

Testimony Presented by
BARRY CAMPBELL, SPECIAL ASSISTANT TO THE CEO
On Behalf of
GLENN E. MARTIN, VP OF POLICY AND ADVOCACY

THE FORTUNE SOCIETY
David Rothenberg Center for Public Policy (DRCPP)

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JOINT PUBLIC HEARING:
The Rockefeller Drug Laws – 35 Years Later

May 8, 2008

Glenn E. Martin
Associate Vice President for Policy and Advocacy
The Fortune Society
The David Rothenberg Center for Public Policy
29-76 Northern Blvd.
LIC, NY 11101
212.691.7554 (phone) x 206
347-510-3607 (direct line)

Distinguished Chairs and members of the various Committees represented at today's unprecedented Public Hearing on the 35th Anniversary of the Rockefeller Drug Laws, 'thank you' for creating this opportunity and for allowing The Fortune Society to testify. Advocates and other stakeholders all across NYS applaud the Assembly, *the People's House*, for its courage, leadership and vision for addressing the unjust and counterproductive Rockefeller-era Drug Laws.

For over four decades, The Fortune Society has been a powerful criminal justice advocate and reentry service provider. We are a longstanding member of the coalition of service providers offering Alternatives to Incarceration, Reentry, and related programs (including pre-trial services, defender-based advocacy, client-specific planning, community service sentencing, drug treatment diversion programs, TASC, legal and employment assistance) across the State. These programs divert appropriate individuals who have been arrested or convicted to community supervision and sanctions, as well as connect to services people who are transitioning from prison or jail into our communities. This serves to protect the public and save the state revenue by reducing prison costs, preventing recidivism and stabilizing these individuals and their families. While Fortune has always engaged in advocacy and community education, in order to increase our impact, we have recently launched the David Rothenberg Center for Public Policy (DRCPP), a department which focuses primarily on community education and public policy advocacy.

Five months ago, when I began to head the Rothenberg Center, I decided to investigate and catalog some of the agency's historical advocacy documents, which depict our longstanding efforts to advocate for alternatives to incarceration and the removal of counterproductive barriers to reintegration facing people with criminal records. During this search, I came across a 1973 NY Times Op-Ed, authored by David Rothenberg, Founder of The Fortune Society. The first line of the Op-Ed reads, "*New York State has entered the era of the quick and simple solution to crime in the streets...*" David continues by asking "*Is our need to punish greater than our need to solve problems?*" Sadly, after reading the entire article, I realized that if this same Op—Ed appeared in this morning's edition of the NY Times, most readers probably would not realize that it was authored 35 years ago, when Governor Nelson Rockefeller decided that incarcerating

people who use and sell drugs for a long time was an effective way to show that he and the State of New York could be “*tough on crime.*” We have clung to this failed and ineffective policy, despite evidence that proves that 1) severe punishment for drugs does not lead to a parallel reduction in offending, 2) the drug laws are applied unfairly and disproportionately, 3) drug treatment in prisons is inadequate and less effective, and 4) we cannot afford to continue building and maintaining prisons.

Thirty-five years of history has proven unequivocally that Governor Rockefeller’s assumption that a strict approach to drug offenses would serve as a deterrent was self-serving, shortsighted, misdirected and catastrophic for New York State and the communities that have been disproportionately impacted by these drug laws. David Rothenberg and others knew this 35 years ago, when he quoted a Fortune Society client as saying “*The trouble with the deterrent theory is that politicians think that there was a logical process to my behavior...that I was thinking rationally about sentences, prisons, deterrence while I was pursuing a white powder to inject into my body, which would strip me of any decency of purpose. You don’t think logically while pursuing a course of self-destruction.*” While I won’t consume precious hearing time by littering my testimony with statistics that we all can quote in our sleep, I would be remiss if I didn’t state this glaring fact: The overwhelming majority of people who are convicted of drug offenses in NYS have been and continue to be poor people of color from low income communities throughout NYS, the majority of whom can be better served through community-based treatment services and other forms of alternatives to incarceration. NYS has inadvertently perpetuated victimization and destroyed individuals, families and communities over the past thirty-five years by having our criminal justice policies serve as a surrogate for our public health, education, and community and economic development policies. On a recent Rockefeller Drug Law Advocacy Day, sponsored by the Correctional Association, the legislative aid to one of our state elected officials asked me, “*Well, when do you stop offering a drug abuser treatment and just put them in prison? What’s the threshold?*” My response was, “*How long do we try to treat a person’s cancer before we lock them up?*” Is it such a radical notion to envision a day when a police officer takes a drug user to a hospital, instead of central booking? By confining the debate about how to address drug use and the need to reform the Rockefeller Drug Laws to the criminal justice arena, including mostly police, prosecutors, judges, and defense attorneys, we have

repeatedly side-stepped important issues regarding treatment and recovery. We have witnessed the creation of entire communities where people use drugs to self medicate and where the drug trade is more accessible and lucrative than a living wage job. As one man said to me on a May 3rd visit to Fishkill Correctional Facility, *“To me, the question the judge should have asked me is why did I see more opportunity to escape the ghetto in a bag of crack cocaine, than in an education and a job.”*

In 1973, David Rothenberg accurately predicted the current out-of-control explosion in our criminal justice budget when writing, *“It is frightening to think of the state of our courts and prisons if the Governor’s proposal becomes a reality. His proposal would mean that we would need more money for judges, courts and prisons...”* In the current fiscal climate, it would behoove New York State to do more of what works and less of what doesn’t, especially when the Rockefeller Drug Laws cost the state million more dollars in revenue that should be spent on education, public health and other important services. Long prison terms as punishment for drug possession and use is the equivalent of decapitation for a headache. However, Alternatives to Incarceration not only work, but they save the state millions of dollars in displaced jail and prison time and cause no diminution of public safety. An article in this week’s Washington Post and a segment on CNN both point out that, based on stark fiscal realities, many states have begun *“reversing decades of tough-on-crime policies, including mandatory minimum prison sentences for some drug offenders,”* and *“many cash-strapped states are embracing a view once dismissed as dangerously naïve.”* The article mentions shifts in criminal justice policy in California, Rhode Island, Kentucky, Mississippi, South Carolina, Michigan and New Jersey. While NYS has been able to significantly reduce the prison population, partly based on embracing Alternatives to Incarceration for eligible defendants, if we adopt a new lens through which to address the drug problem *and* take Alternatives to Incarceration to scale, we can further reduce the prison population, realize additional cost-savings, and more effectively treat substance dependency.

Finally, a particularly embarrassing chapter to our adoption of the notorious Rockefeller Drug Laws is that in 1973 NYS *was* regarded as a pacesetter on criminal justice policy and, as a result, the adoption of these laws provided the basis for some of the country’s most severe drug offense

sentencing. NYS *now* has one of the nation's harshest sentencing schemes for low-level, non-violent offenders. We now have a responsibility to undo a poor decision, which not only adversely affected New Yorkers, but rippled across the country. My years Co-Directing the National HIRE Network, before arriving at The Fortune Society, taught me that NYS *continues* to be consulted as an innovator and today we have an opportunity and a responsibility to plant the seeds for progressive reform and a new paradigm not just in NYS, but nationally. NYS is positioned to serve as the catalyst for a much-overdue tipping point, and your leadership and willingness to engage in today's bold conversation are evidence that we are up to the challenge.

Thank you, again, for the opportunity to present at today's hearing. The Fortune Society's David Rothenberg for Public Policy remains eager to partner with you to advance this important agenda.