ Jesus.

The idea behind the Mass, which drew together members of Marriage Encounter, Cursillo, the charismatic movement, Better World and Teen Seminar, was promoted by Father Fedor. The event was the first of its kind in the Southern Tier, though such liturgies have been held elsewhere in the diocese.

According to Father Fedor, "All of these groups were formed with a single purpose: to renew and strengthen our faith in God. Yet, in our enthusiasm for these movements, we may tend to forget our goals. This renewal Mass is a reaffirmation of these goals."

In his homily, Father Fedor cautioned, "We have found a door to a better life. Don't let those doors become wooden idols. They are all openings to ourselves and God."

Concelebrants with Father Fedor were Fathers Bartholomew O'Brien, pastor, Thomas Watts, St. Patrick's, Owego; Elmer Schmidt, St. Margaret Mary, Apalachin; Eugene Sweeney, James Hewes and Robert Donovan.

James Boulet served as extraordinary minister. Other participants included the welcoming chairmen Gary and Jerri Searles, and Mary Ann Turner, of the refreshment committee. Musical accompaniment for the special Mass was provided by Florence Hughes, church organist, and Celebrate Life, the parish folk group, under the direction of Raymond Defendorf.

Monica Emery and James Powers read the scriptures for the event.

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