

JACK WEINSTEIN

NEW YORK FEDERAL District Court Judge Jack Weinstein isn't a fan of mandatory minimum sentences. As Congress ratchets up penalties for certain crimes, prison sentences have doubled, then doubled again, in the past decade, often for reasons more political than penological. Judges stripped of discretion can either rubber-stamp what they see as harsh sentences, or find ways to impose lower penalties, inviting accusations that they are legislating from the bench.

Weinstein so opposes mandatory minimum drug sentences that for a time he refused to handle minor drug cases. More recently, he's stirred up controversy by taking the same stance with respect to collectors of child pornography. In a case this year involving a New York man with a huge collection of kiddie porn, Weinstein has repeatedly refused

to impose the minimum five-year prison sentence. He's already tossed out two convictions in the case and says jurors have a right to be told of the disproportionate punishment before they render a guilty verdict. As Weinstein explained to *The New York Times*, he doesn't believe in "destroying lives unnecessarily" over a crime that harms nobody.

But does it harm nobody? Weinstein's critics argue that merely "viewing" child porn does real harm to kids by perpetuating a \$3 billion annual market. The Justice Department estimates that in creating their product, child pornographers have abused 1 million kids in the United States. And some studies suggest that between 30 and 50 percent of viewers of child porn also molest a child.



Weinstein says these people need treatment and supervision, not years in prison. And that puts him in the middle of several epic fights: between justice and mercy; between legislators and judges; and, ultimately, between what we know least and what we fear most.

—By Dahlia Lithwick, senior editor, Slate

ANTHONY HARE

Why don't you James expose what we know least and what
you fear most?