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Rockefeller & Kleindienst: Life and/or Death

Law and order had a field day last week—or so it would seem from the headlines. Up in Albany, Governor Rockefeller told a cheering New York State Legislature on Wednesday that he was going to ask for legislation imposing mandatory life sentences—without the possibility of parole, probation, suspended sentences or plea bargaining—for pushers of hard narcotics. Not to be outdone, Attorney General Kleindienst told a news conference in Washington on Thursday that his department was fashioning legislation for congressional consideration that would make the death penalty mandatory for anyone convicted of skyjacking, bombing a public building, assassinating a public official or killing a prison guard. Over in Annapolis, Governor Mandel chipped in with word that he was considering asking the General Assembly for some mandatory death legislation. All in all, it was a good week for folks who believe in escalating violence and for the simplistic kill 'em, bash 'em, sock 'em school of law enforcement.

All of this produces a terrible sense of watching a horror reel being run slowly backward toward the time when violent simplistic reactions were thought to be appropriate solutions to complicated problems. Governor Rockefeller's proposed solution to his state's drug problem is probably the clearest example of executive leadership by pique and tantrum. No one who knows anything about the drug problem in New York can have anything but sympathy for the governor's frustrations with the enormity of the problem and no one who has seen a young life eroded by an addiction to hard drugs can avoid feeling at least a little empathy for the governor's primitive reaction.

But no one who knows anything about the complexity of the drug traffic in New York can believe that the governor's proposed solution will be either just or effective. Does one, for example treat the veteran who sells drugs to support the habit he picked up in the service of his country in Vietnam in the same way he treats the hardened professional trafficker? Does a college youngster selling his friend a bit of hashish get the same treatment as the professional importer of foreign processed heroin. Is the state better off when its prosecutors are deprived of the ability to plea bargain for additional information from a defendant? Apparently, the governor's answer to

all of these questions is Yes; "society has no alternative." It seems to us more like a confession of failure—a not very bold assertion that he is not prepared to assess the real effects of the efforts already underway in New York and that he is unwilling to mobilize the funds and manpower in the massive amounts necessary for a truly effective attack on the problem.

Mr. Kleindienst's statements yesterday indicate not so much a temper tantrum as a willingness to turn 180 degrees away from the civilized and enlightened paths that law enforcement around the globe and in this country has been taking and instead to plunge headlong back into the dark ages. Long before last June's Supreme Court decision severely undermining the death penalty, the Department of Justice had been placed on record in opposition to it. Now, Mr. Kleindienst, who is apparently out of step with some of his key subordinates, says that although he agrees generally with the enlightened view that the death penalty is not an effective deterrent, it will be employed in the really bad crimes he is worried about and will thus bring us more "justice". We believe, to the contrary, that Mr. Justice Frankfurter was right when he concluded that capital cases destroy the process of justice because of sensationalism and emotionalism. We also think that modern juries and appellate judges, more often than not, will contort themselves, the law and the facts in order to avoid sending a man to his death.

And, we wonder a bit about the deterrent effect of a mandatory death sentence. Just think, for a moment, about what might go on in the mind of a skyjacker with a gun or a bomb who knew that upon capture, his only path was to the chair. Could he reasonably be expected, under duress, to have a great deal of concern for the lives of the crew and passengers under his power. We doubt it in that case and in the case of a panicky kidnapper as well.

But, never mind the details. Messrs. Rockefeller and Kleindienst sound tough. And they sound like they are for law and order. Both men—who should know better—went for the quick fixes which, while not advancing the cause of law enforcement very much, will do a good deal to set back the cause of effective and humane reform of our criminal justice system. We should know enough by now about "law—and—order" to recognize that it can not be realized by a quick fix.