

# Pittsburgh Baseball Drug Trials

## A Note on Prosecution of Drug Dealers and Users

PROFESSOR MARK D. YOCHUM

ANDREW URKO (L`18)

DUQUESNE UNIVERSITY SCHOOL OF LAW

OCTOBER 2018

The chief controversy (as opposed to celebrity) concerning the Pittsburgh Baseball Drug Trials was that small-time dealers were being prosecuted rather than big-time ball players. There was no sense, in the press, that the defendants were particularly good guys rather than, once again, power and fame were immunizing. Importantly, from a legal perspective, the cry that the wrong people were on trial was the only defense tactic, patently irrelevant and repeated enough to get the defense attorney thirty days for contempt, after the verdict. Nonetheless, prosecutorial discretion is a matter to consider. Litigators might note that an action against the ball players with the dealers as witnesses (and still no cocaine) would not fly. But there was a sting with the Pirate Parrot. Could there have been a stinging of the players?

In 1985, the Justice Department policy was not to prosecute users. The United States Attorneys' Manual seems to have always provided that one should "leave smaller possession...offenses to state and local authorities." By 1988, it was clear that users were now in the system and often, I suspect, as leverage for information. U.S.A. Manual 9-101. 200 D. and

E. have rules for evaluating the prosecution of addicts and whether they would cooperate against a Confederate. In other words, arrest addicts to start up the supply chain. This change is right after the Narcotics Penalties and Enforcement Act of 1986, House Report No. 99-845 on that Act notes: “While the Judiciary Committee intends to send a signal that it disapproves of drug use of any kind, it is clear that the Department of Justice does not investigate or prosecute simple possession cases as a general rule.”

Modern scholars of crime have given much thought to prosecutorial discretion since the Pittsburgh Baseball Drug Trials. As with the trial, the tangle of race, poverty, drugs and power can distort the perception, causing those at a distance from seeing that justice is being done. But there is no doubt that that tangle has too often made justice undone. Below are some pieces for further study.

Drew S. Days III, *Race and the Federal Criminal Justice System: A Look at the Issues of Selective Prosecution*, 48 ME. L. Rev. 181, 184 (1996)

Robert Heller, *Selective Prosecution and Federalization of Criminal Law: The need for Meaningful Judicial Review of Prosecutorial Discretion*, 145 U. Penn. L. Rev. 1309 (1997).

A. Morgan Cloud, III, *Cocaine, Demand, and Addiction: A Study of the Possible Convergence of Rational Theory and National Policy*, 42 Vand. L. Rev. 725 (1989).