OPINION

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Giving Measure 11 a Second Look *Should juries know the likely sentence?*

BY CHIP SHIELDS

Should juries know the likely sentence when deciding guilt?

You may have missed this important criminal-justice story. On May 9, the Oregon Supreme Court decided it will consider whether, in the words of James Pitkin at Willamette Week, grazing a boy's head with your breasts should get you over six years in the slammer.

The case is State v. Veronica Rodriguez. Pitkin says, "The jury voted 10-2 to convict Rodriguez for allegedly pulling the back of the boy's head against her chest." She is facing a six year and three months sentence for Sex Abuse I under Measure 11, the 1994 voter-approved ballot measure penned by Kevin Mannix.

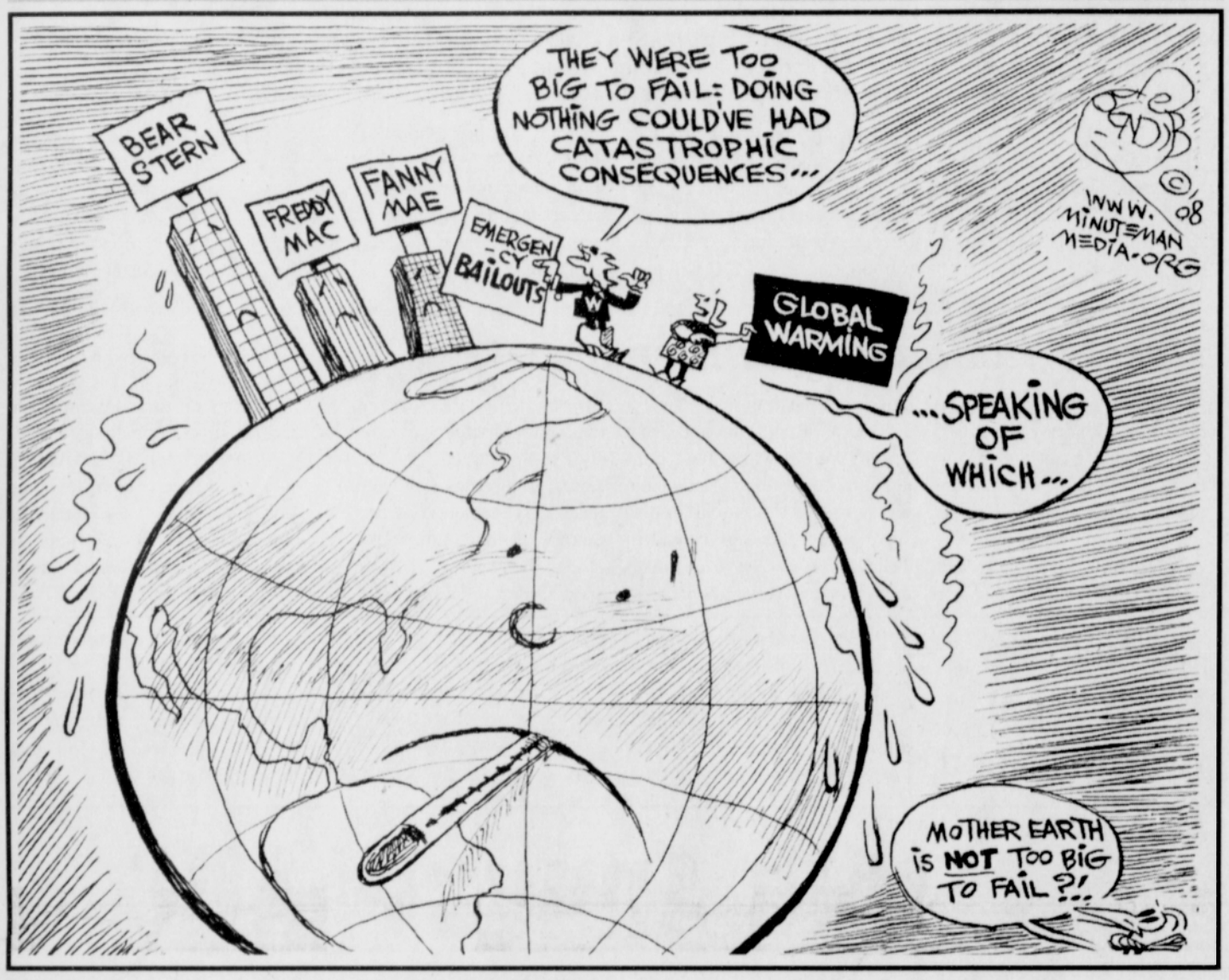
Judge Nancy Campbell, now retired, set aside the Measure 11 sentence and instead sentenced her to 16 months using the state's sentencing guidelines. She stated that applying Measure 11 in this case would violate the Oregon constitution's cruel and unusual punishment clause. The Court of Appeals overruled her and reinstated the six year-three month mandatory minimum sentence.

What's interesting is that in April 2000, the Oregon Court of Appeals upheld Measure 11 in an equally controversial sentence given to Justin Thorp-- a 16 year old who was sentenced to six years and three months for having consensual sex with his 13 year-old girlfriend.

Clackamas County Circuit Judge Robert Morgan determined that such a sentence was cruel and unusual punishment in violation of the Oregon Constitution. Morgan based his decision in part on the fact that the girl said she initiated the sex. Thorp was three years and 10 days older than his victim. But had the difference in their ages been three years or less, it would not have qualified as second-degree rape. At most, he would have faced a misdemeanor sex offense and been sentenced to probation, prosecutors and defense attorneys agree.

Morgan opted to sentence him to 35 months in prison, based on state sentencing guidelines. The state appealed, arguing that the longer prison term did not violate the Oregon Constitution. A 5-4 majority of the Court of Appeals agreed. Thorp had to do all six years and three months.

What's also interesting is that the Thorp opinion was penned by Judge Paul DeMuniz, who was elected to the Oregon Supreme Court six months later. He is now the Oregon Supreme Court Chief Justice and a man for whom I have immeasurable respect.



We all want as much information as possible about the consequences of our actions; why shouldn't we give a jury as much information as possible about the consequences of theirs?

Maybe Judge DeMuniz and his Supreme Court colleagues want to give Measure 11 a second look in State v. Rodriguez. But the issues in this new case are much narrower.

Unlike in State v. Thorp, Rodriguez and her attorney Peter Garlan are conceding that Measure 11 is constitutional, but are claiming that its application against Rodriguez violates the proportionality clause of the Oregon constitution in this case only.

I trust juries, so in 2005, Sens. Margaret Carter, Avel Gordly and I introduced House Bill 2986 which gives jurors information on the likely sentence the courts will impose upon a finding of guilt. It died for lack of a hearing in the then Republican-led Oregon House.

I've been thinking of reintroducing that bill, so I checked in with one well-respected constitutional scholar on the issue. I haven't gotten his okay to use his name yet, but he wrote back:

"As a general proposition, I believe that all human beings should be as fully informed as possible about the consequences of all of their actions before they undertake those actions. Before you put your hand on that hot stove, you should understand that you might get burned. Before you jump into the Clackamas River at High Rocks, you should understand that you might drown in a whirlpool. Before you get on TriMet without a ticket, you should be aware of the penalty if you get caught. And before a jury decides to do X or Y or Z, its members should understand the results that could flow from that decision."

We all want as much information as possible about the consequences of our actions; why shouldn't we give a jury as much information as possible about the consequences of theirs?

So what do you think? Should Veronica Rodriguez' and Justin Thorp's juries have known they would be sentenced to six years and three months each? Or is justice best served by keeping that information from them and having juries only decide guilt or innocence?

Chip Shields serves north and northeast Portland in the Oregon House of Representatives.

Practice what you Preach

Organized labor falls short on diversity

BY MARC MORIAL

There is no question the civil rights and labor movements have shared a public commitment to issues of parity and justice affecting African Americans and working people over the years.

Forty years ago, Dr. Martin Luther King embodied that partnership when he led his last march for justice in support of the striking sanitation workers of AFSCME Local 1733 in Memphis. But, it is also true that the union movement has been slow to practice what it preaches when it comes to equality within its own ranks.

In the early years of the labor movement, African Americans were systematically excluded from major unions, which led to the formation of separate Black labor unions. A. Philip Randolph founded the Brotherhood of Sleeping Car Porters in 1925 and waged a 12-year fight to gain recognition by the American Federation of Labor. He went on to become a national leader in the fight against racism within unions, in the workplace and throughout America.

At a time when African Americans are an increasingly important part of the organized labor's future, they are still not adequately represented at the top echelons of the American labor leadership.

Those early barriers have slowly fallen and now Blacks represent about 14 percent of American union workers. But, at a time when African Americans are an increasingly important part of the organized labor's future, they are still not adequately represented at the top echelons of the American labor leadership.

But don't take my word for it. Listen to what William Lucy, AFSCME secretary-treasurer and the highest ranking African American in American labor has to say. In remarks to a 2005 national summit on labor and diversity in Chicago, Lucy said that at a time when the vast majority of new union members are women and people of color, "a majority of people of color still encounter barriers to gaining leadership positions within their union and even where they have reached leadership positions, they face additional challenges."

Lucy recommends mentoring support, education, training, and other pro-active efforts to achieve opportunities and equality within the union movement. The National Urban League agrees. Organized labor must not take African American support for granted.

As the presidential election of 2008 draws closer, the American labor movement is mobilizing to represent the interests of working people on issues like universal health care, the elimination of poverty and the right to organize.

Let's hope they apply that same vigor to increasing diversity in union leadership and in the continued fight for equal opportunity throughout America. As A. Philip Randolph reminded us, "Salvation for a race, nation or class must come from within."

Marc Morial is president and chief executive officer of the National Urban League.