

PUBLIC HEARING

before

N.S. SENATE COMMITTEE ON LAW, PUBLIC SAFETY  
AND DEFENSE.

ON

Senate Bills Nos. 897, 802 and 803.  
(Eavesdropping and Department of Criminal Justice)

Held:

September 17, 1968

Assembly Chamber

State House

Trenton, New Jersey

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185 W. State Street  
Trenton, N. J.

Members of Committee present:

Senator Joseph C. Woodcock, Jr. [Chairman]

Senator Frank C. Italiano

Senator Hugh Kelly

Senator Frederick H. Hauser

Eliot H. Lumbard, Esq. [Counsel to  
Committee]

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SENATOR WOODCOCK: I see we have passed the appointed hour so I believe I will call the hearing to order. And before we commence I would just say that we are considering this morning Senate Bill 802, and for the purposes of the hearing, although it was not originally noticed to the public, we will consider 803 because I do know that the Prosecutors have indicated some interest in that and I believe that the Attorney General might want to comment on that when he comes in. So that we will expand it to 802 and 803.

We have completed our hearing with respect to Senate Bill 897, the eavesdropping and wiretap bill so that we will address ourselves this morning to 802 and 803.

We will start the procedure this morning with Mr. Lloyd Wescott, President of the State Board of Control.  
L L O Y D     B.     W E S C O T T, President, State Board of Control of Institutions and Agencies, called as a witness, being duly sworn, testified as follows:

MR. WESCOTT: Senator Woodcock and members of the Legislature, I have brought with me other members of local boards which I will introduce to you. We are going to try to get through our testimony as rapidly as possible. We've got a lot to say.

We are very grateful for this opportunity to appear before you and testify as to certain provisions of Senate 302 which would establish a Department of Criminal Justice.



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At the outset let me say that we are not opposing the legislation on every issue. In fact, some suggested provisions contained in the new legislation have long been sought by this Department, such as a work release program, additional half-way houses, increased "gate money," etc. Other suggestions seem excellent: such as a greatly strengthened parole service, the combining of parole and probation supervision to avoid duplication, and the assumption by the State for the custody of all convicted offenders rather than have them housed in county and municipal jails. This Department can effectively implement these suggestions and stands ready to do so.

We will confine our opposition only to those provisions which would transfer to the new Department the functions of the Division of Correction and Parole now housed in Institutions and Agencies. We are convinced that little can be gained thereby and that a great deal will be lost.

Such a move would effectively dismember the Department of Institutions and Agencies. This Department, as you gentlemen know, now is responsible for State services in the areas of mental health, mental retardation, correction and parole, soldiers' homes, and welfare. The Department is now celebrating its 50th anniversary. There is no inherent merit in age alone. There is merit in the fact that this unique Department has worked well for a long time and continues to work well. Actually, the structure of the Department was reviewed in 1947 when the new State Constitution was revised. Again, in 1959, a committee of distinguished citizens working with a Rockefeller Brothers Foundation grant, spent months reviewing the Department and its function and had the advice of national and international authorities. In both cases there was full agreement that the basic structure of the Department be maintained.

What purported failures on the part of the Department is the new legislation designed to correct? I have reviewed the report of the committee that developed the legislation, and the principal indication of our failure cited is the fact that the Trenton Prison has not been replaced. I do not need to tell you gentlemen how overwhelming is the State's need to provide money for capital construction. The strong bipartisan support of the enormous bond issue coming up this fall proves how universal the recognition is. Certainly we need a new maximum-security prison, but none of us, in good conscience, could recommend that \$50 million be spent for this purpose when we still have a waiting list of over a thousand retarded children desperately needing care--when we have woefully inadequate facilities for children in our State mental hospitals--when our needs in higher education are so pressing. If the bond issue passes this fall, it will provide for the completion of the Leesburg Prison now under construction and should allow us to demolish #4 Wing. Is there any reason to believe that the creation of a Department of Criminal Justice will miraculously produce money to build a new prison?

The suggestion is made that New Jersey has failed to innovate in the field of correction. This charge, we say, is completely without foundation. The Clinton Reformatory for Women has long been one of the most outstanding correctional institutions in the entire world and has been so recognized. The Highfields project, which originated here, has also received world-wide recognition, and has been widely copied. Now that we have opened the new Yardville Reformatory I think it can be safely said that we will have as good a reformatory system as exists anywhere in America.

What would be lost by the transfer of Correction and Parole out of our Department? First, we firmly believe that having this Division within our Department enormously strengthens the professional approach to rehabilitation. Rehabilitative programs have their origin in the behavioral sciences and our Department has been outstanding in the acceptance, the development and the use of such methods. The interaction among the divisions has been a powerful stimulant to program improvement. We do not accept the fact that a department which is successful in apprehending and convicting the offender would be necessarily more successful with their rehabilitation. They are two very different things, both essential but unlike, requiring different attitudes and different professional backgrounds.

Secondly, we feel most strongly that the involvement of citizens in correction and rehabilitation, which has always characterized the Department's programs, has been of enormous importance. It would be easy to accuse us of arguing for the status quo in order to maintain our own position and our own prerogatives, but we really are not. There are over 220 citizens involved as Board members in our Department, each with a strong legal and moral responsibility toward the institution or the agency to which he is assigned. It is really extraordinary how extensive this service is and how dedicated these people are. The Boards meet virtually every month, and regular attendance is expected. The present members of our Boards have logged over 1,500 years of service to New Jersey and in 1967 alone gave over 4,500 hours of service--all without pay. These are astonishing

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figures; let me repeat them: The present members of our Boards have logged over 1,500 years of service to New Jersey and in 1967 alone gave over 4,500 hours of service--all without pay. There is a tradition in New Jersey for this kind of service and it is a priceless thing. It should not be destroyed.

Our strongest objection, however, to the transfer of the Division of Correction and Parole is that it would be inefficient and uneconomical to a serious degree. The extent to which we are able to integrate programs, to use professional staff in all divisions, to use prisoners to provide direct services to mental hospitals and institutions for the retarded, the effectiveness with which we can transfer people from institution to institution--these things are the envy of anyone who is fully familiar with the facts.

For example, the Department provides centralized direction and supervision for all divisions and all institutions for such services as personnel, accounting, engineering and construction, agriculture, food service and laundries, and fire protection. There is centralized direction, training and recruitment for medical, psychiatric, psychological, social work, and nursing services. This centralized supervision would quite simply have to be duplicated if the Division of Correction were transferred to the Department of Criminal Justice.

There can be little question that a separate Department of Criminal Justice would have to build additional institutions to provide services now available within this Department for the criminally insane and the defective delinquent. This would require capital funds and increased operating costs.

One of the gravest problems facing any correctional institution is to provide meaningful work for the offender. The so-called "prison industries" in New Jersey can sell only to other branches of government and are constantly criticized for competing with private industry. Hence, the chances for significant employment here are limited. As you will hear later, three-fourths of the output of the prison industries is consumed by our charitable institutions, principally because they are lodged in the same department.

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New Jersey has, however, established a really extraordinary service to the charitable institutions provided by the prisoners. Over 300 men inside the walls run laundries and bakeries serving these institutions. Over 120 operate prison farms, the produce of which is consumed to a large degree by the charitable institutions. In addition, some 750 men are actually assigned to minimum-security details at the charitable institutions, where they provide food service, maintain grounds, run hospital farms and, in the case of women offenders, actually provide some patient care. Pricing the work of these 1,100 men at even minimum State salaries would amount to close to \$5 million. Granted they need supervision and maintenance, but they would have to have it wherever they worked, and the saving to the State does run into the millions. In addition, it supplies meaningful work, which is infinitely important. It is interesting to note that in two institutions for the retarded, the prison and reformatory groups, at their own expense, regularly give parties for the children.

Actually, gentlemen, I think the degree of unemployment in our prisons would be catastrophic if this were done.

No people are more aware of the benefits of the system than the citizen members of the individual Boards. Many of them wanted to testify before you, but in order to save time and to avoid duplication, we have asked eight of them to come, representing specific institutions or specific programs and to tell you as briefly as they can what the integrated Department means to them.

And here I am going to change the order just a little bit. Walter Kidde who has come here this morning needs to get back very quickly so I am going to put him first.

For as long as I can remember, Mr. Walter Kidde has been identified with welfare programs in New Jersey. One of the State's leading industrialists, he has always brought to bear on the problems of welfare the critical judgment of a successful businessman combined with the knowledge that our society, out of human decency and for its own protection, must provide for the needy, the homeless and the helpless.

I am very pleased to ask Walter Kidde to testify. Walter, would you come up here now?

W A L T E R     K I D D E, called as a witness, being duly sworn, testified as follows:

Senator Woodcock and members of the Committee

I'm not an expert on penology. I represent the Welfare Division of the Department. I have some knowledge in that area and a strong belief that the future of the Welfare Department is going to derive from its ability to continue and expand the rehabilitative function that it has at the present time. In other words, rehabilitation is our problem in the Division of Welfare as in other divisions.

Therefore, I am making the point initially that such rehabilitative work as is to be done in the State can best be done under one group.

The Division of Public Welfare has important relationships with institutions within the Division of Correction and we share with them many concerns as to programs.

Our Bureau of Children's Services provides direct community supervision to all children released from the State training schools in the Division of Correction and Parole under the age of 14 years. In the instance of children released from these two facilities between the ages of 14 and 16 a mutually agreeable program for supervision is decided upon by representatives from the Bureau of Parole and the Bureau of Children's Services. To accomplish this program personnel from the Bureau of Children's Services are regularly assigned to work with the staff of the two State training schools. The Department has available at the Bureau level administrative mechanisms to resolve any problems that relate to responsibility for community supervision

As a result of this program, New Jersey probably has fewer children in its training schools who have been approved for release, but who must await development of a community program, than any jurisdiction in the United States. For instance, in 1960 at Jamesburg and the State Home for Girls there were 118 youngsters who were in this category. As a result of State Board of Control policy and the development of procedures to implement it by the Division of Public Welfare and the Division of Correction and Parole, on August 1, 1963 there were only two children in this category.

The Commission for the Blind is part of the Division of Public Welfare and this Commission is directly interested in the program of Braille transcription in our correctional institutions. Benefits from this program to some of the State's sightless and visually handicapped people are obvious, as should be also the benefits in the form of vocational outlet and occupational therapy for some of the correctional institutions' most difficult and intractable inmates.

The Division of Public Welfare has other and more comprehensive interests in the Division of Correction and its programs. Either directly or through county or municipal units, we provide services to the families of many of the inmates confined in correctional institutions. The citizens serving on our Board and our professional staff are much concerned as to the development of sound rehabilitative programs in our correctional institutions. Nothing could be more important than to inculcate attitudes and skills in these inmates that would increase the probability of their becoming responsible citizens and family members. This constitutes a major step toward our goal of assisting welfare recipients to become full productive members of society.



We have an immediate and direct sense of involvement with the State training schools also for the reasons stated above. We were pleased that representatives from our Division contributed to the program developed for the Skillman Institution for children 13 years of age and under that was made possible with the passage of the 1964 Bond Issue and which will open next month. Through personnel from the Division who are assigned to the training schools, citizen contacts and involvement under the State Board of Control, we will continue our interest in this new facility that captures many of our hopes as well as the hopes of the Institution Board of Managers at Jamesburg and the Turrell Fund whose generous contribution and their jointly felt need for such a facility, initiated this project.

The Board of Public Welfare adopted as a major goal for the Division the integration of its services wherever possible within a complex of other Departmental services. Under the State Board of Control policies the Division of Public Welfare and its staff played an important role in the development of a design for regional services for the Department. This program design which was submitted by the Department to the United States Department of Health, Education, and Welfare for Federal funding on a demonstration, experimental basis anticipates the expansion of this goal into a network of "single door" District Neighborhood Family Service Centers which will provide one point in the community for all Departmental services. This demonstration experimental project anticipates the development of a new public welfare occupational role--Public Service Social Worker. These persons would be integrated from the staffs of our existing Bureau of Parole in the Division of Correction, the Bureau of Children's Services in our Division and Field Services in Mental Retardation and would provide

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services to mixed caseloads including parolees and the families of individuals incarcerated in our correctional institutions. We believe this to be an important concept and its significant and meaningful implementation within the community will be severely limited without the participation of the Division of Correction and Parole.

Unfortunately, New Jersey has not heretofore implemented at the local level the possibilities for integrated services inherent in its administrative structure at the State level. The Department is now anxious to do so and contemporary experience suggests this as the most probable development for social welfare services throughout the country. At this moment to disrupt an organizational and administrative structure with such unusual potential to achieve the type of integrated services including correction that is now the aspiration of all states and the Federal government would indeed be regression.

All experts agree that the crucial period in the community reintegration of inmates released from correctional institutions is the first several weeks after release. Correctional experts within the Department have long argued for the improvement of the traditional mechanisms to bridge the gap between institutionalization and full community participation. The existing welfare mechanisms are admittedly inadequate to this purpose and constructive improvement is, in the opinion of the Board of Public Welfare, dependent upon implementation of the recommendations of the Department of Institutions and Agencies and the Legislative Committee studying Criminal Justice in New Jersey and on the development of integrative administrative structures in the community of the type outlined above paralleling the integration achieved at the State level in the Department of Institutions and Agencies.

Thank you.

SENATOR WOODCOCK: I would first like to say, Mr. Wescott, if we could, for the benefit of our stenographers, if the gentlemen have copies of their reports so that they can give them to the girls, I think that this might be helpful.

Secondly, I might say that if you do have written reports, if we could have the written reports put into the record and then have the comments in addition to that because, frankly, we have here, as you see, a limited number of members of the entire Senate and I think since the remarks will be in the record, available to the entire Legislature, this would serve that purpose. And then, for the purposes of this hearing, I think if we expand upon those remarks I think we could save both time and also get something of a dialogue between the Committee here and the people that you are presenting to us today.

At this time I would like to introduce Counsel to this Committee, Mr. Elliot Lumbard, for the purpose of conducting the examination of witnesses and then we will open it up to members of the Committee.

Mr. Lumbard.

MR. LUMBARD: Mr. Kidde, do you make fire extinguishers?

MR. KIDDE: Yes, we do.

MR. LUMBARD: I have one in my office and the name struck me.

Have you read the President's Crime Commission Report?

MR. KIDDE: No, I have not.

MR. LUMBARD: Have you read any of the Task Force reports, particularly the one on juvenile delinquency, which is really most pertinent to your testimony here today?

MR. KIDDE: No.

MR. LUMBARD: Do you appear here today then in the capacity of a person who is a concerned citizen, let's say, or in the capacity of a professional who is knowledgeable about particular program content or in the capacity of what?

MR. KIDDE: I appear as Chairman of the State Board of Public Welfare who has a direct relationship with the Division of Correction and Parole in the Department of Institutions and Agencies.

MR. LUMBARD: Well, do you rely exclusively then for all your judgments about the technical program nature or about this particular government structure that would best house the program or about budget questions on the professionals in your department?

MR. KIDDE: Well I certainly rely to a large extent.

MR. LUMBARD: To what extent? You see, the question that confronts the Legislature is not whether you're a fine, able, well-motivated citizen, but what will be the most effective structure within which to fight crime. Now, you talked about social welfare, you talked mainly about goals, and I am trying to find out at what level I should question you or if at all. Because no one disputes the fact that --

MR. KIDDE: Well, as I said, I am not an expert in any sense in penology. That's another branch of our Division,

of the Department. I am involved in the welfare activities of the Department and I know to a certain extent, to a considerable extent to what extent we are involved in collaboration with the Division of Correction.

I feel that it would be extremely unfortunate to break that direct connection between the rehabilitative work of the Division of Correction and the welfare activities.

So far as the major factors of the bill that we are talking about today are concerned, and the development of a better system of criminal justice in New Jersey, I certainly applaud it. To take the Division of Correction, however, and insist that that must be part of this new Division of Criminal Justice doesn't seem to make any more sense than to leave it where it is. And it seems to me that it makes a lot more sense to leave it where it is because of the relationships developed within the Department of Institutions and Agencies.

MR. LUMBARD: Well, let's get at that then, to get down to understanding the capacity in which you appear and perhaps would be most fruitful.

For example, the United States Department of Justice has been traditionally organized for generations, a longer period than your own department has been organized, in fact, embracing the whole sweep of the system of criminal justice. They have not found this a problem and that's why I'm curious. That's number one.

Number two is, for example, you talked about general social welfare and reform and concern for the

individual, all of which goals I'm sure the Committee would share but, for example, the Federal Government has a department called Health, Education and Welfare; indeed, in many governments, state and otherwise, the traditional category does embrace health, education and welfare as three more allied units than, say, welfare, mental health and prisons. So maybe you could comment on whether or not you think education should be embraced within yours or whether or not a prison should not.

I am trying to get at what level of competence or what you're getting at. The alternatives are numberless.

MR. KIDDE: In any business organization, many business organizations, you will find that different departments are operated quite differently in one organization from within another.

MR. LUMBARD: Right.

MR. KIDDE: There isn't any absolute measure by which you can say that one type of organization is preferable to another.

MR. LUMBARD: Right. In fact, your own company is in some kind of a conglomerate, isn't it?

MR. KIDDE: Yes, we have different companies within it which are organized quite differently from others within it.

MR. LUMBARD: Right.

MR. KIDDE: The question here is --

MR. LUMBARD: But you see the program the Legislature is talking about, Mr. Kidde, however, is not motivated

by that common economic desire for profit which puts conglomerates into different kinds of frameworks. The government must organize around programs and program content.

MR. KIDDE: Correct.

MR. LUMBARD: And what we'd like to hear from you is why, in terms of specific programs X shouldn't be married with Y or Y shouldn't be separated from Z. That's really what we are here concerned with. For example, in other states, where I've been concerned with this kind of issue, it's been perfectly possible for welfare, in a separate department, to work perfectly well with prisons in a separate department or with mental health in a separate department.

So could you give me the reasons why you think these should be married and not just a conclusion.

MR. KIDDE: Well, I tried to do so in this statement that I made, Mr. Lumbard.

MR. LUMBARD: Well all of them are susceptible of equal interpretation from the other side, it could go either way.

MR. KIDDE: This is very true.

MR. LUMBARD: Thank you.

MR. KIDDE: It could go either way but it's our belief that what has been developed, the benefits of what has been developed will cause a major loss, greater than the gain that would be gotten by going the other way. And I think that will be brought out by other members of the Department who will speak after me, and has already been brought out by Mr. Wescott.

SENATOR WOODCOCK: Mr. Kidde, I think that you did say that the rehabilitation problem - and I take it when you use the word "rehabilitation" problem you're talking about all rehabilitation, those not only in the prisons but those in the institutions?

MR. KIDDE: And those on welfare.

SENATOR WOODCOCK: Right. That the rehabilitation problem can best be handled in one department. Is that your position?

MR. KIDDE: That's my position, yes, sir.

SENATOR WOODCOCK: Now, sir, doesn't that depend from where you view the problem? In other words, If you view this or you are viewing a problem from the criminal aspect, controlling crime and what-not, or you're interested in it from the standpoint of health and welfare, let us say, that you might make or come to a different conclusion as to where you would place the rehabilitation of prisoners and the housing of prisoners. Isn't that so?

MR. KIDDE: Well, I don't quite get your point.

SENATOR WOODCOCK: In other words, don't we have basically two different philosophies here? One says that we have a problem of crime, crime in the streets, organized crime, and that we must go after that, and that that would lead you or could properly lead someone to say that if that is the problem they are trying to control then we should handle the problem from detection, apprehension to conviction, incarceration, rehabilitation, probation, parole, what-have you, along that line? Isn't that so? I mean,



wouldn't that, wouldn't that be --

MR. KIDDE: I see no reason why, once the criminal has been apprehended and convicted, he shouldn't be turned over to some other group to handle his punishment and his rehabilitation. There is no more reason for that, to my mind, than there is for the integration of the rehabilitation function in one organization, as it is now.

SENATOR WOODCOCK: Well, you think that the man that is apprehended, let's say, for a murder, for instance, that he changes the minute he becomes convicted of that crime, that he is then changed over to some different person and should be treated by a different department because he's no longer any part of that general area of criminals, and so forth?

MR. KIDDE: Some criminals probably are very close to the area of mental health. Their problems are in that area. Others are in problems which are very similar to what we deal with in the Welfare Board all the time.

MR. LUMBARD: Others are also in the area of education. I mean, let's take the educational level of the average prisoner in some of your institutions. It's way lower, I'm sure, than you or I would like it.

In other words, the needs of these prisoners are enormous. They embrace all of society. It would be foolhardy for you and I to try to say that the only people that could rehabilitate them would be some kind of agency that embraced the whole of society. There is no such agency. And you can never put in any one major structural agency, which is seeking to rehabilitate, the whole spectrum of everything that

all prisoners are going to need, education being the most apparent.

MR. KIDDE: Well, there is relatively little difficulty in turning to the educational facilities which --

MR. LUMBARD: Right. And the prison systems in most states find relatively little difficulty or none in turning to the rehabilitative people in other areas, welfare, mental health. That's exactly the point.

Thank you.

SENATOR KELLY: Well, I guess you certainly have a considered interest, Mr. Kidde, in welfare.

MR. KIDDE: Yes.

SENATOR KELLY: Now, under the federal system, the Federal Bureau of Prisons, where they have a release program working, where inmates are permitted to go out and work. - I know up in Danbury, Connecticut the federal prisoners, after screening and so forth, are permitted to go out and work - now they receive a salary and it's my understanding that part of this salary is taken by the authorities and it's saved for them and some of it is sent home. Now there are two things that happen under that system. One, it takes the inmate and keeps him occupied and trained, trained for employment; and also helps with the welfare situation back home.

Do you feel we ought to have something like this in this State, on a state level?

MR. KIDDE: Well, I feel we do have something like that in this State.

SENATOR KELLY: Do they go out of the State Prison and work in private industry?

MR. KIDDE: You're really asking me questions out of my area.

SENATOR KELLY: I'm sorry. I'll wait until someone in that area comes up.

Thank you very much.

SENATOR ITALIANO: Mr. Kidde, if I understood your statement correctly, one of the primary arguments put forth is, what has been developed will be lost. Am I correct in this assumption? what has been developed in the operation of the present department, as it exists, will be lost if it is transferred?

MR. KIDDE: A good deal would be lost from the standpoint of an easy and ready --

SENATOR ITALIANO: This was one of your primary arguments. Am I correct in that?

MR. KIDDE: Right.

SENATOR ITALIANO: All right. Now, will you tell me how this will by transfer be lost, why this will be lost? In other words, moving it from one department to another or making it a part of another department, how would this be lost, what has been developed?

MR. KIDDE: It's a much more difficult administrative job to combine elements of one department with elements of another department than it is when it's all under the same administrative roof.

This project that we're talking about, a single

door agency or office in various areas of the State to handle all of the problems that come up throughout any of the departments, any of the divisions of the department, couldn't work nearly as easily or as well if part of that organization were represented by parole officers from another department.

The integration and coordination of that work being all done from one administrative office is obviously a much easier job than it is to put units of different organizations together under the same roof.

SENATOR ITALIANO: Except that as I understand it, if this is adopted then the present Division of Correction and Parole under Institutions and Agencies and the Division of Rehabilitation will be sections of themselves and they will be, as I understand it, particularly with rehabilitation, to develop the plans and programs, to coordinate and combine on a statewide and regional basis the efforts toward treatment, training, education and rehabilitation. They still will be doing the same job except that they won't be a department in itself.

MR. KIDDE: Oh, sure, they'd still be doing the same job. We don't argue that. We argue that the integration of what they're doing, the combining of what their doing with other activities of the present Department of Institutions and Agencies is a much easier thing to arrange for and handle than it is when you are dealing with people under two commissioners.

MR. LUMBARD: Just on that point, is your conglomerate organized with a complete central staff or do

you allow your division managers a lot of autonomy?

MR. KIDDE: We allow division managers great autonomy, except in the financial field.

MR. LUMBARD: That's exactly the point.

MR. KIDDE: What's that?

MR. LUMBARD: That's exactly the point too.

MR. KIDDE: Oh, yes, but there isn't the same need in many cases for a close relationship.

MR. LUMBARD: Well, you and I could agree that the way administrators - I think you did say this - would or would not organize a particular agency, function, business, whatever, varies greatly and there is no one magical way. So we pass from administration, which I think is what Senator Italiano was asking you about, to program content and which will produce the best product, if you will, the best rehabilitation job. This is what the value judgment is.

MR. KIDDE: Well, you'd be taking the rehabilitation job which is now being done in a department which has rehabilitation as perhaps its major consideration throughout, and taking it over into the Department of Criminal Justice which has a whole gamut of criminal justice problems, I understand, isolating it from the other rehabilitative efforts being made in welfare, mental retardation and rehabilitation.

MR. LUMBARD: Well, I'm not testifying but I don't think isolation need occur, which you assume. I mean, it doesn't occur in the Federal Government or in any of the

other states. I mean, that's a basic assumption you make which I don't accept.

MR. KIDDE: It's isolated, organizationwise, and coordination of activities between two organizations is always more difficult than it is within the organization.

MR. LUMBARD: Right. And the proposal of the Legislature is to have those things that concern crime and crime control today in one department as a more natural alliance than some combination of welfare, mental health and prisons.

MR. KIDDE: You can make a very good argument for it. I just don't happen to think it's as strong an argument as the one we're making in the other direction.

SENATOR WOODCOCK: Well, I would just like to find out one thing here. We're talking about in one organization, aren't we talking about, number one, the organization being the State of New Jersey and basically the Executive Department of that State and then we're talking about subdivisions within that Executive Department. Isn't that so? In other words, we're talking about in this case Institutions and Agencies and the Attorney General's office and whether or not some of those functions should not be joined in one single department. Isn't that so?

MR. KIDDE: Right.

SENATOR WOODCOCK: So that when we talk about cooperation within an organization, certainly I don't think - this would be my own opinion and I'd ask for your comments, sir - that within the organization of the Executive

Department that there need be this difficulty that you feel. In other words, because part of the rehabilitation program might move over to the Prisons, to rehabilitate prisoners, that this necessarily means that it has to be absolutely disruptive and harmful.

MR. KIDDE: Sir, I think it's inevitable. You have developed over the years in the Department of Institutions and Agencies an organization there with the Board of Control which is functioning, I think, extremely well. The Board of Control has obtained complete leverage over the local boards. They are all working together very adequately, in addition to the staff functions which are coordinated through the Commissioner, and they contribute a great deal through their over-all supervision of the boards within the Department which would be lost.

I don't know whether you propose - I forget whether it's proposed, I don't think there is any board proposed here, lay boards that is, for the Department of Criminal Justice.

MR. LUMBARD: There could be advisory boards but not in the management- administrative control position of any kind.

MR. KIDDE: Your citizen boards for the institutions would remain as advisory boards then under this legislation?

MR. LUMBARD: They could, if the department wished to keep them and thought they would be useful and thought that citizens, such as yourself, who do not have technical expert opinion in the field, wished to give it to them, they

could. But it takes them out of that of which they are not, namely, a technical series of decisionmaking on budget, administration, management. It keeps the value of the citizens but gets them out of that where perhaps they have no particular skill.

MR. KIDDE: Well that's been accomplished in the Department of Institutions and Agencies also.

MR. LUMBARD: In what respect?

MR. KIDDE: The boards of the institutions today are primarily advisory boards.

MR. LUMBARD: Primarily? In what respect are they not advisory boards?

MR. KIDDE: They are.

MR. LUMBARD: They are advisory boards --

MR. KIDDE: Yes.

MR. LUMBARD: -- in fact --

MR. KIDDE: Yes.

MR. LUMBARD: -- in operation.

MR. KIDDE: Right.

MR. LUMBARD: No more? I mean, they are not concerned with the technical program, they don't run it.

MR. KIDDE: They don't have administrative powers.

SENATOR WOODCOCK: Is there anything else, gentlemen? (No questions)

SENATOR WOODCOCK: Thank you very much, Mr. Kidde.

MR. KIDDE: Thank you.



MR. WESCOTT: I might now call on Mr. Reeve Schley, Jr.

As you may know, he is a member of the Board of Managers of State Prison. He is Chairman of the Board of Somerset Trust Company and his family has been identified with the Department for many, many years. His father was President of the State Board of Control.

In this capacity, again I would emphasize we are citizen board members, we're not specialists. We have a close and meaningful and significant role in the Department and we make policy in the Department.

MR. LUMBARD: How can you make policy and not run the Department?

MR. WESCOTT: We make policy within which the Department is administered.

MR. LUMBARD: So you run the Department.

MR. WESCOTT: I think the difference between administration and broad policymaking is very different, very different. Now our position is not what - we just say what would you gain and what would you lose. And we're telling you what we know will be lost, what we know from years of experience. We don't say that it should be done in Massachusetts, we don't say it should be done in Illinois, we don't say it should be done anywhere else. We say it works in New Jersey and don't kick it around. That's all we say.

Now I'll be here for cross-questioning afterward.

SENATOR KELLY: Yes. I don't think I'll forget

if I do, would you be kind enough to remind me of that statement about kicking something around.

MR. WESCOTT: Okeh. I will do it.

Mr. Schley.

R E E V E     S C H L E Y, JR., called as a witness, being duly sworn, testified as follows:

MR. SCHLEY: Senator Woodcock and gentlemen, as Mr. Wescott indicated, I am a member of the Prison Board and I'm not an oldtimer, I've been on a couple of years, but I was brought up in the family of Institutions and Agencies.

As you recall, our distinguished Senator, Dwight Morrow, prepared the original report from which the Department grew. My father served as President of the Board of Control for a great many years, under four governors, Governors Moore, Meyner, Edge and Driscoll; in fact, at a testimonial dinner for another great sponsor of the program, Mrs. Thompson, he was stricken, from which he died.

Mr. Wescott succeeded him. So, living around home I have known a great deal about the Department. I know that it's considered one of the finest in the United States, also one of the finest in the world. The reason I know that is that people came from all over the United States and from other parts of the world and, as I say, the reason I know this, they were entertained, after making their inspection tours, quite often at my father's house.

My wife has been for 30 years on the Clinton

Reformatory Board and is now its President.

I know that these citizen boards are made up of the finest citizens in the State.

MR. LUMBARD: Sir, I don't think anybody disputes that. That's not the issue.

MR. SCHLEY: Well, let me finish. I'm just talking to the Senators.

They are not paid, they work hard, they are terribly interested, they take it home with them and discuss it with people. And their main function, as I understand it, and I can refer more to the Prison, is in policymaking and in advising and helping the professionals of whom the State, over the past 34 years, the ones I've known, have been the top men that could be found in the field.

Now the Prison is, as you know, made up of the Prison here in Trenton with 1200 inmates, 1100 at Rahway, 350 at Leesburg, down South, three camps 330.

As you also know, the Prison Board does not have responsibility for the release of inmates. So our primary duty is policymaking under the auspices of the Board of Control and within the confines of our jurisdiction, and advising and being a watchdog committee, looking over the shoulder of the professionals.

For instance, we're divided up. I have, my specific province is Jones Farm up north of here, a beautiful farm. 140 inmates up there. Most of them, the average sentence is about, I think, three to three-and-a-half years, and a great many of them are in there for bookkeeping, which

amuses me.

MR. LUMBARD: Do you think that having bookmakers on a farm is the best way to rehabilitate them?

MR. SCHLEY: I think it's a pretty good way. It keeps them out of making book.

MR. LUMBARD: It makes a good joke.

MR. SCHLEY: The point is that these men are not - it's a good place for them because they're not the hardened murder type of criminal. They work on the farm, they work in the laundry at the State Hospital. I've been over there. I'm no expert on laundry but it looked very well run to me and very efficient.

There is an example of cooperation between the State Hospital and the Prison. We supply the men to run the laundry. Now you can say two heads could do that just as well as one. But when you've got something working well why change it?

MR. LUMBARD: Well, sir, this maybe raises a very fundamental question. The Governor sent the Legislature a message earlier in the year that New Jersey is one of the most urban places in fact I think he said, the most urban state in the United States. The figure he used was in the order of 90 or a greater percentile.

If your prison population is derived from the most urban state, what is the logic of putting them on a farm for two or three years? so that they come back to society knowing how to grow things.

MR. SCHLEY: Well, I don't know where you come

from but there are still a lot of people in New Jersey who believe that bringing a kid up and putting a man to work on a farm is one of the most valuable things you can do.

MR. LUMBARD: But these are grown men, aren't they?

MR. SCHLEY: Right. I said men. I think a lot of men - I can take you 100 miles up the river and show you a lot of men that are happier on their farms working 16 hours a day than a lot of other places.

MR. LUMBARD: You know that as a fact.

MR. SCHLEY: I know that as a fact.

MR. LUMBARD: Now the question, therefore, really is, you're making a statement of sort of expert nature of the ways --

MR. SCHLEY: I'm not an expert.

MR. LUMBARD: But you just made an expert judgment that the State of New Jersey --

MR. SCHLEY: I make my own judgment.

MR. LUMBARD: -- should have a particular kind of penal problem and it should send its prisoners in certain routes. That's the most important of all judgments, in fact, far more important than whether someone spends two hours in this a day or another because the very nature of the institution governs the kind of program that can be carried on in those institutions.

MR. SCHLEY: One thing you don't seem to understand is that on the farm are comparatively few. I mean, you can't have a hundred men working on a farm, if you know anything

about a farm.

MR. LUMBARD: I used to work on a farm.

MR. SCHLEY: Good.

MR. LUMBARD: That's why I'm so convinced that it is no training for the streets of Newark.

MR. SCHLEY: In the laundry you need more people. So the farm is not a great -- I think if we could have them all on the farm, it would be my opinion, a non-expert opinion, it would be helpful but you can't have them all on the farm because you don't need that many people on a big farm.

Now let me just finish.

Another example of cooperation, in Rahway we've opened a new sex offender's unit and that's apparently going very successfully and it's manned by psychiatrists and doctors, professional people from Menlo. So there's a lot of cooperation between these two things. And I feel that if you take away, for instance, our Board in the Prison, if you take away our power of making policy for the prison complex, subject naturally to the Board of Control, you're not going to get anybody to serve, they're not going to take the time to come down and spend four or five hours every meeting because there would be nothing for them to do. And if it isn't important to have that sort of a Committee, advising, watching, checking, from your position and the legislature's and the Governor's position, why then forget it.

MR. LUMBARD: Well that's exactly the question. What is going to produce the most effective rehabilitation

program for the State of New Jersey? What you're doing now or --

MR. SCHLEY: You have something that is recognized as good, why change it.

MR. LUMBARD: Well, that's an underlying theme that constantly goes on.

MR. SCHLEY: What's your theme, change it and make it better?

MR. LUMBARD: Oh, yes, that has been my recommendation.

MR. SCHLEY: Well my theme is don't change it because it's good.

MR. LUMBARD: Okeh. That's what we're here to find out.

MR. SCHLEY: Now one other thing. Don't think in the Prison Board we all don't know we need a new prison but Institutions and Agencies, let alone our committee, can't get the money for that. You understand that. You gentlemen know that.

MR. LUMBARD: Should we address you with those questions or wait for Mr. Wescott, as to the over-all policy and budget of the --

MR. SCHLEY: Wait for Mr. Wescott. I'm just saying that as a member of the Prison Board we meet down there in the Prison and I am no expert but I am not dumb enough to think we don't need a new prison.

And another thing that the citizen board will do, they're out working to convince the people of this State that they need this bond issue, which I doubt will build a

new prison but it may help out.

That's about all I have to say.

SENATOR KELLY: Just one question, maybe it's a statement instead of a question. I think I'd rather be on a farm than in a cell.

MR. SCHLEY: You would what, sir?

SENATOR KELLY: I'd rather be on a farm than in a cell.

MR. SCHLEY: I would too. I've seen it. It's a beautiful farm.

SENATOR KELLY: I've seen the cells.

SENATOR WOODCOCK: Senator Italiano, do you have any questions?

SENATOR ITALIANO: No questions.

SENATOR WOODCOCK: Thank you very much, Mr. Schley.

MR. WESCOTT: I am now going to call on Judge Thomas Zimmerman, one of New Jersey's most distinguished citizens, a former Judge of the Juvenile Court, who served for twelve years on the Board of Managers of the North Jersey Training School at Totowa, an institution for the retarded, and since 1964 has been on the Board of Managers of the new Reformatory. He is now President of that Board.

Judge Zimmerman.

T H O M A S     Z I M M E R M A N, called as a witness, being duly sworn, testified as follows:

JUDGE ZIMMERMAN: Members of the Senate Committee, I have not a prepared statement but since I've heard some of the cross examination, I've changed my whole thought on



what should be said.

I was for 23 years a Judge of the Juvenile and Domestic Relations Court in New Jersey, one of the founders of the National Juvenile Court Association.

I think every bill that's passed the Legislature since 1930 involving juveniles, excepting perhaps one recently, this last year, I drew that affected youth or domestic relations.

For many years I was on the Supreme Court Committee involving domestic relations courts and juvenile courts. So I think I can talk a little bit about the juveniles who comprise the largest part of the reformatory complex.

I did want to direct your attention to the change that is going to take the releasing of the parolees or the parole functions from the unit, from the boards. I think it is one of the best things in the present setup and I think it's better than the proposal where you are going to put the paid board to pass on these parolees.

MR. LUMBARD: Do you think that's good or bad?

JUDGE ZIMMERMAN: I think it's bad in this instance, and I'll tell you why. First, we have a close contact with the inmates. When we review them, we review them personally, we review every parolee and every report that comes through on a proposed parolee. Every one is reviewed by every member of the Board, then individual members do examine each of the proposed parolees.

Now I do know this, that it keeps our staff on its

toes. They know that we know what's going on in that institution, and we know it because we do interview these individuals.

We have a fine staff but we disagree very often with the staff in its judgment. As citizens you would sometimes. They are strictly professionals.. And we often disagree and sometimes overrule them.

Now that I think is quite essential, I mean to the function. You can have, as we do in the State Prison, - I mean the State Parole Board can handle it, - but I think in handling these, mostly juveniles, it's well to have that citizen committee reviewing the staff recommendations as to the paroles. And they do it and disagree in so many instances.

MR. LUMBARD: Judge, when you say review, do you really mean decide?

JUDGE ZIMMERMAN: We decide.

MR. LUMBARD: That's what I want. I want to make that clear.

JUDGE ZIMMERMAN: We get a recommendation.

MR. LUMBARD: Right. I want to make sure that the function you're proposing is very clear. You propose that a citizen board not merely read to review, in an administrative sense, and thereby learn and then be in a position to comment, but you mean to read and decide parole.

JUDGE ZIMMERMAN: Decide very definitely.

MR. LUMBARD: Yes. You want citizen boards to decide parole for children.

JUDGE ZIMMERMAN: For children. And I think it functions well at the present time. I have seen it function for the last several years since I've been on this particular board.

But I also want to call your attention to the fact, in this bill you are taking from the probation department. You're putting it in - I mean, they will investigate for the judge and make the reports, but you're placing it under the State. The State controls it. Now we tried that --

MR. LUMBARD: Judge, I think there may be some misunderstanding then. The bill does not purport to do, I don't think, quite what you just said.

JUDGE ZIMMERMAN: Well, up to presentence investigation they have that power but the new board would have control of the functions from that point on.

MR. LUMBARD: Yes, supervision, right. Presentence investigation would remain with the court, which we discussed with Chief Justice Weintraub and he was quite happy with it. Supervision in the field would be part of the new joint field service embracing both supervision by probation and parole. They do the same thing and in the same kind of office.

JUDGE ZIMMERMAN: I might tell you how the judges react to that. I can't say now, I've been off for several years, but how they did react, I mean state control of a situation of that sort or a central board centered here in Trenton.

The five juvenile court judges - there were only five

at one time, now they cover the State, but there were five that did this. When we heard from the Reformatory, for instance, they were about to release some of the inmates and some that we had sent there, we always kept control, I mean by having the right to recall, we would recall them and place them on probation, and the reason for it was this: A probation officer was in touch with that individual before he was turned over to the institution, he knew the boy, knew his environment, and we found that it functioned much better. And I'd like Counsel to hear this --

MR. LUMBARD: I'm sorry, the Senator asked me a question and I'm retained by the Senate so --

JUDGE ZIMMERMAN: I know you are.

Now often some of our boys would be involved with the federal authorities and I know, for instance, Judge Fake, rather than turn the boy over to the federal parole, would ask us to take him back and handle him with our probation system because our probation office knew that individual, had been with him before he had been in trouble. No juvenile court worthwhile would send a boy to an institution unless he first started him out on probation. So, from that angle, I think you should go very slowly in taking all powers from the probation office, particularly in the juvenile court, and putting them in the state institution or under state jurisdiction. I think it's a very radical thing.

As I said, Commissioner Ellis, in the thirties tried to do the same thing and there was sufficient opposition to it and it didn't go through. But I think you should consider

that very, very carefully because I don't think it will work.

As far as possible, when I was a judge, I kept my boys under the probation department where I could call in a probation officer at the end of the week and say, "What have you done with that particular boy?" It would be very difficult to do it if he was down here in Trenton.

But we kept very close contact with every boy placed on probation and we had probation reports on them. Now I think it's something that should be considered very carefully before you transfer that power away

But at the institution, if you take the power of parole away, what about the citizen boards? You haven't provided for the disbanding of them but it might be well to do it, I mean particularly the reformatory complex.

Our principal interest in that - we're not just looking at the housekeeping that's going on. The professionals do provide the programs with the consent of the State Board of Control where they're supervised, but our principal duty, as I see it, is watching these prisoners and finding out what's going on, how they're being treated, how the individual is being treated, and you do it better when you examine them and see if they're justified in being paroled at that particular time.

Now another thing, I can't - and I've had a good deal of experience along this line - I can't see any advantage in putting the after-sentence matter in a different department.

We have a man who is Commissioner here at the present time - I saw him grow up. He originally went with us to

Highfields, he went down to -- I'm talking about a man in control of criminals in this State. He originally went to Highfields, developed Highfields and made a fine job of it. He then went down to the Prison and later became Assistant Commissioner and now Commissioner. I can see no reason for changing that situation. Perhaps you wouldn't. He's Commissioner of the whole Institutions and Agencies. He is an excellent one. From My observation, I have been on boards for many years, I find that the State Board of Control has done an excellent job in managing the individual boards. And the individual citizen boards of this State do a job, at least those that I've been on do. We work hard, put a lot of time in, and then it's suggested that our power be taken away from us.

SENATOR WOODCOCK: Senator Italiano, do you have any questions?

SENATOR ITALIANO: Yes. Judge, I don't think anyone here is questioning the integrity or the sincerity or the ability or the working capacity of any of the citizen boards at all. I think the overriding question is, what is the best method to combat the growing menace of organized crime, etc., and how to fight it.

Now, do you think we've been successful to this point with the system that we presently have?

JUDGE ZIMMERMAN: I think we have comparatively, yes.

SENATOR ITALIANO: When you say "comparatively," what do you compare it with?

JUDGE ZIMMERMAN: I mean, you have to compare it with something, with other states. We have. For instance, there has been a very great growing of the addicts. A great many are in our institutions, particularly the reformatories.

MR. LUMBARD: Young people.

JUDGE ZIMMERMAN: Young people are addicts.

MR. LUMBARD: How old?

JUDGE ZIMMERMAN: Oh, the average age is probably, in the institutions, about 18 or 19. A great majority of them, I don't mean the majority of those there are addicts but there are a great many, too many, addicts there.

We didn't have that some years ago. I might say in the 23 years that I presided over the Juvenile Court in Bergen County we didn't have one case come before the courts, of juveniles. Today they are coming before the court. And that is a very real problem. I don't know that we're going to solve it under this bill. The Federal Government certainly hasn't been able to solve it down Lexington where they have about 99 percent recidivists.

MR. LUMBARD: That's a very long and different story though, Judge.

SENATOR ITALIANO: Essentially this is our problem here. You've noted the increase in addiction, and in other areas of crime there has been a great deal of increase, now the problem, apparently, with the increase of the nature that the statistics report, we haven't been successful.

JUDGE ZIMMERMAN: Well, are we going to be any more successful by just transferring it to another department?

We have a good, efficient department, I might say.

SENATOR ITALIANO: This is what we're trying to find out today and in these hearings. Now I don't think the transfer in itself is going to accomplish anything without the other tools that we're talking about as part of the over-all package. I mean, we're trying to isolate something here and it's like when I was in law school they used to isolate the courses that you know and I know evidence overlaps torts, etc., etc. It's just for convenience sake that we're having hearings on particular bills but we have to look at it in its totality. And I think the program we're trying to devise is a method to effectively combat what has been described to us, particularly yesterday, in New Jersey as something beyond proportion in New Jersey crime.

JUDGE ZIMMERMAN: One statement I made I would like to correct to this extent. I talked about probation, asking you to go slow in taking the powers away from the probation office. I'm talking now primarily of the big counties where they have very efficient officers. The one in Bergen County is headed by a psychologist.

MR. LUMBARD: Judge, there's some difference of opinion as to whether they are today very efficient officers as against when you were there. Earlier this spring, testimony was taken in the area of probation. The three probation officers who did testify, one of them was from Hudson, one from Somerset, and so on, they unanimously thought that there should be this change. The change has been recommended now for many months and to my knowledge no judge has protested



to the Legislature and I think the expression you're making is back about ten years when that indeed was the view. And the problem is what happens today on the streets. And this has been extensively discussed. We want to get all of the opinions possible. As I say, the judiciary has not asked to come in to change this.

JUDGE ZIMMERMAN: Well I might say that the Juvenile Court Judges' Association is meeting Monday night, as a matter of fact, in Bergen County. And if you would like their viewpoints, I might ask them to send them to you. They are loathe to interfere with legislation. As judges they feel that they haven't the power but they will be glad to express their viewpoints, I'm sure, if they are asked.

MR. LUMBARD: My own experience with judges is that of all groups in society, they know how to get the message.

SENATOR WOODCOCK: Senator Kelly?

SENATOR KELLY: Judge, I don't think any of us find any difficulty with people. I know people affiliated with the Correction Department, like Mr. Wagner, and I have an extremely high regard for him. But I think our question is on the system that prevails today.

Now I think it's a well-established fact that penology, parole and probation throughout the whole United States, over the years, has been a failure. It's quite to the contrary from- it's been a failure because of this repetitive thing. With our juveniles, I think where the parents used to want to know where their children were, today children don't know where the parents are. See? This is one

of our problems.

JUDGE ZIMMERMAN: I might call your attention to the fact that we should be very careful with statistics. I know the statistics in juveniles and defend it. The only time you know whether there's a juvenile delinquent is if he's in court. There are a lot of them never brought to court and there were for many years, they were handled locally. So the increase sometimes is the result of the fact that the police departments and others are bringing them into court more often than they used to. They used to handle them - the chief of police did most of the jobs for the juveniles. Today they're sent on. So you've got to be very careful with these statistics. It's not as great, the increase is not as great as they say.

SENATOR KELLY: Except our prisons are overcrowded, our county jails are the kindergarten of an education in prison. I think this is the first step in education, so far as criminal activities are concerned. And the State Prison is overcrowded. We are all cognizant of that. And I certainly hope that in the future this gets relieved to a degree. And we have the same problem in our county jails. It's a tremendous problem today. And I think that because of these failures we have to change it.

JUDGE ZIMMERMAN: Justice Brennan of the Supreme Court, recently, at the opening of our new complex here, our reformatory, made the comment that he and I visited the State Prison and we're not very happy about it. He said he wasn't happy about it and he knew I wasn't happy about it,

and I wasn't. But every time we get money for a state prison there's a greater need, apparently. That should have been changed years ago, there isn't any question about it. There are other needs in the State.

SENATOR WOODCOCK: Judge, are you familiar with the President's Crime Commission Report, particularly with respect to the findings on juvenile delinquency? It's my impression and my recollection that they indicated in that report that an overwhelming percentage of the crimes against property, auto theft and the like, were committed by juveniles.

JUDGE ZIMMERMAN: I think that's unquestionably so.

SENATOR WOODCOCK: Right. And I think that you would also admit that there is a rising crime rate in this country, whether committed by juveniles or adults.

JUDGE ZIMMERMAN: Oh, yes. I'll concede that but I say, I don't think it's quite so great as it was. Some of those cases, as I say, would never have had a record if they weren't brought to court.

SENATOR WOODCOCK: True.

JUDGE ZIMMERMAN: There are more cases going to court today than there ever was before, all over.

SENATOR WOODCOCK: Agreed. Yet the problem of the rising crime rate and the preponderance of those crimes against properties being committed by juveniles must ultimately lead you to the conclusion that we have a very serious and growing problem of juvenile delinquency, and that basically one of the purposes of this meeting and this legislation is to - as we said, this is a proposal before the Senate, one,

as a single effort in that attack against, not only juvenile delinquency but all crime whether it's organized, unorganized, in the streets or wherever. And I think this is evident.

JUDGE ZIMMERMAN: Do you think transferring the agency, I mean this particular thing, - of course I'm testifying and shouldn't be asking questions but do you think by transferring it to anybody else, you'll have individuals who are going to run it, whoever you have in charge will be an individual, - if the present staff is wrong, we can change it. I think we have a very able Commissioner. I say, if he isn't, we ought to change him. But I don't think you are going to - by just shifting it over and putting more bureaucracy in, and that's what it's going to be here in the State, more bureaucracy, where it can be handled just as well, I think, under this one umbrella, Institutions and Agencies.

SENATOR WOODCOCK: Judge, not to answer a question with a question but I would just pose to you, do you think that the situation as it exists in New Jersey where we have this division between the law enforcement process, etc., and the control, prison control, etc., has given us a better result? Is there any evidence of that?

JUDGE ZIMMERMAN: I think it has nothing to do with it, actually, which department it is under. The individuals are in charge and changing this is not going to do the job, as I see it. And I don't say that once a judge sentences a man from that point on that it need be in the prosecution end of it.

SENATOR WOODCOCK: Well, I understand your point of

view, Judge, but what I'm asking you is whether you have any evidence that the results here in New Jersey, by reason of this division, could justify the continuance of that division.

JUDGE ZIMMERMAN: No, I can't say that. I can say though that I can't see where changing an individual, changing the head, - and that's what you're in effect doing - whoever is in charge - is going to do the job unless the present head is inefficient. And I've known him for so many years and seen him work as a younger man working his way up, and I feel he's a very efficient man, the present Commissioner.

SENATOR WOODCOCK: All right. Thank you, Judge.

I think we have passed the time for a break and I think the stenographers would benefit from it and I think we all would. We'll take five minutes.

(Recess)

(After recess)

SENATOR WOODCOCK: All right, we will continue.

MR. WESCOTT: Shall I proceed?

MR. LUMBARD: Go ahead, sir.

MR. WESCOTT: Next I would like to call on Mr.

Theodore Barth who is President of the Board of Managers of the State Home for Boys. Mr. Barth has long been a leader in business and civic affairs in Middlesex County. He is Assistant to the President of the First National Bank in Middlesex County, and he has contributed greatly to the program at the State Home for Boys and is President of that board.

Mr. Barth.

T H E O D O R E    B A R T H, called as a witness, being duly sworn, testified as follows:

MR. BARTH: Gentlemen, I am pleased to have the opportunity to share the concerns of the lay boards of managers of the various institutions in New Jersey, as it relates to the bill which you have under consideration before you.

Now, as a member of the Board of Managers of Jamesburg for many, many years, as a matter of fact for the last 12 years, we have wrestled with all of the problems of the institution which, of course, has been involved in the overcrowding and lack of facilities and, of course, the lack of budget, and these have been the things that we've been involved in for many years, and our concern now is that when we begin to see some light

ahead by the advancements that have taken place in the last few years, where it relates to the juvenile institutions with which I'm connected, we look upon a change with somewhat askance because we feel that we've made great progress and we have great plans under the present program to bring to fruition the hopes of some great advances in the juvenile program.

We have been quite pleased with the administration as it exists with the present Department of Institutions and Agencies, and find that with the climate that exists at present it makes for proper rehabilitation, and the program with the lay boards has certainly been one that we are certainly proud of.

The obstacles which we have encountered over the years have not been obstacles that have been brought about due to poor policy or administration by the Department of Institutions and Agencies but rather is related to the absence and the lack of physical facilities and proper compensation schedules for the employees and, of course, the professional people.

For many years, you perhaps know, the State Home for Boys was the only institution for juvenile delinquents in the State of New Jersey, that is, through the ages of 8 through 16.

Now the Jamesburg Board, of which I'm a member, and the Department has been concerned with the problem for many, many years and the indiscriminate housing of all the juveniles in Jamesburg. And to this end, with the help of the

Turrell Fund, which is a private fund contributing money, through the joint efforts of both of our groups and also I might add the help of the bond issue in 1964 providing funds, we have found that it's been possible to improve the facilities and program immensely. And to that end we have at present the new Skillman unit which is being constructed on the grounds of the Psychiatric Institute which, by the way, is a division of the Mental Health under the present organization, and we, in the department that we're in and concerned with, are using the joint facilities with another department. The facilities we're using, of course, are the common facilities, feeding, maintenance and medical care. So that, of course, this helps considerably in the general economic aspects of this, the interrelationship of these departments that can only be, in my estimation, accomplished by an interrelationship of administration which exists at the present moment.

MR. LUMBARD: Sir, on that one point, I don't understand. You have a place for delinquent boys which is in some way on a facility that is for mental retardation?

MR. BARTH: A new institution that is being constructed on the grounds of another institution.

MR. LUMBARD: Which is for mental retardation.

MR. BARTH: No, a mental hospital.

MR. LUMBARD: A mental hospital.

MR. BARTH: Yes, not retardation.

MR. LUMBARD: Will the populations be mixed in any way?

MR. BARTH: No. They are separate institutions.



However, there are certain overriding aspects which permit an economic saving by having the feeding done, the cooking done in the present facility and transferred, and medical care.

MR. LUMBARD: They won't eat in the same dining room.

MR. BARTH: No, they will not. Nor will they be intermingled in any way, physically or in any programming. This is merely the maintenance, the medical and the feeding facilities. The use of the facilities actually is what we're talking about.

The new institution will house 200 delinquent youngsters, 13 and under. This is just for the youngsters. We're talking about the 8 to 13. We take a great deal of pride in the facility and look forward to becoming an outstanding example of what a State can do when it prepares to commit the necessary resources to a problem like this.

We believe that New Jersey citizens can be proud of this institution and I am confident that our high hopes will be matched by a significant rehabilitation achievement.

I might also add that our planning relates to the close proximity to the institution of this other division and the close cooperation and relationship between these two institutions. And I personally believe that this is indispensable for the realization of any of our hopes.

We are very confident that we can achieve a great deal with this in the next few years.

The Board at Jamesburg was also very delighted in the last year to have a camp for older boys. We take our responsibilities very seriously because it is our responsibility to parole these boys. And as lay members and citizens, we spend a great deal of time and effort in interviewing, counselling, with our staff and with the professional people and interviewing the boys and being familiar with them, with their problems, and also with their parents at visiting time. And we feel that in this over-all picture we, as a lay board, acting almost like a jury, as you might say, the lay jury in your present court system, we feel that it's a very important attribute in the over-all concept of taking care of and providing for rehabilitation of these juveniles.

MR. LUMBARD: In the sense that you set policy? Is that what you're saying?

MR. BARTH: We don't set policy per se. The policy is set in guidelines by the administration of the Department of Institutions and Agencies. These guidelines are set forth, as is done through the Legislature, and so on, - these policies are set forth. However, we, as lay people, bring to bear our opinions and our policy, as we see it, as lay people, where --

MR. LUMBARD: Do you change the policy of central administration, if you disagree with it?

MR. BARTH: Well, we fight, yes. Where we disagree with things we make it known and we ask for revision, we ask for consideration of things that we feel are not in the best interest of the boys at the moment.

Now I hasten to add that we aren't constantly tearing down. The policies, we feel, are adequate and generally very, very good. We're talking about modifications --

MR. LUMBARD: What was the last such policy of the central administration with which your Board disagreed and which resulted in a change?

MR. BARTH: Oh, perhaps you misunderstand me. I'm not concerned with the major policies with which we disagree, it's the implementation of the various guidelines. For example --

MR. LUMBARD: Wait. Just a minute ago you said you fought with them sometimes and changed it. What was the last such incident over what that you changed the policy?

MR. BARTH: Perhaps I didn't express myself properly, as far as your understanding is concerned. I say that generally the policy of the Institutions and Agencies has been established and we have guidelines. However, in the implementation of these, where it applies to a specific given case, oftentimes, for example, if a boy is committed by the Court to our Institution and has an I.Q. of 42, or some such thing, which makes a rehabilitation program meaningless generally under the scope and guidelines and policies that we have, and the present administration only provides that he be at Jamesburg, we then use what powers we can as a board in discussing this with the Department to see if we can't get this boy put into another institution, by that I mean an institution such as New Lisbon or one of the mental

institutions where he could be better cared for.

MR. LUMBARD: And the administration couldn't do that on its own?

MR. BARTH: Well, no, because the other particular institution can only take boys under certain policies and they only have room for so many.

I can't testify as to their functioning, I can merely testify as to what we at the State Home, the lay Board, are confronted with, the problem.

I might say that there is no lack of cooperation on any of these things and whatever the policies are that are set up, we have met with a great deal of cooperation in every sense from the Department to the sense that we feel that we have a good system and a working system and that is what I am addressing myself to today as a lay member to tell you that we feel it is a satisfactory system.

I wanted to bring your attention to the fact that we have a camp at the Wharton Tract for the older boys where we take them for rehabilitation prior for parole, and we have found that - this has been something that has been provided in just the last few years and the funds have been made available. We've asked for this for as long as I can remember, the last 10 years, and we were unable to get proper funds to do this.

I think that many of the things that we have been developing in our guidance unit at the State Home have met with remarkable results in rehabilitation of our boys. And we feel that the present system and the cooperation and working

under the climate under which we're working at the present moment with the facilities available, through the Department as it is administered today, is of vital importance. And it is for that reason that we are here, and I particularly am here, to defend the situation because I can find no ready fault with it, and being involved in it in an administrative capacity, as a lay member, I feel that we've made great strides.

I still maintain, after listening to some of the testimony, I don't think any of these things are a panacea and I think we can certainly find fault along the lines with everything and I'm sure we can find it in the Senate, we can find it in government, we can find it in our courts, we can find it throughout the land and I think you can readily see --

MR. LUMBARD: Even in banks.

MR. BARTH: Even in banks, you're quite right. And we too have been fighting for higher rates for a long time and we've been successful in that. Had I been on the other side of the fence, it might not be the same.

However, I don't mean this to be facetious but I do point out the fact that there is a great deal of great concern on the part of the lay boards because I feel that there is a vital place for lay people in the administration of justice and I think, as I said before, your present court system shows the need for peers to judge the people that are brought before the court and I think your lay people play an important part.

And I tell you gentlemen in all due sincerity, the great sacrifice on the part of so many people with whom I've worked over the years in administering and counselling and

giving their time to the juveniles, and that's all I can testify for, the State Home, has really been remarkable. You'd be surprised, beyond the call of duty, the things that board members do to help and take some of these boys under their wing and to do things beyond the pale of the mere policy of administration. And I do feel that we find this to be successful and we do find that the Department, as set up, has functioned well and is moving in the right direction and primarily because of the fact that we have gotten funds. That seems to be the basic problem, lack of facilities, the lack of good pay for the people that we can bring into the institutions. And I think that you will be confronted with this regardless of how you change your administration, whether you put in a new program such as you are taking testimony on today or whether you continue this. I think you will find that you will nonetheless be confronted with the same set of facts and circumstances of money, facilities and personnel.

SENATOR WOODCOCK: Are there any questions?

SENATOR ITALIANO: Mr. Barth, do you think that lay people in an advisory capacity can still play the important part that you stress?

MR. BARTH: I would be hard pressed to answer that unless I knew exactly what the function would be in that case. If it were merely a matter of advising - you see, under the present status there is a little bit more weight to the function than mere advisory, although we have policy we still stand, as you know, under the Legislature - it is our duty to

administer the parole and, as such, this is a grave responsibility that gives more than mere advisory function to this task. So I say to you, I don't know whether it would or not. The only thing I can say positively is that I believe that our present system, with the amount of authority vested in the lay board, is an important attribute in the functioning of the institution.

SENATOR ITALIANO: Well, in other words, there always is a general hesitancy on something new. This is your general hesitancy, that it is something new and you are not familiar with it?

MR. BARTH: Perhaps to a degree I must confess this. I think this is always true. We always avoid or are unhappy to leave the status quo. I think psychologically this is a well established fact. However, I don't base my opinion on that, and I'm not taking the stand - I think Mr. Wescott expressed it very well in the beginning, in his statement, when he said that we weren't opposed to this present program just per se but I think there are a lot of things that certainly must be taken into consideration.

SENATOR ITALIANO: I mean, you see, we are assuming here that there is going to be a complete breakdown in the operation of all these departments because they are going to be taken and put into a different department. This is an assumption that we have. There is a general economic interrelationship - we're assuming that there is going to be a complete breakdown. That is what apparently appears to me with everyone so far, there is this general assumption.

In other words, do you think there will be no cooperation any longer because of the transfer of departments?

MR. BARTH: Well, just in reading the legislation, - I'm certainly no lawyer or expert on the semantics or the choice of phrases or anything of the sort - I can merely say that as a layman looking at this and being familiar from a business point of view, any great change that you have, an upheaval in which you are going to throw something out completely and begin from scratch again, you're bound to have problems and you are bound to have tremendous problems in a general degree, and it would seem to me - I'm not here to criticize what you're doing, I'm here to defend the fact that I feel we have an excellent program now that is doing a fine job, and if you feel - I'm not lecturing to you, but I feel, generally addressing myself to the issue, if there are deficiencies or voids that you see in the present administration, I think these could be corrected by measures far short of a complete revision of a great deal of good. It's sort of like taking a shotgun to an issue that only needs a rifle shot, if this is the case, and I'm not saying that it is, I'm merely using an illustration.

MR. LUMBARD: The problem is, the Legislature is looking for that one rifle bullet that's going to shoot down the problem of crime in the communities today and they may suspect that there is no such single rifle bullet that will do the job.

MR. BARTH: Well, I quite agree, and I think I've been, as a citizen, aware of these things as anybody else. And I



believe that perhaps the approach of changing this is not the answer. I do feel from a personal point of view, and I don't testify on this as an expert, but a great deal of your concern can be at other levels and I'm sure that you have taken that into consideration. By that I mean the administration of justice from the courts and from the police departments, and the apprehension, because we find laymen just looking at the product that we get into the institution. It leaves a great deal to be desired on the admission end from the courts and from the treatment that these boys get at the other levels.

MR. LUMBARD: But that's a very crucial thing. There has been much talk here that there's a total difference of philosophy between the law enforcement side and the rehabilitative side with which I don't agree, but my opinion is irrelevant. But what you just said goes to the fact that the way the police handle a juvenile in the first instance is in fact intimately related to what kinds of treatment or rehabilitation, his attitudes, his willingness to accept when he gets to the later rehabilitative stage, and that they couldn't be more intermingled and related.

MR. BARTH: Well I would defer this to someone that knows more about it. But on the other hand, I can't help but express a personal opinion on this that it would seem to me that I would not be personally in favor of having the police officer being the rehabilitative officer.

MR. LUMBARD: Nor would I, nor did I say anything like that.

MR. BARTH: And I don't feel that the over-all administration should follow in that direction. I feel that there should be a definite delineation between these two. And I feel, just as there is a delineation between the jury and the court, I think this same factor should be delineated in the administration such as we have it.

SENATOR WOODCOCK: Except, Mr. Barth, that the courts and juries are still administered under one department, they are still under that branch of government called the judicial branch. So that they are, in that respect, administered through the same system.

I have just one question. I thought that you might be under the impression that if this bill were enacted there would be an abolition of all of the present personnel in this Department currently, almost to the extent that the buildings and everything else would be lost, and we would have to, you used the term, "start from scratch."

Now, are you under that impression, sir?

MR. BARTH: No. I perhaps didn't express myself well enough. I meant from an administration point of view, if you change the over-all structure. I was not concerned with the personnel. I am not concerned with them in any respect, as individuals, at all. I am merely concerned with the administration and policy and so on must need change and if you are going to change the over-all then the implementation of these policies would certainly change, and this is what I am concerned with. Whereas progress has been made under an existing administration, not with existing

people, - I divorce that from the point because they come and go as the Director has and so on down the line. I'm not concerned with that, nor do I look upon myself as being the only person at Jamesburg. We've had boards long before I was there. I am merely talking about the administration and I would say that certainly in changing the over-all structure the administration would change and this is something that gives me pause.

MR. LUMBARD: Before you mentioned that - I'll be brief with this - there were many things that the members of your Board did that were above and beyond the call of duty. I think you used a phrase of that order. Remember?

MR. BARTH: Yes.

MR. LUMBARD: What of those kinds of things that they do in that regard could they not also do if they were in a purely advisory capacity?

MR. BARTH: Well, I can say that perhaps they could if they were so motivated.

MR. LUMBARD: The things above and beyond the call.

MR. BARTH: A great deal of it could be. However, I did make one point beyond that that I do want to mention, the fact that this wasn't the only reason I espoused the --

MR. LUMBARD: Oh, I understand that.

SENATOR ITALIANO: I think the other important point you make, that whatever progress and advances that you are achieving now for some reason or other will either diminish or not be available if there's a change in administration set up.

MR. BARTH: I don't know that this --

SENATOR ITALIANO: But you feel this.

MR. BARTH: I can only see what you have in here and the fact that this is going to change generally, and if there is any change will it be good or will it be bad. See? I know what we're working under and I can see this as a positive fact and can make a judgment on this. However, I can't make a judgment on what would happen if there's a change.

MR. LUMBARD: Then you are for your board continuing to make parole decisions for the boys.

MR. BARTH: Yes, indeed.

MR. LUMBARD: More than the professionals or the administrators.

MR. BARTH: Yes, --

MR. LUMBARD: Or a professional parole board.

MR. BARTH: -- or in conjunction with them. I don't divorce them from it entirely but I mean -

MR. LUMBARD: Well, no, but somebody has the decision-making power. You can't budge that. They've either got it or they haven't.

MR. BARTH: And I think the legislation was proper when it promulgated this type of an arrangement.

MR. LUMBARD: You're for civilian parole.

MR. BARTH: Yes.

MR. LUMBARD: Okeh.

SENATOR WOODCOCK: Is there anything else?

Thank you very much, Mr. Barth, for coming down.

MR. WESCOTT: We would like to get through before lunch if we possibly can.

The next person I would like to call on is Dr. Fred Knocke, a distinguished surgeon, who has been a member of the Board of the Reformatory for Women for 12 years. His strength and his knowledge have contributed enormously to that institution. Actually he succeeded me on that board. I was for 13 years on that board and I know the extent to which a local board can involve itself day by day.

We interviewed the girls and women who stayed over a given period of time. We interviewed every parole violator, not to know why she violated but to know to what extent the institution failed. It's an involvement that you just plain won't get with an advisory board.

MR. LUMBARD: Well, Mr. Wescott, since you're asking that, you say every day you're there. Right. You just said when you were on this board you were there every day?

MR. WESCOTT: No, not every day. I was there at least once a week.

MR. LUMBARD: Once a week?

MR. WESCOTT: Yes.

MR. LUMBARD: One day a week?

MR. WESCOTT: Well, I gave a day a week.

MR. LUMBARD: All right. But now let's come to a very fundamental point that's inherent in this. What class of people in our society can afford to give one day a week free to this government function? By having that particular kind of setup, don't you confine drastically the kinds of

people who can be so involved?

MR. WESCOTT: We don't ask them to give a day a week. We ask them to give at least a day a month. And you would be surprised how many people are willing to give a day a month, from all walks of life. We do not have just people with money. We have laboring people, we have Negro people, we have people from all walks of life. They work. And why do they work? Because they have responsibilities, they aren't advisory. You wouldn't get them to walk across the street for an advisory capacity, I can assure you.

MR. LUMBARD: Well, no, what's really at stake is the fundamental issue of whether at large in most cases you produce on this kind of board a particular kind or class of person or whether you can in fact get a whole strata.

MR. WESCOTT: We do not, we do not. And I would just challenge you to find out. Don't make statements, just come and find out. Go over the board list with me.

MR. LUMBARD: Mr. Wescott, I'am only asking questions here to elicit as clearly as I can --

MR. WESCOTT: All right. I'm telling you.

MR. LUMBARD: You're the witness.

MR. WESCOTT: I'm telling you and I will submit the biographies of every single one of the 220 board members, if you're interested in reviewing them.

Dr. Knocke.

F R E D E R I C K     K N O C K E, called as a witness, being duly sworn, testified as follows:

DR. KNOCKE: Senator Woodcock, Committee Members, ladies and gentlemen: I don't have a prepared statement but I do have some notes and a few points I would like to make.

The citizen board members of Clinton Farms are very concerned about some of the implications of S-802 for our institutions.

It is 55 years since citizens of this State, by their interest and involvement, caused the transfer of women prisoners from the Trenton Prison, where they were housed in a wing of the male prison, to the institution at Clinton in a rural setting where the emphasis has always been and still is on the rehabilitation, development of self-reliance, character, vocational training and education, so that the inmate can again take her place in society as a useful citizen.

This institution is a semi open institution and was one of the first to develop along these lines. Again, this was done by the initiation of policies by a lay board in cooperation with a very talented and capable professional, Miss Edna Mahan, who for 40 years directed this institution with her inspiring and inspired leadership. I believe that she was able to devote this uninterrupted lifetime because of this system.

The Board is vitally concerned and active in the development and implementation of the total program in cooperation with the professionals. The Board is also

interested and aware of the individual inmate. Specifically, the Board has helped establish funds for the maintenance of institutional grounds; it has developed recreational facilities, when the funds for this were not available from State funds, by tapping private sources.

Incidentally, the total facilities of the institution are becoming antiquated but recent bond issues are making great strides to correct this.

The Board under the State Board of Control sets policies and works with the staff to implement these policies.

Some of the new programs which the lay board has instituted, with the help of the professionals but started from the lay board, were to set up a halfway house in the town of Clinton, adjacent to the institution. They have arranged for a program where our inmates work at the institution at Vineland for the retarded in services to those inmates. This was done through the instigation of Mrs. Iselin of the State Board of Control but certainly without cooperation and help.

One other thing the Board is intimately responsible for and controls is parole at our institution. This is done by personal interviews, after recommendation from the professionals.

Our Board is made up of 5 women and 2 men. And we think it's very important to have the distaff side represented in the responsibility and care of the inmates at



Clinton. The feminine viewpoint is important. We think that this can only be given if we have a predominantly female board.

We believe that if parole and the control and involvement in the selection of the superintendents and the responsibility for the setting of policy is taken away from the boards, then the usefulness of the citizen board is lost. Instead of being partners with the professional staff, we would be the outsiders, gadflies with no real voice.

If I may digress for just a moment, I'm a physician. Hospitals traditionally are controlled by lay boards, not by doctors, not by the professionals. When hospitals are controlled by professionals then the self-interest of the doctors becomes paramount and not the self-interest of the patient.

I believe this same thing applies to any public institutions, whether it's an art museum, a prison or an institution for the retarded. I believe intelligent, across-the-board responsibility by members of the general population insures a much better institution, a much better program, than if it's run entirely by the professionals who have axes to grind, who have careers to further, and very frequently cannot see the total picture.

MR. LUMBARD: Would you say the same thing should be applicable to police departments?

DR. KNOCKE: It's not my field. I don't know. Perhaps it would be.

In conclusion I would like to say that the lay Board at Clinton is proud of the contribution it makes. We think we've done a good job and we hope we can continue to contribute.

SENATOR WOODCOCK: Any questions?

Thank you very much for taking your time to come here.

MR. WESCOTT: Thank you, Dr. Knocke.

A question was raised about whether farming makes good rehabilitation programs for prisoners.

MR. LUMBARD: Whether what?

MR. WESCOTT: Farming. There aren't many farms in New Jersey. I happen to own one of them. I grant you that we are not going to train farmers. I ask you, what are the alternatives? And I just say to you, in my estimation a job well done, good work habits, a purposeful job that a man can apply himself to is basic to any training program and, therefore, while I might improve on farming I certainly would prefer it to sitting around in prison cells doing nothing which is basically the alternative.

MR. LUMBARD: Is the alternative only that they sit in the cells.

MR. WESCOTT: In New Jersey right now and in the foreseeable future, running those farms is one of the things we have to employ the men at. I don't know what else you're going to do. Have you changed the laws on prison industry? Have you supplied us institutions that would give these training program? Here's meaningful, wonderful work for the

men and I defend it on that ground.

SENATOR WOODCOCK: Let me ask you this, though, have you recommended any changes?

MR. WESCOTT: Having the prison --

MR. LUMBARD: The prison industries. What is the last recommendation you have made to the Legislature, and when, to change the prison industry law that would accomplish what you just said would be desirable?

MR. WESCOTT: I will call now on Mr. Bradford Cochran, Vice President of the National Newark and Essex Banking Company, who since 1955 has been a member of the State Use Advisory Council, and I think he can tell you about the prison industries.

MR. LUMBARD: Because, sir, if prison industries should be changed, then let's fight to change it, but let's not say, if we're not really fighting, that farms are better.

MR. WESCOTT: I think we have fought. I think we have fought in New Jersey for bond issues and for money to build adequate institutions. In the new Reformatory at Yardville we have excellent training programs.

MR. LUMBARD: But bond issues are not what I am talking about. I'm talking about prison use restrictions that you say come from labor and --

MR. WESCOTT: You can't train men for adequate work on antiquated machinery in the basement of antiquated institutions where they can't turn around and where you have to overassign about five to one. You can't do it. Then why not put them out on farms and work them and in laundries

and work them, instead of having them sit around? It's a dream to think that New Jersey is going to do this overnight.

Now, I am going to call Mr. Cochran.

B R A D F O R D     C O C H R A N, called as a witness, being duly sworn, testified as follows:

SENATOR KELLY: Is that a prepared statement that you have, sir?

MR. COCHRAN: I have somewhat a prepared statement.

SENATOR KELLY: Are you going to read that whole statement?

MR. COCHRAN: No, I am not.

SENATOR KELLY: Because I would like a copy, if you have it.

MR. COCHRAN: No, and I have made a number of changes, I've made corrections, this, that and the other.

SENATOR WOODCOCK: Mr. Cochran, if you would like, you can have the stenographer take that and she will incorporate it in the record and then you can expand upon those remarks, if you would like.

MR. COCHRAN: If you so wish, as long as there is excerpted what I have crossed out. I have no objection.

SENATOR WOODCOCK: Well, it's up to you, sir.

MR. COCHRAN: I think what I have to say may lead to some questions and one thing or another on the part of you gentlemen. I would just as soon read what I have as quickly as possible.

Since its inception 15 years ago, the State Use Advisory Council has been interested in the development of programs of inmate employment that will achieve the following two objectives: one, contribute to the acquisition of attitudes and skills likely to improve the future employability of inmates who are assigned to State Use Industries; two, to provide useful and productive employment in industries that will contribute to the State's economy without seriously and unfairly competing with any one industry.

We have reviewed Senate Bill 802 and we believe it would seriously impede rather than facilitate the achievement of these two objectives.

We feel New Jersey has been relatively successful in producing items at costs comparable to outside manufacturers because New Jersey developed, starting in 1953, outlets for inmate employment in service occupations in the charitable institution.

As a consequence, there was less pressure to over-assign inmates to correctional industry - by that I mean simply to assign three men to a job that could have been done by one.

With the reduction in the number of inmates assigned to correctional industries, it became possible to achieve some consolidation and improvement of production methods, thus inmates assignments in the State Use Industries dropped by over 500 jobs between 1957 and 1968. We have no quarrel with this. If men can be better employed

or more productively employed by taking them from an auto tag shop, for example, and having them do meaningful work elsewhere, that's perfectly all right.

In addition, shops in Vineland and Totowa, for example, have been closed. These economies were necessary because of the State Board of Control policy that State Use Industries not be subsidized through the operating budgets of charitable institutions.

With the State Board of Control --

MR. LUMBARD: Could I interrupt. What does that sentence mean? I'm not sure I follow what it means.

MR. COCHRAN: Well, we don't want men assigned to charitable institutions unless they are doing worthwhile work. If they are doing worthwhile work, fine; if they are not, if they are doing work that has no real meaning, if they're just wasting time, this is what we mean by taking these jobs away, time-wasting jobs.

MR. LUMBARD: Well I was confused by the word "subsidy." What did you mean by the word "subsidize?" That was the word that perhaps confused me.

MR. COCHRAN: Well, I'll ask Mr. Wescott.

MR. LUMBARD: I'm seeking clarification. I simply didn't understand subsidy as used in that sentence.

MR. COCHRAN: All right. May I continue on?

MR. LUMBARD: Yes.

MR. COCHRAN: With the State Board of Control requirement that the industries meet outside competition and with the development of opportunities for work and

service occupations, great strides forward have been made. This has been enhanced and achieved with a minimum of friction because of the close relationship that exists between the Bureau of State Use, within the Division of Correction and Parole, the Citizen Board of Managers and administrators of the charitable institutions.

There is available administrative machinery in institutions who are the primary customers of State Use Industries for the ready and easy resolution of problems that relate to price, design or quality. The importance of this cannot be overemphasized when it is recognized that during the period from 1955 through 1968 \$1,600,000 worth of manufactured goods was sold each year by the Bureau of State Use to various components of the Department. This is almost seventy-five percent of the total output of State Use Industries which currently, for the most recent years, is running at about \$2,400,000.

We are of the firm opinion that close relationships between the State Use Bureau, the institutional boards and the various boards and other departmental components are necessary for the maintenance of this program.

For example, if inmate workers are removed from the broad control of the department as it's presently constituted, it would make sales to the State hospitals and charitable institutions, to name only a couple of categories, much more difficult.

In other words, in a sense today we have, because of the many different areas in which the Board of Control

operates - we have something of a captive - not captive audience but captive places to sell our merchandise.

If the present relationship is not maintained, New Jersey faces two serious problems; one, the return to widespread inmate idleness, with all the bad things that that connotes, and over-assignments to inefficient industrial shops where individuals acquire attitudes and aspirations unlikely to help once they get out of prison on payrolls; two, the financing of whatever industrial employment which might exist through a variety of subterfuges that ultimately means the subsidizing of these industries by the taxpayer.

New Jersey has gained a great deal in recent years. We are hopeful that it will do even better in the future and we recommend a very cautious and deliberate examination of these factors prior to Senate action on Bill 802.

I would like to submit for the Committee's examination a listing of the various items that are produced right along, year in and year out, by State Use Industries.

Thank you.

MR. LUMBARD: Could we have that list?

MR. COCHRAN: Yes, you may.

MR. LUMBARD: Mr. Cochran, just as you approached the witness chair, Mr. Wescott and I had a colloquy about recommendations in recent years to the Legislature by the Board of Control which would expand - restrictions of some kind that he apparently implied held back the full development of prison industries. Now, he seemed to pass that over



to you. Just as soon as we got into it he said, Mr. Cochran, Prison industries. So now you are here. Please tell us, in the last five years, what recommendations were made by the Board of Control to the Legislature to remove these restrictions that Mr. Wescott said inhibits it?

MR. COCHRAN: In the last five years what we have --

MR. LUMBARD: Read it back, please.

(Question repeated by stenographer)

MR. COCHRAN: I can think in recent years only of the fact that we have been under attack from time to time, that is State Use Industries has been under attack from time to time by the printing unions and sellers of printed material.

I can also think of from time to time I believe legislation comes up in the State that any clothing that is made in the Prison shops has to carry very large labels saying it was manufactured by prison labor or words to that effect.

SENATOR WOODCOCK: Well, Mr. Cochran, I think the Committee here understands your problem with respect to the competitors outside of the institutions but what we are interested in is not with respect to that but what recommendations have been made by your Department or by the Board of Control with respect to lifting these restrictions so that we could make better use of the inmates of the institutions, so that we could use it as a meaningful part of rehabilitation programs.

MR. LOMBARD: So that we could get them off the farm.

MR. COCHRAN: We would be able, if we had better equipment, if we had more shops, - certainly the State of New Jersey could supply more prison goods, prison made goods, if you want to.

SENATOR WOODCOCK: Well, I'm talking about the specific restrictions that presently exist in regard to State Use goods.

MR. COCHRAN: We have a money restriction in that we don't get or we don't have sufficient money to properly equip our shops in many cases. We are not running shops that are as efficient as they should be.

SENATOR ITALIANO: Assuming all this, I think the question was what recommendations did you make toward easing these restrictions in the last five years. I think that's the essential question here. Recognizing all these problems that you are explaining to us, what recommendations have you made or your Board has made in the last five years to eliminate these problems.

MR. COCHRAN: I don't know that within the last five years we have made any particular recommendations as to easing the trouble that we have in getting proper machinery for our shops. I think in the last five years we have come, on the advisory council, to accept what we have and do the best we can with it.

SENATOR WOODCOCK: If I may just go with that question one step further. I believe Mr. Wescott when he

was in that chair indicated that one of the difficulties - it was in answer to a remark that Mr. Lumbard made concerning the fact that we have prisoners on farms and that you can't really rehabilitate a man to go back to Newark, into that environment, by training him for farm work, and Mr. Wescott said that the problem was that the restrictions that were placed by the Legislature of the State of New Jersey on prison goods and the use of prison labor did this.

Now, our question to you, sir, the question we placed to Mr. Wescott, what recommendations have been made to the Legislature to lift these restrictions or relax them in any way so that we can get into a meaningful program of rehabilitation of prisoners by work programs while they are incarcerated.

MR. COCHRAN: I would say no recommendations have been made by the State Use Advisory Council. This I don't think is our function.

MR. LUMBARD: Well, Mr. Cochran, what I'm coming to is another point. Mr. Wescott - I think you opened up saying your objectives were twofold, one is that they be usefully productive and the other is that they develop attitudes and skills for future employment. Mr. Wescott's comment, as I understood it, was directed to attitudes, work habits, ending idleness, which indeed you can do on the farm but you can also do this in a machine shop.

MR. COCHRAN: Yes, in either place.

MR. LUMBARD: Right. The other side of that second point is skills, attitudes and skills. The farm may give

you attitudes but the farm won't give you skills. So what we're boxing in on here is skills. Now what is in the law in New Jersey that prevents you from rehabilitating regarding skills so that we can get beyond the mere, we've got to keep them busy and their work habits on the farm.

MR. COCHRAN: We cannot in the State Use Industries take the raw material, an inmate, and make him somebody who will be able to do an adequate job say in an automobile assembly plant, something of that sort. We cannot do that. And this is where probably the need is, on an assembly line with efficient manufacturing going on. We can only do the best we can with the machinery that we have. We can't really make the best use of that machinery.

MR. LUMBARD: Again you're talking budget, I think, rather than restrictions but I will come back to budget right now. For example, it was my privilege to go with Commissioner Wagner through the Trenton State Prison, with Miss Martin and some others, a few months back. One of the places we went through was the print shop. Having once been an apprentice printer, I got the idea that these presses were, let's say, slightly old. Thirty years, Mr. Wagner?

MR. WAGNER: About that.

MR. LUMBARD: So I said to him, "Why are the presses of an age and an order that are completely outdated so far as the industry is concerned? We can't do anything with these things. We're training people for what, with these presses?" And I ask you, when did

you make a recommendation last for a new printing press in the Trenton State Prison which is of a weight, Commissioner, which could be sustained by the floor, could go into that same space, it's not a matter of saying the building is too old, we can't do it.

MR. COCHRAN: I do not know.

MR. LUMBARD: Okeh.

MR. COCHRAN: I repeat, sir, I don't think really the State Use Advisory Council has this responsibility to carry specific legislation to the Senate.

MR. LUMBARD: Who does?

MR. COCHRAN: I would say the Department of Institutions and Agencies. Specifically, it would be Mr. Wagner, it would be John Bonnell, it would be Mr. Wescott, perhaps, too, to make a specific recommendation.

MR. LUMBARD: Well are we crawling between two stools here where you're involved in prison use and -- the fact is it hasn't come.

MR. COCHRAN: This I do not know.

MR. LUMBARD: All right.

SEN. KELLY: I have a question I would like to ask.

Do you prepare the budget in your State Use Industries?

MR. COCHRAN: Do we prepare the budget? No, we do not, we are an advisory council, we're public relations, we help in the planning of catalogs, we try to improve the selling technique.

SENATOR KELLY: Right. When a budget is prepared

in State Use Industries, when it has been prepared by whoever prepares it, is it presented to you for your views, for your advice?

MR. COCHRAN: No, sir, --

SENATOR KELLY: Do you ever see this budget?

MR. COCHRAN: -- it is not.

SENATOR KELLY: You never see this at all?

MR. COCHRAN: No, we really do not. We are an advisory body, we are not a governing body.

SENATOR KELLY: Well, it's not advise and consent, I'm sure, but as an advisory body don't you think that possibly you could be of some benefit advising on the budget?

MR. COCHRAN: Yes.

SENATOR KELLY: Advising and suggesting maybe to cut the budget or add to the budget?

MR. COCHRAN: It's possible. Although at the moment I happen to be the only one on this Committee, this Advisory Council, of maybe a dozen people who has any particular financial background. There are housewives and people of this sort.

SENATOR KELLY: The part that surprises me here is, today I asked these questions of different witnesses and they don't have the answers. And maybe sometime before this is over somebody from the Department of Institutions and Agencies will appear before the Committee who will answer these things.

Is Mr. McCorkle going to be here?

MR. WESCOTT: He can't come tomorrow, he can't come today.

SENATOR ITALIANO: I have a question.

SENATOR KELLY: He won't be here at all?

MR. WESCOTT: Not today. He's attending a budget hearing. I think he may be able to appear tomorrow.

SENATOR KELLY: Oh. Then you ought to call him and tell him about some of these things we are hearing today.

MR. WESCOTT: Mr. Wagner is here, the Director of the Division of --

SENATOR WOODCOCK: Wait, please. Senator Italiano has a question he would like to ask.

SENATOR ITALIANO: Mr. Cochran, getting back to the two objectives which you stressed as important aspects of your Council, to make sure that the inmates become useful and productive and to develop attitudes and skills, you stated categorically that S-802 would seriously impede these two objectives. Will you state why and how?

MR. COCHRAN: The more people or the more groups or hospitals that we can sell to, the better, in my estimation.

SENATOR ITALIANO: You're talking about State institutions?

MR. COCHRAN: I'm talking about this - yes, that's correct. My fear is that if the prison and reformatory structure were to be moved out of the Department of Institutions and Agencies, as it is presently constituted, I think it would be more and more difficult for State Use

Industries to sell to the new Woodbridge Home for the Retarded, for example.

MR. LUMBARD: Why?

MR. COCHRAN: Because it is an advantage to us to be presently in the same general body or department.

SENATOR ITALIANO: You think there wouldn't be cooperation between --

MR. COCHRAN: What's that?

SENATOR ITALIANO: You think there wouldn't be cooperation because they're separate --

MR. COCHRAN: Yes, I do.

SENATOR ITALIANO: You think there wouldn't be cooperation.

MR. COCHRAN: I don't think there would be the same opportunity.

SENATOR WOODCOCK: Do you think that because it might be in a Department of Criminal Justice the Department of Institutions would say, we don't want to deal with you anymore because you don't belong to us? Is that what you think?

MR. COCHRAN: I think there would be some of that. I think we would sell in this State a great many more road signs, for example, slow down, speed up, maximum speed, parking, no parking, whatever it might be, - I think we would sell a great many more of this type of merchandise if the Department of Transportation was part of this same Department of Institutions and Agencies. This isn't practical.



MR. LUMBARD: Well, aren't both the departments under the Governor?

MR. COCHRAN: Yes.

MR. LUMBARD: You're talking like these are two foreign countries. Isn't this all the State Government of New Jersey?

MR. COCHRAN: Yes.

MR. LUMBARD: Let me just inform you, as a minor matter, I used to help run an agency in New York State and the Department of Corrections, which is just prisons, has a State Use Industry. When I wanted a chair, we'd send in a slip, the chair would arrive, made in the prison, no problem, nobody did not buy because it was made in the New York State Prison, in fact, they had to buy because of the state law that said they had to. There was no problem at all. And I really don't understand why you say that the transfer alone will mean you'll have less sales. You're going to sell the things to state agencies.

MR. COCHRAN: Nevertheless, this is my opinion.

MR. LUMBARD: The assumption is that the State Government won't work properly. That's what you're really saying.

MR. COCHRAN: This can happen too.

MR. LUMBARD: Well, I think the Governor ought to answer that.

SENATOR KELLY: Sir, do you have a sales force that sells, stop signs, etc.? Maybe we could make an appointment with Mr. Goldberg for somebody to go sell some

signs, you know, if this is one of our difficulties that we're not making sales and you can produce stop signs and road signs that are cheaper then don't you think Mr. Goldberg as Chairman of Transportation would be interested in this economy and savings in his budget.

MR. COCHRAN: I think more selling effort can always be used whether it's outside private employment or within the State.

SENATOR KELLY: Well, what I'm suggesting to you is, it's difficult for me to assume that, for example, the various departments throughout the State and municipalities are going to just call the State Use Industries. And I might add that I have. When I was Undersheriff in Camden County we purchased stuff through State Use Industries and didn't have any complaints.

But what I am saying is that these sales, going out and trying to sell this to other agencies within the government itself, you're suggesting to me that there can be a savings and also be productive as far as the inmates are concerned.

MR. COCHRAN: I would hope that we could do a great deal better in our sales effort. As I said a few minutes ago, I think there's always room for this. Several months ago I attended a meeting with John Bonnell and others directly involved in State Use in Albert Wagner's office and the whole tenor of that meeting was, let's not have our people going out only answering complaints, let's have them go out and sell. There has been too much of a negative

campaign, if you want to put it that way, rather than an aggressive selling campaign.

SENATOR WOODCOCK: Well, Mr. Cochran, if I may just get back for a moment to road signs. Were you merely using that as an illustration or is this a matter of fact that you experience that difficulty with items made by the prisoners?

MR. COCHRAN: It is in a way an observation but I think it would come very close to being fact too.

SENATOR WOODCOCK: And I ask you that because I also happen to be a member of the Transportation Committee and if that be so then I plan to take that up with Commissioner Goldberg to ask why this is so.

MR. COCHRAN: I would welcome any such inquiry as this. That would be fine.

SENATOR KELLY: And I am on the Transportation Committee too and Mr. Woodcock beat me to the punch because as soon as I see Dave Goldberg I'm going to ask him about your stop signs.

MR. COCHRAN: If we can sell more road signs, fine. We had a poor month of August. For example, in August there were only a little over \$1,400,000 worth of goods produced in the industry shops. This is way down. .

MR. LUMBARD: New Jersey is now for go, go, and not stop, that's why.

What other State departments are not cooperating adequately with the sales efforts of State Use?

MR. COCHRAN: I would not want to pinpoint any

particular department.

MR. LUMBARD: Mr. Cochran, I know you don't want to pinpoint but we want you to pinpoint. That's the purpose of having you here at a legislative hearing to find the facts that have not previously been brought public. You're under oath. We are now asking you. You have an official State position. We are asking you on behalf of the State Senate what State agencies don't buy enough from State Use Industries that would enable you to increase your efforts.

MR. COCHRAN: I don't know exactly what department it would come under. I'm not that familiar with the State Government. But I am quite sure, in my own mind, that we would be able to sell a good deal more printed material. I don't know, for example, where this is printed (indicating), and there must be hundreds of these bills that are submitted in the course of a year. I don't know. I'm sorry. I don't think they're printed by State Use Industries. Some of them may be. Some pamphlets may be. But I think we could sell a whole lot more.

MR. LUMBARD: Do you think you could submit to Senator Woodcock, within a week's time, a letter which would so inform him?

MR. COCHRAN: If I had help to do it, yes.

MR. LUMBARD: Well, Mr. Cochran, that doesn't add up because Mr. Wescott and others are making the general point, don't change this because we've got the staff, we're all working. We're going to have to assume that this letter can be produced, or there should be change. That in itself

would almost say a message. So, would you produce such a letter that informs Senator Woodcock within one week's time of what state agencies could buy more of what to help State Use more in the rehabilitation of prisoners.

MR. COCHRAN: I think a week might be a little short.

MR. LUMBARD: Two weeks?

MR. COCHRAN: Two weeks.

MR. LUMBARD: You can do it in two weeks?

MR. COCHRAN: I think this can be done.

MR. LUMBARD: All right. Thank you.

SENATOR WOODCOCK: Thank you very much, Mr. Cochran, you've been very helpful.

MR. COCHRAN: Thank you.

MR. WESCOTT: Senator, let me address myself to the efforts made by the State Board of Control to change the present system.

I think hardly a year goes by --

SENATOR WOODCOCK: Mr. Wescott, if I may do this, sir. I know that you have other witnesses that you want to bring forward and we're running, I might say, about almost a half a day behind now.

MR. WESCOTT: I agree.

SENATOR WOODCOCK: I would prefer if we could get finished with the citizens and then if you could make yourself available later this afternoon, we'd be happy to hear you at length with respect to this and other matters that were spoken of this morning.

MR. WESCOTT: I will.

SENATOR KELLY: Mr. Wescott, is the testimony from these other witnesses the same in general content?

MR. WESCOTT: No, quite different.

SENATOR KELLY: All different?

MR. WESCOTT: The testimony from one of them is from the Board of Managers of the Mental Hospital and the other one is the testimony from the Board of Managers in the Division of Mental Retardation, to show the degree of cooperation between our department, between one division and another which, in our estimation and which we're convinced would not exist otherwise. So that I would call now. --

SENATOR KELLY: Well I don't want to restrict testimony, I just want to delete repetition, if possible.

MR. WESCOTT: Right.

MR. LUMBARD: Mr. Wescott, when you come back will you please bring for me two things. Number one, what's happened to the bond money that has been given under the bond issues in the last ten years in terms of the Department of Institutions and Agencies with respect to the area of correction. I'm going to want to question you on that. The table, if you want to write this down, column one, what money was allocated; column two, for what project; column three, what is the status of that project; column four, if not yet finished, why not; column five, how much more has it cost because there has been a delay.

I would like to question you about that. And in the second area that I would like to have you bring with you,

please, are the logs or the minutes or in some way just a recapitulation to show the attendance within the last five years of the citizens at these respective boards, that is, X board has ten members, they met - just a summary attendance sheet - they met five times in a year, the attendance was total, 100 percent or 50 percent, you know, details.

MR. WESCOTT: Mr. Lumbard, there are some 30 boards and some of them have up to as many as 15 members. I have on my desk a card file which lists every board, every individual board member and the record of whether he has attended or whether he has not attended.

MR. LUMBARD: Well, do you need more time for that?

MR. WESCOTT: Well, this would be a great deal of work. If I make available to you the actual records themselves, would that be of use to you?

MR. LUMBARD: Well, it would be of use but we're asking you to make the tabulation rather than us because you have this agency to do it.

MR. WESCOTT: It would take some time.

MR. LUMBARD: How much time would you need?

MR. WESCOTT: Well, I think it would take a person at least a day to do.

MR. LUMBARD: Fine. I thought you were going to say a week. Let's do it in a week, by way of a letter to Senator Woodcock. But the material on the bond issue I'm sure you have readily available, it must have been made in preparation for your discussions with the Governor.

MR. WESCOTT: Which bond issue, Mr. Lumbard?

MR. LUMBARD: Any bond issues in the last ten years. There was one in 1964, for example, I understand. Was there any other?

MR. WESCOTT: Well, there have been two fairly recent ones. There was one in 1950 and two more recently than that. You want this on the last two.

MR. LUMBARD: Yes.

MR. WESCOTT: I think you're asking me something that I won't be able to do and nobody would be able to do, the amount of money or additional cost involved by so-called delays.

MR. LUMBARD: Well, let's leave that one column blank to be filled in in a week or so.

MR. WESCOTT: How can one do it, sir?

MR. LUMBARD: How can one do what?

MR. WESCOTT: Make an estimate of what the difference in cost --

MR. LUMBARD: Here's how I would do it. In 1964 you went to the people saying, if we get X we'll allocate it like Y, we'll say \$2 million; but in fact the building was built three years later and cost \$3 million. Right? The contracts so state. That isn't complicated.

MR. WESCOTT: But can I take a moment to explain the problem to you? When we go to the people asking for a bond issue, we don't know what we're going to get and once the bond issue is passed, we don't know what the Legislature is necessarily going to appropriate that money for. So when the bond issue is finally passed and the



Legislature finally makes the appropriation, then, in the past, inevitably in the past it has been necessary for us then to start from scratch. In the last, I think, about 3 years, the Legislature has been giving us planning money, giving us advance planning money. We have been able to hire architects, we have been able to appoint committees, and we now have for this bond issue that's coming up, for the first time, we have available to us actual plans, programs and rough schematics and we know exactly what we're going to do. On most of the program we did not have that in the past, sir.

MR. LUMBARD: Let me say, we can't now go into it. We had anticipated maybe 45 minutes or an hour with your testimony and then the Attorney General and Commissioner Ylvisaker were to come on. We've had all these fine citizens and we are way out of whack. So the Attorney General must be accommodated to a certain degree also. So we must not go any further with you now. We would like to hear you later in the day, however, so hold yourself in readiness, please, and then I will want to question you in as great a degree as you can supply at that time on the bond issue.

MR. WESCOTT: I will try to get those figures by this afternoon. I'm not sure I can.

MR. LUMBARD: Thank you.

MR. WESCOTT: Now I would like to, as I said, introduce a member of the Board of Managers of one of our fine institutions for the mentally ill. He has been with

the Department for many years. He was appointed originally by the Taxpayers Association to study the need for a bond issue back in 1949. He is now President of the Board of Managers at the Neuropsychiatric Institute and I am going to ask Mr. Merrill to come forward.

E. I. M E R R I L L, called as a witness, being duly sworn, testified as follows:

SENATOR KELLY: Sir, is that a prepared statement that you have?

MR. MERRILL: Yes.

SENATOR KELLY: May we have copies of it?

MR. MERRILL: I'm sorry, I could have it typed but it is not typed now, but you are welcome to have it.

SENATOR KELLY: Thank you.

MR. MERRILL: Gentlemen, 50 years of institutional operation without major corruption has been New Jersey's reward for adopting the Institutions and Agencies Organization recommended by the Morrow Commission in 1918.

We are told that the exploitation of prison labor, patronage awards of warden and other positions down the line, wholesale personnel changes in state hospitals after each upset election, and continuance of status quo if the ballots were favorable, all led to the Morrow Commission recommendations which in effect:

1. Took operation of New Jersey institutions out of politics;

2. Made it possible for medical and correctional personnel to develop careers in New Jersey;

3. Permitted career development in turn to produce imaginative and rewarding treatment of patients and inmates; and

4. Put control of New Jersey institutions in the hands of unpaid citizen boards of managers.

Is New Jersey about to set the clock back?

In Article 7, paragraph 55a of Senate 802, this language appears: "The rules, regulations, orders and directions issued by the commissioner through the division for this purpose shall be accepted and enforced by the Board of Managers having charge of any institution or group of institutions or non-institutional agencies or any phase of the work within the jurisdiction of the division."

Compare this with the 1918 language under which we still work: "Subject to the supervision, control and ultimate authority of the State Board, the management, direction and control of the several institutions and non-institutional agencies shall be vested in the several boards of managers who shall be responsible to the State Board for their efficient, economical and scientific operation."

If you were asked to serve as a member of a Board of Managers, would you choose paragraph 55a under which to serve?

For half a century thousands of responsible citizens have served under the 1918 language.

In my opinion, S-802 would in a relatively short time eliminate citizen boards of managers in the correctional institutions.

Institutions in the Division of Mental Health have enjoyed cooperative and mutually beneficial relationships with correctional institutions for many years. The planning of the Department anticipated that a variety of psychiatric and medical services would be provided all recipients of Departmental Services including inmates of correctional institutions by our State hospitals. The prompt and effective execution of this obligation is achieved in large part because of the relative ease with which it is possible in an integrated Department to move inmates from one institution to another institution in a different division and then return him to the facility having primary responsibility for his care and treatment. For instance, during the last ten years, an average of 225 inmates per year were transferred to State hospitals from correctional institutions for psychiatric service. For the years 1967 and 1968, the average length of stay per inmate was 212 days. For the same years the number of patient care days provided correctional inmates by units in the Division of Mental Health totaled 55,118 and 48,614, respectively. In addition, during the same period an average of 47 inmates per year were provided medical-surgical service exclusive of psychiatric care at our State hospitals.

Although the use of correctional inmates to perform valuable services on the grounds of facilities within the Division of Mental Health has a 50 year history, this program

was accelerated during the 1950's. One of the reasons for accelerated programs is the changing concept of patient care in the State hospitals.

Prior to the so-called "wonder drugs" and the concept of the open hospital, patients in mental hospitals were assigned to a variety of tasks that made substantial contribution to the economy of the institution. For instance, the Trenton State Hospital has a farm of 1,024 acres with a large dairy herd of more than 250 animals to which patients were assigned.

In 1954 inmates of the New Jersey State Prison, later augmented by a detail from the Annandale Reformatory, assumed responsibility for these assignments under the supervision of hospital personnel. This farm produces food not only for institutions in the Division of Mental Health but other departmental divisions as well.

The total value of the production of the 61 inmates assigned to the Trenton State Hospital farm last year amounted to \$273,548.00. The Trenton story is repeated at the Marlboro State Hospital and the Neuropsychiatric Institute, Princeton. As a matter of fact, during fiscal year 1968 the cash value of food produced by correctional inmates for institutions other than those in the Division of Correction and Parole was \$729,827.00. A total of 2,744,443 quarts of milk accounted for much of this and at 12 cents a quart amounted to \$335,882.00.

In addition to farm operations, the correctional institutions either at laundries on the grounds of the State hospitals or at the Regional Laundry at Rahway Prison provide essential laundry services for patients in all the mental hospitals. Last year alone the 55 inmates assigned to the Trenton State Hospital laundries processed some 4,816,000 pounds of laundry. At Ancora State Hospital the 65 inmates processed 5,043,995 pounds of laundry.

Since I understand another Board member has analyzed in detail the fiscal implications of this program, I will not do so.

In addition, inmates are assigned to various details on the grounds of the State mental hospitals and have in these assignments made significant contributions to our efforts to improve the condition and appearance of physical facilities available to us for patient care. They are available to us also both as groups and individuals to meet such emergencies as heavy snow removal, fire fighting, and the like.

The State of New Jersey has provided large capital sums to construct inmate camps at the New Jersey Neuro-Psychiatric Institute, the Marlboro State Hospital, the Trenton State Hospital, the New Lisbon Colony and the Vineland State School. These camps provide housing for almost 400 minimum custody inmates who have been assigned to them from our overcrowded correctional institutions.

The development of appropriate policies within the departmental structure resulting in the mutually beneficial relationships described above is precisely what the founders

of the Department had in mind when they recommended to the Legislature the creation of citizen Boards to provide "economical, efficient and scientific" integrated departmental services. The development of these programs has not been without difficulties and both citizen Board members who make up the Department's voluntary structure and the dedicated professionals who administer it have at times experienced considerable frustration and some anxieties. However, the resolution of problems relating to these frustrations and anxieties is obviously much easier in a well-coordinated Department. I cannot stress too strongly the fact that the Department with its integrated services, citizen involvement and mutual sharing of problems, has grown out of the imagination and experience of a group of socially-conscious citizens who anticipated the integrated system of institutions and agencies, whose Golden Anniversary we are celebrating this year.

It might be argued that placement of correctional facilities in a Department other than ours would not preclude the types of programming that are described by citizen Board members today. It is likely, however, that unless administrative structures are available for a prompt resolution of problems there is the inevitable tendency for governmental units to seek to have available all services necessary for discharge of their function under their immediate and direct control.

The Board structure of the Department of Institutions and Agencies with its capacity to resolve differing citizen concepts under the State Board of Control and the securing of administrative professional consensus under the Commissioner has

made for the prompt disposition of the day-to-day problems that make the difference between careers or "just employment" for individuals charged with the direct responsibility for the care, treatment and training of the mentally handicapped and ill.

In Article 7, Division of Rehabilitation, I have been unable to find any reference to work opportunities for prisoners, such as are now provided by State Use Industries. Work habits developed in State Use Industries have been the keystone to rehabilitation as I have observed for many years. If services being performed for patients in the components of the Division of Mental Health by correctional inmates are discontinued, it will be necessary to provide these services with paid personnel. The needs of our institutions for additional personnel now and in the foreseeable future in direct patient care are so great that to consciously create an administrative structure that increases the need for resources the State of New Jersey will have to commit to its mental institutions to replace services now being adequately performed by correctional inmates is, in my judgment, not only ill-advised from a taxpayer viewpoint, but has far worse implications for the primary objective - early rehabilitation of the prisoner. It is hard for me to believe that this omission was planned - rather I feel it to be an oversight. Nevertheless, it is of such great importance that it should be spelled out in any legislation covering rehabilitation.

In summary, Mr. Chairman, it appears to me that S 802:

(a) Will shortly eliminate citizen Boards of Managers from correctional institutions. I urge you to retain citizen



Boards with full control over the care and rehabilitation of inmates and to leave this control in the Department of Institutions and Agencies, the department with 50 years of effective know-how.

(b) S 802 does not adequately emphasize the need for work programs for present inmates.

(c) S 802 will not be able to provide the same degree of correlation between departments as is now available within one department.

Thank you.

MR. LUMBARD: Sir, just a preliminary question - I think you are under a grievous misapprehension that those provisions of the law which now govern work and so on would not be carried over into the new bill. They are, in fact. They don't need to be redone in this bill because there is a provision in 802 that says those other provisions are carried over and made applicable. So that part of your statement which thinks we are losing something is in error. We are not losing that thing you are worried about losing.

MR. MERRILL: That's fine.

SENATOR KELLY: Just one question. In your opening statement you mentioned that in the past 50 years there hasn't been any major corruption under the present system. Are you suggesting that if this bill were adopted by the Legislature, this may open the door for major corruption? Are you suggesting that by that statement?

MR. MERRILL: What I was leading up to was the fact that the experience under citizen Boards of Control has been

relatively good. What it will be if they are eliminated, I don't know. The experience before citizen Boards was poor.

SENATOR KELLY: You think Mr. Hoover has done a good job with the Federal Bureau of Investigation, don't you?

MR. MERRILL: Yes.

SENATOR KELLY: I just thought I would mention that as something extra.

SENATOR WOODCOCK: Senator Italiano.

SENATOR ITALIANO: Mr. Merrill, in the light of the explanation given to you by Mr. Lombard, what are your specific objections to S 802?

MR. MERRILL: In my summary I stated that the citizen Boards will probably be eliminated because of the fact that they will have no responsibility to control the institution if they are to carry out orders as sent down from the Commissioner. This is different from the way citizen Boards operate now.

SENATOR ITALIANO: You mentioned something about employees in the very, very beginning. Do the citizen Boards hire these employees now?

MR. MERRILL: I'm sorry. I didn't get your question.

SENATOR ITALIANO: Do the citizen Boards hire the employees now?

MR. MERRILL: No. That is done by administrative personnel. Citizen Boards do have the responsibility to hire the Chief Officer of the institution.

SENATOR ITALIANO: Do you approve transfers of these people, these employees? Are the transfers submitted to you prior to a transfer for your approval?

MR. MERRILL: No, not unless it is a very important employee and a question arises.

SENATOR ITALIANO: In other words, you have no effective control over employee use, hiring, firing or transferring.

MR. MERRILL: Only that we hold the Chief Officer responsible for effective operation.

MR. LUMBARD: It is a fact, is it not, that, of course, the Civil Service retains the employees, governs their pay, transfer and so on?

MR. MERRILL: Yes.

MR. LUMBARD: And that would continue under any new arrangement.

MR. MERRILL: I suppose so.

MR. LUMBARD: In what jurisdiction, State or Federal, have you discovered that there has been a difficulty in making transfers of patients, which was one of your points, between departments, that is to say, if some one in a prison needs mental care, they can't get it because the Correction and Mental Health or Hospitals are in separate departments?

MR. MERRILL: I have no specific on that. It just appeared to me that it would be more difficult between departments as compared within a department.

MR. LUMBARD: How? I mean, the ambulance has to be driven from one building to the other, but how?

MR. MERRILL: Well, the heads of different departments may have different needs.

MR. LUMBARD: Well, do you really think that in other

states and in the Federal government, if some prisoner gets a mental problem, it takes the Commissioners to have a conference and that this isn't a matter of absolute routine?

MR. MERRILL: I can conceive that would happen, yes.

SENATOR WOODCOCK: If I may ask you, sir, what happens now - assume that there is a prisoner in State Prison and he suddenly loses his mind and is a danger to himself and to the other prisoners down at State Prison - how is that transfer effected?

MR. MERRILL: It would be, I think, by call to the Central Office, the Director of Mental Health, who would ascertain the facts and find out where this man should best be transferred. He would then arrange with the appropriate mental hospital to suit the particular condition.

SENATOR WOODCOCK: And you think if we were to take the State Prison out of Institutions and Agencies that this would either become impossible to do or difficult to do.

MR. MERRILL: I don't think it would be impossible. It would be a little more difficult, I think, because of differing authorities.

SENATOR WOODCOCK: Well, do you think that the telephone call would be more difficult? Certainly, not that.

MR. MERRILL: No.

SENATOR WOODCOCK: The physical act would not be more difficult.

MR. MERRILL: That's right. There may be factors in the conditions of the transfer that would require discussion

which might lead into more time to develop the need for the transfer.

SENATOR WOODCOCK: Are you saying to me - and I have heard this today throughout this - that there is a great degree of cooperation within the Department of Institutions and Agencies and the various prisons and institutions that they control and there is throughout this hearing this morning permeating the entire thing that there is not this cooperation between this department and other departments in this State.

MR. MERRILL: I did not intend to make that point. I meant merely to state that as within one authority, one department, transfers could be effected quicker than between two departments.

MR. LUMBARD: But the underlying assumption - I join the Senator - is as though you are all talking about a State that doesn't have a Governor, that there is no Executive, that there is no one to combine administration and that all these State agencies are sort of fragments hanging around all over the place and if there are common problems, there is no way to resolve them. I wonder really if that is sound.

MR. MERRILL: Well, if you are a superintendent of Hospital A and you want to get something done, you don't go to the Governor, not unless you really have to.

MR. LUMBARD: No, but you go to the Commissioner and the Commissioner goes to the Governor and these problems really are non-existent if there is administration by the top executive.

MR. MERRILL: The Commissioner doesn't go to the Governor either until he tries all other openings.

MR. LUMBARD: I think that is an assumption that is very difficult to make. That is why I asked you if you have any other state or the Federal government on which you could base any such conclusion. Again that has been underlying all these witnesses, that if this is done in a different way, it won't work.

MR. MERRILL: I didn't mean to say that at all. I don't think I did. I have said I think it will be more difficult.

SENATOR WOODCOCK: Any other questions?

SENATOR ITALIANO: Just one more. I think more important than all of this is the fact that the reason for these hearings is to develop a program to fight crime. I think this is the essential part of the hearings now that we are trying to develop. Do you think the present system is the most effective method to fight crime?

MR. MERRILL: I am sorry. I am not competent to comment on that. I have been only associated with the care of patients in the mental hospitals and I have incidentally been through the prisons a few times. So on this aspect of it, we do have know-how. I think we have been in the forefront in this field from what I have read over the years.

MR. LUMBARD: But, Mr. Merrill, you came here to the Legislature today voluntarily to urge the Legislature not to pass a specific bill before it. So are you really saying you don't know anything about it? Is that the thrust of what you are saying? You came here and sought to tell the Legislature that it should not affirmatively pass 802, not some vague concept, which is certainly to imply that you do feel confident

that you know something about crime control and how this will affect crime and crime control.

MR. MERRILL: I think the only specific that I mentioned was that this bill, S 802, did not specifically provide for work programs.

MR. LUMBARD: But it does in fact.

MR. MERRILL: I couldn't find it specifically mentioned.

MR. LUMBARD: It isn't specifically mentioned, but it doesn't make any difference. The rest of the law, if you would ask departmental counsel, and I am sure you must have a departmental counsel, - the rest of the law is encompassed within. It is transferred over and there are general transfer provisions in it. That is a technical legal point. I don't think you really need to get involved in that.

SENATOR WOODCOCK: Are there any other questions?

[No response.] Thank you very much, Mr. Merrill, for coming down.

MR. WESCOTT: Our last witness will be Mr. Robert Garrett, who is President of the Board of the New Lisbon Colony for the Retarded, and he is now the Vice President and Administrator of one of our largest hospitals in New Jersey, the Cooper Hospital in Camden, and he has been on the Board at New Lisbon for a very long time. He is very experienced in institutional care and I would like him to tell something about the relationship between the Division of Correction and Parole and the Division of Mental Retardation.

R O B E R T     G A R R E T T,     called as a witness,  
being duly sworn, testified as follows:

I appreciate the opportunity of appearing before the Committee today to convey my thoughts and some of the thoughts of our Board at New Lisbon.

The Division of Mental Retardation has enjoyed, as other witnesses have testified here today, an excellent rapport and cooperation with the State correctional institutions. I shall not enumerate all the things that they have done for us and the services they have performed, but I would like to mention just one in particular and that has to do with the Bordentown institution which has a plant at New Lisbon and we call it a satellite camp. At the present time there are 60 inmates at this camp, principally involved in food preparation and service. During the five years that these inmates have been at New Lisbon, we have had two escapes, two each time, and both times the inmates were apprehended.

I would like to point out that so successfully has this program operated at New Lisbon that the Superintendent has urged additional help to come and serve in many capacities, principally on the grounds. We are delighted with the cooperation and the help and services that these people have rendered.

In addition to the food service, these people have become involved in voluntary activities and I think it was a very wonderful thing last year and the year before when these inmates voluntarily took from the stipend that they receive for the services rendered at New Lisbon a collection to supply a Christmas party each year for two of the cottages. This was



quite a contribution from these people, but I think the spirit involved also indicates what is going on.

In addition, the inmates serve as volunteer fire fighters and at times have used their talents elsewhere. I don't speak of talents as far as painting a pony barn is concerned, but they actually have done that on their own time and willingly.

In the five years that we have had this arrangement, there have been 450 inmates assigned to the New Lisbon unit.

Also I would like to mention about the laundry services that are given to the retarded institutions by the correctional inmates. For example, last year at Woodbine, which is the only institution now in the retarded division with a laundry on the grounds, there were processed over 3 million pounds of laundry by inmate labor.

At other institutions within the division, laundry is shipped to other locations and processed by inmates. I would like to mention as a matter of comparison the cost at Glen Gardner, an institution in one of the other divisions, where laundry is processed on the grounds at a cost of 10.2 cents per pound.

SENATOR WOODCOCK: Mr. Garrett, if I may just interrupt you for a moment, sir, are you assuming that if this department is set up under 802, this service would not be available to the New Lisbon State Colony?

MR. GARRETT: I am not saying that it would not be available under the law. I say that it may not work as well and I have no proof to make that statement any more than ---

SENATOR WOODCOCK: Well, I think what you are saying to us is that it is working well now.

MR. GARRETT: It is working well and should not be disturbed.

MR. LUMBARD: Have you studied any other state - I'll ask you the same question I did the last witness - or the Federal government to determine whether it has proven impossible for those jurisdictions not to have such inter-departmental cooperation of the nature you have described?

MR. GARRETT: No, I have not studied any other state program in this regard. I base my thoughts and opinions purely on the basis that when such administrative procedures are diversified, it becomes harder to cooperate and having these transferred to a completely new department, I think will be putting road blocks in the way and make it more cumbersome to receive cooperation than when they are in one department under separate divisions.

SENATOR WOODCOCK: If I may, have you completed your statement or did you have some other remarks that you wanted to make?

MR. GARRETT: Well, I was about half way through.

SENATOR WOODCOCK: I just want to take one point with respect to this. How are the transfers currently made from the State Prison and so forth to the grounds of New Lisbon to help you?

MR. GARRETT: Well, these inmates come from the Bordentown unit.

SENATOR WOODCOCK: I'm sorry - Bordentown.

MR. GARRETT: And they clear through the Superintendent at Bordentown with the Superintendent of New Lisbon.

SENATOR WOODCOCK: And you think if we were to take Bordentown out of the Department of Institutions and Agencies and transfer it to the Department of Criminal Justice, that this would then present a greater difficulty with making that type of a transfer.

MR. GARRETT: I feel definitely it would.

SENATOR WOODCOCK: All right, if you will continue.

MR. GARRETT: I just wanted to mention that last year, as the result of the laundry program, that this program did 28 million pounds of laundry and based on the cost at the institutions where we have inmate labor, there was a saving to the taxpayers of over \$2 million against the rate that it cost at Glen Gardner.

MR. LUMBARD: Now, if there is a transfer, how much of that \$2 million would be lost? Because we have made the point, yet you keep going back to these specific examples that all assume that there is no Governor who is going to coordinate the departments that are all within his Executive Branch. So of this \$2 million, which is a very heart-warming and attractive figure and I am sure everyone thinks is great, by the transfer, how much will we lost?

MR. GARRETT: Well, that is conjecture. You can't prove anything. All I am saying is that with this kind of example today, I as a taxpayer, and I am sure everybody else, would look very much disenchanted at the breaking up of this kind of an arrangement if it is going to cost a whole lot more

money.

MR. LUMBARD: But that assumes it is going to break it up and two will cost more money. I mean, there has been no indication by the Legislature, by the Committee, in the bill, that all these assumptions you are making would happen or are even desirable. I think it is quite clear, in fact, from the Committee's questions today that they share the assumptions with you that it should be done efficiently, taxpayers' money should be saved, rehabilitation should be maximized. The goals are the same.

MR. GARRETT: I agree with that. But we now have something that is certain. We know the cost. We know the results. And we have something certain. Now we are talking about something that may be uncertain.

MR. LUMBARD: But perhaps the Legislature is not as confident of the success of that certain thing that is happening now as distinct from whether the taxpayers are saving dollars; that is to say, whether the present department, present arrangement, is the most effective system of rehabilitation, whether the department as a whole and the whole State government adds up to the most effective crime control mechanism that can be. That is really the ultimate question. And I don't think anyone in the Legislature would dispute the fact that if some kind of laundry arrangement can be made that saves \$2 million, that wouldn't be completely desirable. Who is opposing that? Who is even suggesting anything that has anything to do with it?

MR. GARRETT: Except this is one of the phases that has to be taken into consideration. This is one of the points

we are making.

SENATOR WOODCOCK: Except, Mr. Garrett, and I don't like to dwell on this because I think that we have been over it with several witnesses, if we pass Senate Bill 802, Bordentown is still going to be there and the New Lisbon State Colony is still going to be there and basically there isn't going to be any great change in the people who are running either institution, is there, if we incorporate or pass 802?

MR. GARRETT: Yes, there will be other people involved. There will be a new Commissioner.

SENATOR WOODCOCK: Except we are talking now specifically about Bordentown. The gentleman - I assume it is a gentleman - who heads up Bordentown is going to be there. He isn't going to be replaced, is he, because we pass 802?

MR. GARRETT: Not because of 802 I shouldn't think.

SENATOR WOODCOCK: The person in charge of New Lisbon State Colony, he is going to be there, isn't he?

MR. GARRETT: I would hope so.

SENATOR WOODCOCK: Now is there anything inherent in Senate Bill 802 that is going to prevent the person in charge of New Lisbon from making the same arrangement with Bordentown that they currently make with respect to handling the laundry, with respect to leasing the grounds or taking care of the ground and all of the things that you have set forth here today?

MR. GARRETT: Theoretically, I think you are right, but practically, I disagree because I think that you will not get the same cooperation even in the same government of New Jersey between two departments that you will if it is held in the

same department.

MR. LUMBARD: I think the Governor wouldn't be very flattered to hear that.

MR. GARRETT: Well, I can't help whether he would or not. That is the way I feel about it.

MR. LUMBARD: Your inherent position is it shouldn't happen because the State government of New Jersey isn't going to work correctly.

MR. GARRETT: I think basically it is going to work well, but I don't think it will work quite as well as if it were under the same department.

SENATOR WOODCOCK: Let me pose this to you, sir, and perhaps you are not qualified to answer it, but I feel I must pose it: What you are saying then is that perhaps our criminal justice effort here in the State of New Jersey has been lacking because of the split because we treat a prisoner when he is apprehended through prosecution and conviction in one department and then as soon as we get him past that point and he is going to be incarcerated, we turn him over to Institutions and Agencies and because of that, because of the fact that we have two departments split, we can't get a real effective program against crime in the State of New Jersey. I think that is implicit in the statement that you have made and implicit in the statement that every other witness here this morning has made - because we have a split in departments, the program must fail.

MR. GARRETT: On the contrary, I feel that this is best in my opinion and I am not an expert and I shouldn't be testifying

on this point, but I feel that up to the point of sentencing, that is all right, and I think from then on it ought to be in the Department of Institutions and Agencies.

SENATOR WOODCOCK: Well, that is because it works that way now.

MR. GARRETT: I wouldn't say that. I feel very definitely there is a different problem involved. That is just my personal feeling about it.

SENATOR KELLY: Mr. Garrett, how about the Justice Department and the Bureau of Prisons? There isn't any diversity there. The Bureau of Prisons comes under the Justice Department and the Attorney General does the prosecution and the Federal Bureau of Investigations may do the investigation.

MR. LUMBARD: And now has narcotics, the Bureau of Narcotics.

SENATOR KELLY: And the Bureau of Narcotics. This is all today incorporated into the Justice Department.

MR. LUMBARD: And indeed you might find - I won't ask Mr. Wagner that - but I think perhaps you might find that among prison people throughout the whole country, if they had to pick one prison system that is the superior one, it is the Federal one at the present moment. I am not going to press that, but I certainly don't think you are going to find many people saying it is not. And one of the reasons is that it is in the Department for a lot of reasons we could go into in other ways - the Federal Bureau of Prisons - outstanding.

SENATOR WOODCOCK: Is that all?

MR. GARRETT: I think that we have covered the remaining

points of what I had intended to say and the stenographer has a copy of it.

S 802 may work, but from my experience in administering a hospital with many departments, I am satisfied that the present situation is far superior to that related in Bill 802 and I am not opposing 802 only in so far as it relates to the matters to which we have testified here today.

SENATOR KELLY: Mr. Garrett, I think that one of the major reasons for Cooper Hospital's success today is because of your being the head of that hospital.

MR. GARRETT: Thank you.

MR. LUMBARD: Just one last thought. I'd like to add this: You might care to examine the relationship between the United States Public Health Service and the Federal Bureau of Prisons, both in different government agencies, both working very well together. At least, I have never seen or heard the slightest intimation that they didn't and had any problem whatsoever.

SENATOR WOODCOCK: Thank you very much, Mr. Garrett.

[Mr. Garrett's written statement can be found in the Appendix, Vol. IV.]

SENATOR WOODCOCK: I think now we will recess for lunch and we will return hopefully at 2:15.

[Recess for Lunch.]



AFTERNOON SESSION

L A W R E N C E   W .   P I E R C E   and  
I R V I N G   L A N G ,   called as witnesses, being  
duly sworn, testified as follows:

SENATOR WOODCOCK:     Mr. Pierce, would you identify  
yourself and give us your experience for the record, please.

MR. PIERCE:     I am Lawrence W. Pierce, Chairman of  
the New York State Narcotic Addiction Control Commission,  
1855 Broadway, New York City. Now you wish a brief statement  
concerning my background?

SENATOR WOODCOCK:     Yes.

MR. PIERCE:     My background consists of work in the  
fields of law, law enforcement, the administration of justice,  
and the direction of rehabilitation programs. I have been an  
Assistant District Attorney for six and a half years, a  
Deputy Police Commissioner in New York City for two and a  
half years, Director of the New York State Division for Youth  
for two and a half years, and for the past two and a half  
years have been Chairman of the New York State Narcotic Addition  
Control Commission.

MR. LUMBARD:             You are a lawyer, of course?

MR. PIERCE:             Yes.

MR. LUMBARD:             Now the Legislature has before  
it for consideration Senate Bill 802 which you received a  
while back in the mail. Contained within that bill is a  
program for narcotics rehabilitation drafted in substantial  
conformity with the New York program which you administer.

Therefore, the Legislature is most interested in hearing from you about that bill which is in many respects your bill as well, in hearing from you about your program which has been put into effect pursuant to that bill, what your experience has been, what your forecasts are, what your beliefs are as to the program itself, and consider that the Legislature's program at this point is a small beginning, nothing in the order of New York -- a beginning, first, with a pure civil commitment program.

MR. PIERCE: Mr. Lumbard, Senators, Members of the Committee: The addict population is indeed one which intensifies the challenge of crime in a free society. Addicts do become involved in the commission of criminal acts, particularly crimes against property, such as burglary, larceny and forgery. For years, government's response has been imprisonment, or placement in a psychiatric setting, or assignment to a general hospital.

Gradually it became generally recognized that there was an interrelationship between the addict's crime and his addiction; that, generally, addicts are not mentally ill in the sense that one may be "certifiable" as a psychotic person; and that they are not physically ill in the same sense as a person who has a bacterial infection or a physical disorder.

The case history of the average addict shows him to be a person who suffers major personal deficits which bear upon his psychosocial situation. In addition to emotional and personality deficits, he suffers educational, vocational, social and familial deficiencies. Left to his own devices,

few addicts will undertake the necessary commitment of self which is essential to removing these deficiencies. The addict is described as being a "dropout from society" and the question is presented as to how one who withdraws from society - who basically resists growing to maturity and developing responsibility - can be aided. Fortunately, in seeking answers to some of these questions, we have been able to draw upon the experience of the Federal government over the past three decades, thirty odd years, and also upon the experience of several State and municipal governments and a number of private agencies. Their experience to date indicates that voluntary and ambulatory approaches to the treatment of addicts can be effective in the care of some addicts.

However, the United States Public Health Service Hospitals report that in treating some 63,600 addicts who entered Federal programs voluntarily over a period of thirty years, more than 71 per cent voluntarily left the programs within one months.

The experience of New York State with its own voluntary programs was similar.

MR. LUMBARD: Is that called the Metcalf-Volker bill?

MR. PIERCE: That is correct.

Of 6,800 addicts who entered our former State program over a period of three and a half years, it is estimated that 90 per cent left within the first thirty days.

These facts would suggest that for most addicts, other treatment modalities must be utilized besides those which are

voluntary.

The New York State Narcotic Addiction Control Commission recently published in its reprint series a report by Dr. John O'Donnell, researcher at the United States Public Health Service Hospital in Lexington, Kentucky. This report is entitled "The Relapse Rate in Narcotic Addiction: A Critique of Follow-up Studies." In his report, he comments on eleven follow-up studies which were conducted principally at Lexington, Kentucky, in California, and in New York which report rates of effectiveness ranging from under 10 per cent to as high as 92 per cent. Dr. O'Donnell states "It would seem safest to accept all of the studies at face value, as indicating variations which are not yet explained. Whatever the definition of relapse one prefers and whatever the rates of relapse may be, these studies strongly indicate that there are differences in relapse for different subgroups of addicts." The measure applied in these studies related to "relapse" and "abstinence."

These and other studies would indicate to us that the issue is not to determine whether rehabilitation of addicts is achievable but to determine which treatment modalities are effective for particular types of addicts. This would clearly imply that a broad system of diverse treatment and rehabilitative approaches must be employed with concurrent evaluation of each. The goal must be twofold: to determine which combinations of care are effective with particular addicts, and to learn the dimensions of the segment of the addict population for which each modality is efficacious.

While rehabilitative efforts which strive for abstinence would certainly appear to be warranted, concurrently we should continue to explore other approaches such as those which undertake to stabilize the addict within the community by administering drug substances on an experimental maintenance basis with a view toward satisfying the addict's craving for narcotics, coupled with an effort to upgrade his level of functioning in the community. And I have in mind, of course, programs such as those utilizing methadone and other such substances. Similarly, combinations of care offered on an ambulatory basis must be assessed along with those offered in residential settings. And both ambulatory care and residential care must be provided on a voluntary basis as well as on a compulsory basis with evaluation of each.

In our State the Commission now provides an array of placement opportunities which includes each of these various modalities.

Under our State's umbrella of coordination and fiscal support there are presently 26 rehabilitation and community-based centers in operation, and we employ six identifiable though overlapping rehabilitative approaches. We think these represent the identifiable rehabilitative approaches used anywhere in the world today at any substantial level. The six approaches may be described as follows: 1) psychiatric, 2) interdisciplinary--and we use that word to describe the programs we administer directly, employing program components which include educational components, vocational, pre-vocational, group psychotherapy, recreation, etc.

MR. LUMBARD: Would Bayview be one of those -

MR. PIERCE: Yes, Bayview would be an interdisciplinary approach. So 1) psychiatric, 2) interdisciplinary, 3) correctional, 4) ex-addict directed group programs, 5) drug maintenance, and 6) ambulatory programs. Facility settings should include several levels of structure ranging from open, free communities to those which are closed and secure, depending upon the needs of the individual and the community. Therapeutic community concepts must be developed in each of these settings, regardless of the setting.

The Commission has entered into contracts with twelve private agencies including one which will enable the Dole-Nyswander-Methadone Maintenance Program to expand from 500 cases to 1000 cases, on an experimental basis.

The Commission's program has been underway now for 18 months. So far there are 4,000 addicts in the compulsory program and 3000 in private agency programs as voluntary participants. Thus, all together there are 7000 receiving care and related services in the State's new program.

Narcotic addiction most frequently occurs in people who present patterns of behavior which are inconsistent with successful living in society. Thus, our responsibility is to reverse those patterns.

Therefore, our program aim is the movement of narcotic dependent persons along a continuum of services which seeks to achieve three things basically: first, to overcome initial resistance and create a program participant; secondly, to

improve performance, and, thirdly, prepare the individual for life in the community.

This process we seek to implement through a systematic effort which is intended to establish three basic groups in each rehabilitation center. They may be described as: entry, intermediate and advanced treatment groups, with movement from one group to the next based upon change which reflects three things: first, the acquisition of positive attitudes and acceptable behavioral patterns; secondly, involvement in and use of program opportunities, and, thirdly, the ultimate emergence of a capacity for responsible and reasonably independent functioning in the open community.

Now, essential to the achievement of these therapeutic goals is the recruitment of competent and experienced staff in sufficient numbers. In most of our States here in the East there is no abundance of what you might call "addict workers," so it becomes necessary to recruit the best people one can find and to train and develop a corps of addict workers. We have been, we think, quite fortunate in being able to attract excellent staff to our own program. We think this is perhaps attributable to three principal factors: first, our State, through the enactment of the State's new law and the commitment of substantial funds, indicated that it was serious in its desire to do something about the problem of addiction; next, the addict population is one of the most difficult groups with which to work, and many able professionals and non-professionals welcomed the challenge that was posed by participation in a program dealing with working with addicts; and,





center any longer, and they can function closer to the community so long as they can draw support from a structured-group living situation.

Those placed in the second phase, the day care phase, though living in independent situations out in the community, will be required and are required to participate from morning through evening in regularly-scheduled programs which are designed to continue the program aspects they received in the rehabilitation center, such as education, pre-vocational training, psychotherapeutic services and the like.

The third group, those on after-care reporting, are expected to become engaged in lawful and productive pursuits while residing in the community and, in addition, they are to participate in programs at the community-based center to the extent necessary to sustain them in remaining drug free and otherwise leading responsible lives.

Through the aftercare program we must be in a position to know through direct observation, coupled with urine testing, when and if the individual resumes drug use. When and if drug use does occur, our aim is to intervene in the individual's life quickly enough to prevent the resumption of drug use from becoming re-addiction. And that's the key.

Thus in the case of resumed drug use, we can return an individual to a facility - we can and we do return individuals to facilities either within the community or outside the community for a week or a week end, for a month or several months - not for the purpose of punishing him, but for the purpose of assisting him in becoming re-strengthened and re-fortified in

order to return to the community to try again.

Concurrent with the development of its rehabilitation program, we are undertaking to mount a significant research program, and our research interests include broad-scale epidemiological studies as well as research related to sociological, clinical and biological studies.

You may have read a report which was issued just yesterday. A study was made of 700 adolescent offenders from the deprived neighborhoods of New York City who had come to the attention of the authorities 10 years ago because they were involved with either heroin or marijuana. This study showed that 50 per cent of adolescent offenders who 10 years ago were involved with heroin as experimenters today are heavily involved with heroin either as addicts or as heavy heroin users. And interestingly enough, it showed that 40 per cent of the marijuana users of 10 years ago are today either addicts or heavy heroin users. And the difference between that 40 per cent and 50 per cent is 10 small percentage points.

Interestingly enough, we studied the third group from among those 700 of people, adolescents who had been charged with some violation of the criminal law but who were not drug users, and we found that only 15 per cent of the non-drug-using adolescent offenders ten years later were involved with heroin.

While research aspects of our work and the development of rehabilitation programs are essential, we believe that adequate steps have to be taken to prevent illicit drug use and abuse in the first place. So, obviously, while there are

many factors contributing to drug usage and to narcotic addiction, we believe that educational efforts can be effective in preventing experimentation with drugs, especially by young people.

Therefore, we have opened nine community narcotic education centers across the State to provide information, education and guidance to local communities. These centers also serve as a source of assistance to addicts and their families in gaining help and information about how to get into the State's program.

What I have described here, as surely you realize, is not intended to represent a panacea or an instant answer to the problems of drug abuse and addiction. Obviously, no such formula has yet been demonstrated. We do believe, though, that we are traveling a path which should have meaning, particularly for the characterologically disordered person who is involved with drugs, and we believe that in implementing the program I have described which looks toward treatment, research and prevention, we are following a course which is dictated by logic, reason, experience and good judgment. And we are proceeding with cautious optimism.

Thank you.

MR. LUMBARD: Thank you, Mr. Pierce.

The State of New Jersey does not now have a narcotic program of any scope or nature. Would you be in a position to recommend that New Jersey commence adoption of a program, even though very modest by comparison in scale, along the lines of the civil commitment program in Senate Bill 802?

MR. PIERCE: Well, as a visitor to your State, I would prefer to speak to our own experience and hope that our own experience would be of help to any sister State which might wish to follow along the same lines. Let me say that with all of the cautious optimism and the restraint with which we tend to view what we are doing and express what we are doing, we are obviously encouraged by the approach which New York State has developed in dealing with the problem. But we tend to feel that our State has finally done that which had to be done if one wished to seriously come to grips with the problem of narcotic addiction. I would think that that's not only true in New York State but true in any State which really is seriously interested in coming to grips with the problem of addiction.

MR. LUMBARD: Well, at the present time New Jersey is listed as about fifth in terms of the State's number of known narcotic addicts under the Federal Bureau registry, whatever the problems may be with the accuracy of that. So there doesn't seem to be much doubt that something has to be done. The question is, is the road that is expressed in Senate Bill 802 a useful road.

MR. PIERCE: Well, I'm going to rely on Mr. Irving Lang, our chief counsel, to speak to the various aspects of 802 and the spirit of 802, if you will.

MR. LUMBARD: You mean as to the technical and legal points?

MR. PIERCE: Yes.

MR. LUMBARD: Well, first of all I am interested in policy judgment.

MR. PIERCE: If your question is whether or not we strongly subscribe to and support the concept of a compulsory approach to narcotic addiction wherever it is found, the answer is yes.

MR. LUMBARD: Now do you feel, or do you see or know of a relationship between the States, especially those which are contiguous, in terms of addicts traveling back and forth and the problem of one is to a certain degree the problem of the other inevitably?

MR. PIERCE: Yes, we believe that to be true.

MR. LUMBARD: Now do you in New York, therefore, see that the New York problem of addiction is to a certain degree related to the New Jersey problem of addiction?

MR. PIERCE: I would think that the problem of narcotic addiction which we experience in New York is related to the problem as it is experienced by most adjoining States, including New Jersey. In other words, we know that there are people in New Jersey who come to New York State and make purchases of drugs and return to New Jersey. They come into New York State and return to New Jersey.

MR. LUMBARD: Because it's a haven?

MR. PIERCE: Because there is much trafficking in drugs in New York State, particularly in New York City.

MR. LUMBARD: Because New Jersey doesn't have a control program with a bite in it such as in New York. In

other words, they can buy it in New York but live with impunity in New Jersey.

MR. PIERCE: I would think that that's the practical effect of one State with a compulsory law which might be described by the addicts as a tough State or tough approach, existing side by side with a State which does not have the same statutory provisions.

MR. LUMBARD: Have you seen this traffic or heard reports that it was growing between New York and New Jersey?

MR. PIERCE: I hear some reports that it is.

MR. LUMBARD: Of the nature I described.

MR. PIERCE: That is correct.

MR. LUMBARD: Well, if so, that might be a very important factor for the New Jersey Legislature to consider, because the end result of that might be that more addicts would tend to come and live within New Jersey, to New Jersey's detriment, because of the strong New York law and the weakness of any law in New Jersey?

MR. PIERCE: It's quite possible.

MR. LUMBARD: Now there is a new Federal Program. Is that not correct, in terms of addiction and rehabilitation?

MR. PIERCE: Yes.

MR. LUMBARD: Can you describe that briefly to us?

MR. PIERCE: It's the Narcotic Addicts' Rehabilitation Act of 1966 adopted two years ago by the Federal Government, and provision is made in there much along the lines of the compulsory approach of New York State. There are some considerable differences in terms of techniques, but basically

it is an approach which allows addicts to volunteer in the programs if they choose to, as can be done in New York State. It allows relatives and friends of addicts to petition them into Federal treatment programs, which again is the statutory practice in our State. It provides for financial assistance to be rendered to States in terms of prevention, research and treatment, and it authorizes the Attorney General's Office to enter into arrangements with various States to develop various aspects of preventive research and treatment programs.

MR. LUMBARD: Do you look toward the day when there might be interstate compacts between the States working at the problem of narcotics addiction?

MR. PIERCE: Yes. In fact, I would hope that within just a matter of weeks or months, the States of the northeastern region - if we might describe ourselves as being in that grouping - I would hope that they would come together as co-participants or co-sponsors of a meeting which is designed to get routes of communication between these various States for the very reasons which have been touched on here today, because the flow between States of narcotics and of addicts is likely to occur, because there are common problems in terms of interstate compact arrangements, extraditions, where, if you will, just establishing the kind of common climate that doesn't allow an addict to move from one State to the next simply because he feels that that State has an easier law.

MR. LUMBARD: There has been testimony before another legislative committee last spring also interested in this same

area that the New York program is just another name for a jail, a phrase I'm sure you have heard before.

MR. PIERCE: Yes, indeed.

MR. LUMBARD: Could you address yourself to that?

MR. PIERCE: It's a common statement. It's particularly common among addicts during the first 10 to 12 weeks that they are in the program, and it is particularly common to addicts who are in the program because someone else petitioned them into it. In fact, if you permit me to speak to the question, we receive basically three or four different kinds of persons through this law of ours. The addict may volunteer in the program. The volunteer, contrary to what some might think, is the most difficult person to handle in the program. Perhaps this is because one out of every two of the people in our program have been in a treatment program before, whether it was Lexington, Ky., or Fort Worth, or Corona, or one of the programs in our own State. But in the past, a person who volunteered into a program could volunteer out of the program. This is no longer true. You may volunteer in but you may not volunteer out.

Another thing is that the volunteer tends to be a person who wishes very much to be his own diagnostician and he feels that when he feels he's ready, that's the time he should be allowed to leave, regardless of what other staff professional, non-professional, semi-professional personnel may think about his situation.

The person who is arrested on a criminal charge who claims to being an addict, admits to being an addict and elects to come



to us instead of being prosecuted and possibly being sent to prison, is perhaps the best type of resident in our program.

MR. LUMBARD: Is that the second category?

MR. PIERCE: That's right. A third category would be those who are the subject of a petition by a relative or friend. This type of person, as I have indicated, tends to be extremely hostile during the first few weeks, the first few months, three to four months of the involvement in the program, and then the experience so far indicates in most instances a change of attitude as you continue to work with the individual. He begins to feel that - well, it was done for his good; well, his mother or his aunt or his wife had no other choice. He begins to put that legal action in a better light.

When we see this change, we believe that we are beginning to see the addict coming along in terms of development.

Then, of course, we get people who are convicted of a crime first and subsequently found by the court, or concurrently found by the court to be addicts. Under the law, if they are misdemeanants or if they are convicted of the offense of prostitution, the court has no choice but to send those persons to us. In the case of a felony, the court has a choice of either sending the person to us as a certified addict, or sending that person to State's Prison, and he may not be placed on probation if it's a felony conviction. He may not be given a suspended sentence. Those cases generally do not provide any particular problem beyond the normal problems of dealing with

a person who has the affliction of addiction.

These are generalizations but I think they are worth making.

MR. LUMBARD: How many of your people are in the category of having been put in by reason of family petition?

MR. PIERCE: Twenty-two per cent of the first 3500 cases came to us as civil commitments on the petition of somebody other than the addict himself. Usually that means a relative or friend. Eighteen per cent were self-petitioners.

MR. LUMBARD: Now many persons in New Jersey in talking about narcotics express a general sense of hopelessness and they talk about the experience and reports from Lexington, Kentucky, and oh, what's the use; it's all a waste of money, etc. Could you address yourself to that viewpoint?

MR. PIERCE: I'm afraid once again that that view represents a dissatisfaction with something we think we've done but never really ever did. Now, in the first place, we tend to think that the Lexington and Fort Worth programs have been criticised unjustly over the years. We think the programs at Lexington and Fort Worth were good programs. It's just that once the person left those federal hospitals and came back to the community, there was little or nothing happening in the community to sustain and support that person in order to help him remain drug free or to pick him up if he did begin to resume the use of drugs.

MR. LUMBARD: And they were programs in which he could voluntarily get himself out when and if he wished.

MR. PIERCE: That is true. That's where the 63,000 who

entered voluntarily over 30 years, of which 71 per cent left within the first month. The big gap was the failure to program in the community. If one simply built a rehabilitation center for the treatment of narcotic addiction, you've only done half the job. Maybe not even half the job, because the community-based center has to deal with the test the individual faces right there in the community, right on the firing line, where he can make a connection. Now the key, if I may - the key to the community-based approach as we see it is, first there are going to be some who will not return to drug use. Then there are going to be others, perhaps many others, who will resume drug use. The point is to be in a position through the development of your after-care program to detect the resumption of drug use quickly enough and to be able to intervene quickly enough to do whatever is indicated to prevent drug resumption from becoming re-addiction. And I would emphasize that there is a difference between the two.

This is precisely what we are about. For example, of the first 1279 cases which have been returned to the community by us since the first of this year, 22 per cent have resumed drug use, have been found to have resumed drug use and have been returned to what we call an intramural setting, meaning to a rehabilitation center.

If you wish to know what the level of control is - and that should be the measure - you add the number of people who are doing satisfactorily in the community - for us that, at this

point, is 54 per cent -- you add to that the 22 per cent who were returned, and you have 76 per cent level of control.

Now there are three goals, as we see it in dealing with narcotic addiction. The first goal is cure, and we believe that to be achievable. The second goal is control, and we believe that to be even more immediately achievable. The third goal is to represent society's response to doing something for people in our midst who find themselves afflicted. And a humane and civilized people do something to assist afflicted people.

MR. LUMBARD: I gather from what you say that you believe in a program of forced treatment for narcotic addicts and that it can work.

MR. PIERCE: That is correct.

MR. LUMBARD: The Methadone out-patient program. Will you describe that?

MR. PIERCE: Yes. It's a program which has been underway for the past four or four and a half years. It was developed by Dr. Vincent Dole and his wife Dr. Mareen Nyswander. It's not that Methadone was not used previously; it has been used previously both licitly and illicitly. The point is that Dole and Nyswander developed an approach by which they increased rather tremendously the dosage of Methadone which was given to addicts and increased it to the point where they flooded the central nervous system, the effect then being that if a person were to take a shot of heroin he would receive no effect; there would be no euphoria. There are presently somewhere in the vicinity of seven or eight hundred persons in

this program. The entire program is funded by the State Narcotic Commission. We see it as an experimental program and we see it as one which is not going to effectively serve all addicts but it offers encouraging hope that it may be an effective way of assisting at least some addicts.

MR. LUMBARD: Is it for a selective type of addict?

MR. PIERCE: Yes, sir.

MR. LUMBARD: What is that type?

MR. PIERCE: In the first place, they don't take the very young addict. They also want an addict who has been an addict for at least a period of five years. There are other criteria. The tendency is to take an older addict and a person who has been involved with addiction for a longer period of time. The most difficult addict to work with is your very young addict, the one who has just been involved for a few months or for a year or two, who still has the high jinks. He is extremely difficult among the addict population to work with. They do not work with this group of addicts at this time.

MR. LUMBARD: Mr. Pierce, you indicated that Mr. Lang, who is your general counsel, has some points to make with respect to the general legal condition of the bill.

Mr. Lang, the Committee is in receipt of some communications from several New Jersey departments to the effect that the New York Act is unconstitutional. Could you address yourself to that, please? And, therefore, this part of Senate 802 would be unconstitutional.

I R V I N G   L A N G:    I will address myself first to the general problem of the constitutional feasibility of the compulsory civil commitment law. With one of the people who helped to draft New York's legislation, we, of course, studied all the available legal precedents in this area. Significantly enough, most of our States have compulsory commitment laws for narcotic addicts. Indeed, as you pointed out before, the Federal Government, in the form of the Rehabilitation Act of 1966, has compulsory treatment programs - compulsory civil commitment programs for narcotic addicts.

The Supreme Court of the United States has spoken quite clearly on this problem and in what appears to me unambiguous language. They discuss the problem of compulsory civil commitment in a case called Robinson vs. California, 370 U.S. 660, a case decided in 1962, in which the court held unconstitutional a California statute making it a criminal offense to be addicted to the use of narcotics. But after pointing out that that statute was unconstitutional as cruel and inhuman punishment, the court went out of its way to point out that the State did have the power to regulate narcotic traffic. It pointed out, and now I quote from the majority opinion by Mr. Justice Stewart: "Such regulation, it can be assumed, to take a variety of forms. The State might impose criminal sanctions, for example, against the unauthorized manufacture, prescription, sale, purchase, or possession of narcotics within its borders. In the interest

of discouraging the violation of such laws, or in the interest of the general health or welfare of its inhabitants, a State might establish a program of compulsory commitment for those addicted to narcotics. Such a program of treatment might require three years of involuntary confinement and penal sanction might be imposed for failure to comply with established compulsory commitment procedures."

In fact, a point Mr. Justice Douglas, in a concurring opinion, stated, and I quote: "The addict is a sick person. He may, of course, be confined for treatment for the protection of society." And he pointed out with approval that California has expressly provided for civil proceedings for the commitment of habitual addicts. And again I quote Mr. Justice Douglas: "A prosecution for addiction, with its resulting stigma and irreparable damage to the accused, cannot be justified as a means of protecting society where a civil commitment would do as well."

MR. LUMBARD: Is one fundamental basis of the New York Law the protection of society in addition to the protection of the addict?

MR. LANG: That's right.

MR. LUMBARD: In terms of the number of crimes that might be reduced by a reduction in the addict population?

MR. LANG: They are concomitant goals. That is, the protection of society and the rehabilitation of addicts are parallel goals and obviously not goals in opposition to each other. Because as the addict becomes rehabilitated and

does not have the need to commit crimes to support his habit, or as he becomes totally rehabilitated and does not feel the compulsion to act in anti-social fashion - in that measure society becomes protected and he becomes a useful member of the community. In addition to the protection of society in terms of view of the amount of crime that is committed by addicts, we also have the protection of society in, I think, a much broader and philosophical scope in that narcotic addiction hits at the very fabric of society, hits at the fabric of the home, the community, the desire to reach for one's highest aspirations rather than one's lowest goal. In addition it has the goal of prevent what is in effect the addict's playing Russian Roulette with his life. You may have read recently that the Medical Examiner's Office in New York indicated that between the ages of 15 and 35, heroin addiction is the Number One cause of death in New York City. So that for every fifty addicts in New York, one is going to die every year as a result of heroin addiction.

MR. LUMBARD: Because of an overdose or just general deterioration over a long period?

MR. LANG: Overdose and deterioration connected with narcotic addiction. These figures are from the Medical Examiner's Office in New York, and as you know, Dr. Milton Halpern and his Chief Assistant Dr. Baden in this area have been doing studies of narcotic-related deaths for a number of years. Last year there were over 600 and this year it may be even larger.



MR. LUMBARD: And you relate that to the constitutionality of such proposal; that is, the interest of society -

MR. LANGE: The interest, in the words of the Supreme Court of the United States, of the general health or welfare of its inhabitants.

Now the New York Court of Appeals has recently ruled on the New York statute, in a case in the Matter of James. Now the Court of Appeals clearly held that compulsory civil commitment substantively was a legitimate exercise of the police power of the State. However, they did hold that certain of the procedures utilized as opposed to the substance were unconstitutional. In point of fact, we had amended the procedures and in effect anticipated possible problems in this area prior to the Court of Appeals decision and, indeed, the Court of Appeals commented favorably on the amendment.

If you wish, Mr. Lumbard, I will submit as exhibits to you the opinion of the Court of Appeals, which is not yet published. It is the unrevised, uncorrected opinion, and also the latest amendment to Article IX of our Mental Hygiene Law which includes the procedural changes which apparently were mandated by the Court of Appeals' decision in James. I will leave that with the stenographer. [See Appendix.]

But certainly from the words of the Supreme Court of the United States, the Supreme Court of the State of California, and the Court of Appeals of the State of New York, which is our highest court, there seems to be absolutely no question from at least a legal point of view and a constitutional point of view of the constitutional feasibility of compulsory civil commitment.

There is also an opinion of the Attorney General of the United States which was published in hearings held by Senator McClellan, dated December 4, 1964, in which the then Acting Attorney General Nicholas Katzenbach also indicated the opinion of the Attorney General - as Deputy Attorney General he indicated the opinion of the Attorney General, who was then Robert Kennedy, that compulsory civil commitment was a constitutional means of handling the addict.

MR. LUMBARD: This letter from this department also contains this sentence, talking about this section of the bill which is adopted from the New York bill: "We seem to hit a new low in procedural due process when a person can be committed for an indeterminate sentence of up to three years solely on 'reasonable grounds to believe' that he is an addict - no other standard is provided in the bill." Could you address yourself to that?

MR. LANG: I don't think that that is an accurate representation of either the New York or the New Jersey bill. The statement "reasonable grounds to believe" that a person is an addict is the triggering device to establish the validity of a petition so that if a parent wants to come into court and make a petition for the commitment of the addict, the addict son, she, the parent, must establish reasonable grounds before the court may then intervene to the point of directing medical examination or a hearing. This standard is a constitutionally-based standard much similar to the standards of the Fourth Amendment with respect to the issuance of search warrants. That is not the standard of proof required at a hearing or trial to

determine whether or not the person is an addict. It is merely the initiating standard and it's the standard used in arrest and in other law enforcement and rehabilitative functions.

MR. LUMBARD: This departmental letter also continues - raising constitutional questions about the proposed bill, 802:

"Whether an indeterminate sentence at the discretion of the Commissioner is not a violation of the constitutional separation of powers." Will you comment on that?

MR. LANG: I frankly don't quite understand it.

MR. LUMBARD: Well, neither do I, but -

MR. LANG: If you are referring to the statute which provides that the sentence of a convicted addict be for an indeterminate period of up to 36 months or 60 months and the person will be discharged only as rehabilitated on a sooner date, this to me seems to be a liberalization of laws because virtually every State in the Union has indeterminate sentences. Now to give the Commission or the Justice Department or the administering agency the power to discharge earlier than the maximum of expiration, on the grounds that a person is rehabilitated, seems to me to vest the executive with additional discretion, and I think it's a salutary thing.

MR. LUMBARD: And no different in effect from parole powers with respect to indeterminate sentences in the criminal provision.

MR. LANG: I think the entire trend in the administration of criminal justice in this country is for indeterminate

terms to leave to the discretion of the parole or probation or supervising authority the ability to, within the maximum limits, exercise reasonable discretion.

SENATOR KELLY: Commissioner, you mentioned before about the narcotic addicts going from New Jersey to New York to purchase. I am concerned with that, of course, and I am also concerned about the traffic from New York to New Jersey. Has there been information or any indication that the Syndicate is operating in New Jersey in the narcotic traffic area?

MR. PIERCE: I am not prepared to speak to that question. It is really in the area of law enforcement, Senator. While we do have responsibility in the State Narcotic Commission for programs of prevention, research and treatment, the one area that we do not have and should not have in our province is that of law enforcement. That has been delegated in our State to the State Police and to the local authorities.

SENATOR KELLY: In dealing with people who have been victimized in many case, I can't help but be concerned that people are going to New York to get a "fix" which is one thing and it's certainly a very serious matter. But I certainly am concerned about the people who are leaving New York and coming over to our fine State who are addicts.

MR. PIERCE: Well, I wouldn't want to leave the impression that this is something just between New York and New Jersey. We have addicts in our State from the State of California, and California has addicts in their State from the State of New York. Obviously in a country such as ours with the freedom of movement between any one of 50 States, we

are going to get this kind of movement, and it's to be expected that you will have people crossing State lines for a variety of reasons, some of which will be related to narcotics and drug abuse.

SENATOR KELLY: Well, my interest in asking you was because of the close proximity to the New York area, and in South Jersey we are close to Philadelphia, and I'm sure they are related.

MR. PIERCE: Well, of course proximity is a factor in the picture. I hope I didn't leave the impression that your New Jersey addicts are coming into our fine State of New York and doing business in purchasing. What I mean to say rather clearly is that there is a flow between States where these kinds of problems occur. New York State has half the known addicts in the country. Obviously there is going to be a lot of traffic in narcotics in the State. This leads to all kinds of consequences and included among those consequences is that we are going to have people coming in from other States and people from our State going into other States.

SENATOR ITALIANO: One of the functions of this Committee, or the function of this Committee is to determine the effectiveness as to whether our proposals here are effective in combating crime, and necessarily one of the elements in the crime situation is the narcotics problem. Now, generally speaking, there are two aspects to the combating of crime and that is the prevention of it and subsequently the apprehension and rehabilitation of addicts. We have to present ourselves to these two aspects of the fight on crime.

Now what I'm concerned about is the rehabilitation of the narcotic addict and his return to society, and its subsequent effect in the prevention of future narcotic addicts. Does Senate 302 give New Jersey a legitimate approach to the solution of these problems?

MR. PIERCE: To the extent that I understand it, yes. Let me be more specific. I have indicated that so far, since the first of this year until August 31st of this year, under our State's new program, we have returned to communities and placed on after-care status 1279 persons. Seventeen of those persons to our knowledge have been re-arrested for the commission of new and additional crimes. Now we expect to do a great deal more in terms of studying this situation, in which we will undertake to relate the criminal records to arrest, and all that sort of thing, but I can tell you that from my own reading of cases prior to people being placed on community-based status, the records of those who are involved in addiction are extremely long, sometimes running two and three and four and five fingerprint sheets long. And so again, if the experience in New York State, with a compulsory law, is similar to the experience in the State of California, we can expect that arrests for new and additional crimes by rehabilitants, that is, former addicts - we call them rehabilitants upon their return - sent back into the community, arrests in that category are likely to be under four per cent for misdemeanors and under three per cent for felonies.

I say again that we are encouraged so far by what we have found in our State in terms of arrests.

Now what may New Jersey anticipate in this respect? I can only tell you that if you should adopt a law similar to what the State of California has, similar to what we have - ours being a broader law than theirs - you will find in this field a great deal of sameness. There is much that has come; for example, you will find that wherever you go pretty much the number of women who are involved in addiction as against the number of men is going to fall somewhere between 10 and 20 per cent wherever you go.

You will find that the age groupings are pretty much commonly at the 23-24 year-old mean level. You will find that about three-quarters of those who are in your program as addicts, addict rehabilitants, have dropped out of high school.

There are a number of definitive characteristics about this population. I might tell you that before the end of this month, we will publish our first annual statistical report. We will be happy to share that with you because there may be data in there which you will wish to examine and which will be of help to you.

MR. LUMBARD: Would you send one to Senator Woodcock?

MR. PIERCE: Yes.

SENATOR WOODCOCK: Commissioner, I was wondering whether it would be possible for the members of this Committee to visit any of your facilities in New York State so that we might get a better idea of what this program really is and how it operates.

MR. PIERCE: Yes, Senator, we would be pleased to have you visit with us and to provide any help and assistance we

can.

SENATOR WOODCOCK: One other question, Commissioner.

You expressed the idea that this was a rather fluid situation, that addicts move about, and the problem has a tendency to move from New York to New Jersey and back and forth and to California. Do you see any real hope in coming to grips with the narcotic problem unless States like New Jersey and New York that are in this northeastern province get this kind of law on their books?

MR. PIERCE: I think that's a very substantial question, if I may say so. In the first place, I don't want to leave the impression that there is a lot of fluidity in movement. I think generally the addict tends to stay put. Generally he does not move about. What we are speaking to when we speak to those who may go to California or come to this State or go to Connecticut or come to our State is really relatively modest numbers as compared with the whole. The addict tends to stay close to his connection.

Now going beyond that, there are other characteristics about addicts that I think we can generalize about. He tends to look for the weak point in the dike and once he sees a pin-hole, he will plough through it until it becomes a big whole.

If you do adopt a compulsory program, it should be with the realization that the addict will squirm and twist and, if need be, he will burn the whole place down in order to get out of it, because he really so often has no wish to free himself of his addiction. He prefers to be an addict, for reasons which are peculiar within his own emotional personality makeup.



I say this not in criticism but as an observation.

The point of the thing is that he ambivalates. On Monday he wants to free himself of his addiction. By Wednesday he has changed his mind. We see this in the voluntary aspects of civil proceedings where an addict will sign a petition asking the court to determine that he is an addict and send him to us. That takes place on a Monday. The court must verify his claim of addiction and so he is sent for a medical examination. By Wednesday, when he comes back to court with the medical examination report, he has changed his mind, and he says I'm not an addict. If you just wait until the following Monday, he will have changed his mind again. You have to be prepared to accept this. This is the reality of his situation. You have to be prepared to accept the fact that he will find the hole in the dike and squirm through it, and unless the States in this region have laws which are common and which really shore up that dike, we do have an eye on the possibility that he will find a way of escape - "escape" meaning escaping from himself, and from what he must do about his plight. He will escape that by running, and he will run to wherever he can get away from whatever it is that is putting the pressure on him.

MR. LUMBARD: Several of the police departments, including the Newark Police Department, Commissioner, have informed me that they are seeing a pattern whereby addicts live in New Jersey, go to New York in a quick trip by way of the tunnel or the bridge to make a purchase, but most of their time is spent in the communities of New Jersey because

of the haven aspect of the law. This is very distressing because it means that - let's say the criminal activities, burglaries, larcenies and whatever, their thefts to sustain their habits, are in effect committed in New Jersey, although the narcotic purchase may occur in New York.

SENATOR WOODCOCK: Is there anything else, gentlemen?

Well, let me say, Commissioner and Mr. Lang, I want to thank you very much for coming down from New York and giving us the benefit of your testimony. I am certain that not only the Committee but the entire Legislature will benefit by your testimony.

MR. PIERCE: Thank you for inviting us.

MR. LUMBARD: Commissioner Luger.

M I L T O N L U G E R, called as a witness, being duly sworn, testified as follows:

MR. LUMBARD: Will you identify yourself for the record, please, Mr. Luger, and then tell us something about your background.

MR. LUGER: Yes. My name is Milton Luger. I am the Director of the New York State Division for Youth. My background originally was in education. My undergraduate and graduate degrees were in that area. I taught in college and the public school systems in New York. I was later the Director of Rehabilitation for New York City Department of Correction, the Director of the Correction Academy, Deputy Director for Larry Pierce in the State of New York Division for Youth, and for the last two years or so I have been the Director of the Division for Youth. I have served as a Consultant to the

President's Commission on Law Enforcement and the Office of Juvenile Delinquency.

MR. LUMBARD: That's in Health, Education and Welfare?

MR. LUGER: Yes.

MR. LUMBARD: Now, Commissioner, the Legislature has been considering Senate Bill 302, a copy of which was forwarded to you a while back. Within that bill, there is a provision for a Division for Youth, which was in its drafting patterned substantially after the bill under which you operate and the Department which you head. Could you please tell the Committee what your experience has been under that law in New York, what programs you have, what your observations are about their effectiveness, what directions you might see, whether the bill should be amended in one or another particular in your opinion?

MR. LUGER: Mr. Lumbard, let me make it clear at the outset that I would not want anyone to consider me an expert from New York State coming to tell New Jersey what to do about its youth problems. I think that you have in your midst and in your State people who have been pioneers in this field, in the field of youth correction - Al Elias, Dr. McCorkle - many of these people are of legend in the field literally. They are of keen mind and they certainly should be brought into these considerations as well.

What I would like to do, as you suggested, is to tell something about our own problems, our own progress, and if they will be of any benefit to you, fine.

May I also say this, that I have not prepared, or I should say that I have written a statement principally about the facility program, the center program, of the Division for Youth. I would like to leave this with you for the record rather than take the time to read the entire thing, and make my presentation much more informal and just answer any questions that you might ask.

MR. LUMBARD: Will you give that to the stenographer, and it will be made part of the record. [See Appendix]

MR. LUGER: In order to understand, Mr. Lumbard, the work of the Division for Youth and what its role is, you have to really understand the broad bases of many of our mandates and many of our responsibilities that have been given to us.

The Division of Youth itself is an outgrowth of an agency called the State Youth Commission which was begun in 1945 in New York State. This State Youth Commission, and it was redesignated as the Division for Youth in 1960, had always been given the responsibility of providing seed money to many localities throughout the State in order to encourage and enforce the youth programs to be initiated on the local level where the main responsibility for youth programming lay. Through the years, this program has grown to some seven and a half million dollars which was given by the State to the localities to match what the locality will offer on its own.

Indeed, the program has been so successful, I might say, that now localities throughout New York State put up

five dollars for every dollar of seed money that the State gives them. And through this approach, many, many diverse youth programs locally based have been launched. Specialized police services to do with youth - JAB's, as we call them in New York State, counseling programs, mental health programs, even probation services, have been started through the years in some counties which did not previously have such services - recreation programs, remedial reading programs during the summer - anything that a locality deemed important for its youth the State could contribute, based upon a certain formula arrived at by the State Legislature, which was in turn based upon the youth population in that area, certain State moneys to be made available to the locality. Generally it comes to about seventy-five cents per youth in each area of a town.

Today more than fourteen hundred projects have been begun throughout the State in close to 1300 - I think it's 1294 - municipalities. So it is widespread and, in many ways, the Division for Youth has gotten the reputation of being a helping agency to a locality, to a city of New York, to Syracuse, Watertown, Painted Post, Elmira; wherever you are, usually the Division for Youth is there to help you with your youth problems.

Now I stress this, Mr. Lumbard, mostly because it ties very, very much in with our later mandate which was given to us, and that was to start center programs for pre-delinquent and delinquent adolescents. There is a direct correlation.

MR. LUMBARD: When you say "center programs," you mean physical facilities?

MR. LUGER: Right, facility programs. We don't like to call them institutions because we would like to avoid the institutional character and stigma of an institution. I think in most ways, we have in program and spirit and philosophy and in operation avoided that.

The lamentable fact is that it has been said many times, Mr. Lumbard and members of the Committee, that everybody wants to do something about juvenile delinquency and youth crime, but do it in somebody else's backyard, not in mine. In other words, it's great to run and to organize rehabilitation programs for troubled youth, but don't bring them near my house.

Because the Division for Youth has had this kind of healthy relationship through its State aid to so many localities, when we were given the responsibility to organize youth centers, residential programs for adolescents, we were able to turn to these very communities that we had helped and say, "Well, now we want to really get in and start creating these resources," and we knew the power structure; we knew who was important; we knew the influential people because we have been dealing with them over many years in the local assistance program, and in this way we had entree to many localities who would have been very, very much resistive about bringing in our center programs.

MR. LUMBARD: You mean the standard resistance to putting any kind of physical facility in a community?

MR. LUGER: Right. None of the centers which we

have organized are security facilities because our philosophy is such that we feel that the adolescents who are sent to us - and there is an important distinction to be made here. They are referred to us. They are not committed to us. They come to us as a condition of their probation, the 15, 16 and 17 year-old adolescents. And, by the way, the President's Commission Report and many of the studies show that precisely this age - 15, 16 and 17 - is probably the highest as far as the arrest rates are concerned. They more than double their proportionate numbers in the usual population as far as arrest rates are concerned. It's an age group that is for the most part because of their difficulties in academic circles dropping out of school or close to it, and yet, because of our child labor laws and so on, they are a little bit too young to hold full-time employment. So they are somewhere in limbo between the two areas of school and very often of work, and they are at a very difficult age to treat.

We got this responsibility of 15 through 17 year age group and we have found that, for the most part, when we were given the responsibility there was little diversification in the State as far as youth treatment programs were concerned. Most of the facilities available for the courts and the social agencies were based upon mass congregate kinds of approaches - large training schools, large penitentiaries and reformatories.

Let me be the first to say, Mr. Lumbard, that prison and walls and mass congregate facilities are absolutely necessary. You would be naive if you didn't think so. But the tragedy really has been that everybody who got into

trouble was forced into this one treatment mold - or I should say control mold. Many of the youth who were sent to these mass congregate places did not need this kind of an approach, and I think they became worse for the experience they had there.

What we had hoped to do in our facility program was to diversify what the State had to offer. This diversification under our responsibility and operation has taken the form of forestry camps; it's taken the form of urban homes located right in the midst and in the heart stream of communities; it's taken the form of what we call START programs which we have admittedly acknowledged have been patterned very much after your own Highfields Program in New Jersey, which is an excellent program; it's taken the form of what we call STAY programs, which are non-residential but still have a heavy concentration of counselling and remedial work tied in with the youngster's work experience with us, but he returns to his own home each day.

Each of these programs is outlined in more detail in the paper which I have given you, but I would try to put forth the point that, as Mr. Pierce said just previous to my testimony, diversification was the goal, to understand that not all youngsters were the same; some needed warm support, some needed heavy confrontation; some needed what people would call "a boot," and some needed a pat on the back. I think through all of the diversified approaches we have had, we have been able to try to fit them into different treatment tracks.



MR. LUMBARD: Do you think it's been an advantage to try to have that program under a Commissioner and in an entity which is separate from the traditional penal system; that is to say, under a separate administrative head.

MR. LUGER: We are, of course - the Division for Youth is part of the Executive Department in New York State, which is a larger agency. I think there has been a certain amount of flexibility which has been afforded the Director of the Division for Youth, my predecessors as well as myself, to be somewhat independent, quite frankly. We have made our policy, the agency has always been run on a non-partisan, apolitical approach; we have enjoyed this kind of reputation, I believe, and this kind of an approach.

MR. LUMBARD: Because this bill 802 does have a Division for Youth, as you perhaps noticed in one article, and a Division of Rehabilitation in another article, all, however, under the same general structure, administratively, the same commission and of the same policy-planning research entity, so that there is no question that the population under the Division for Youth is not intermingled with the population of the Division for Rehabilitation.

MR. LUGER: Yes, I think it's important to try to separate out different youths as you diagnose them, to make sure that the hardened kind of adolescents are not mixed in with the more passive kind, as much as you are able to.

Let me just say this one other thing quite personally: I don't feel that the boxes and the dotted lines and the tables of organization that are drawn up by public administrators and

by professors, and so on, are as important as the people you get to run your program. I think that people of good will, people who have courage, and people who gain the support of their superiors can operate in most any kind of a structure.

Let me just say this one other thing, Mr. Lumbard:

I don't want to lecture or admonish or anything else. I can just speak out of the frustration of years of work in the rehabilitation field, to know that for a program person who is on the line dealing with the rejects and with the unwanted, the unloved and the unwashed of our society, the most important thing is not so much where he fits into a structure as to what kind of political support he will get from above. If he gets the right and proper support, he is going to be out there being innovative, he is going to do the right thing for kids, he's not going to be trying to run a nice, safe type of operation that embarrasses nobody, because once you start to run a program to control solely, you get no rehabilitation. All you get is control and more control, and no change of attitude.

You can make adolescents knuckle under very easily. You can make them say yes, sir, and put their eyes down low when they talk to you, and put their hands behind their back as they address you, and some people think this is treatment. It's nonsense. You're just hardening them and they are manipulating you, and as soon as they get outside they are going to get even some way or the other. But if you get a program person who feels I can make a mistake and still get backing from above, if you have it direct and ask him to start

a community residence against the opposition in that community, and you know that the political leader in that community is going to back this movement and not say, "Look, my constituents don't want it; don't put it there," then you might get some real innovation and some real movement in the field of what adolescents require.

MR. LUMBARD: Could you briefly tell us a little bit about the program that you have run in (1) the forest camps and (2) in the community centers in the cities?

MR. LUGER: Yes,

MR. LUMBARD: And what happened in each.

MR. LUGER: Yes. In the forestry camps, we have tried to capture a spirit of what we call a good coach approach. Here we send, of the 15, 16 and 17 year-old adolescents referred to us, the most immature group, the kind of youngsters who would respond to rubbing elbows with real manly figures, with rolled-up sleeves and plaid shirts, knocking down trees and having competition fighting forest fires, building truck trails, doing all kinds of what we hope they will concede to be adventure-some, hardy kind of manly work.

Paul Goodman in many of his books talks about the fact that the youth programs fail because much of the training we try to give adolescents is not manly in their eyes. Well, our approach is to really make them feel like young, needed, important young men.

In this forestry camp setting itself, we have licensed academic teachers, we have a fully-equipped vocational wood-

working shop, we have part-time academic teachers, and we have guidance counsellors who at least - in some camps it is even more - but at least three evenings a week will meet with the youngsters in group counselling at which time they will talk over the kind of problems they have, the kind of difficulty they are having in the here and now, the kind of change in the attitude that they must evidence in order to really make it on the outside. You see, most adolescents will tell you that the only problem that they have is that you are holding them. That's the only problem. They don't understand that the trouble is within them, the trouble of not getting caught. They think trouble is only getting caught.

Now if you can make them see that they have to change by assuming responsibility. In a forestry camp these immature adolescents hopefully become more mature. There are no guards, no bars. It is easy to run away, but it is their responsibility to stay.

MR. LUMBARD: How many live in each one of these?

MR. LUGER: Sixty in each forestry camp. We have five in operation.

MR. LUMBARD: What kind of person goes in and how does he go in legally?

MR. LUGER: These youngsters come to us through the courts as a condition of their probation. They can come from a family court or they can come from the

criminal courts. They also can come to us voluntarily. Some twenty-five of the youngsters who do come to our agency come with parental consent through a duly-authorized agency.

These duly-authorized agencies are those which are certified by the Department of Social Services in New York State as fully qualified to deal with youth in residence care or for welfare services, or for any child-care needs that they require.

Since there is no guard, no bars, no wires, and youngsters can run away at any time, this does take place, and it's tied in, as I said before, with our program philosophy of placing responsibility with the adolescent rather than playing cops and robbers with them to try to hold them in our midst.

The youth in the homes, Mr. Lumbard, are generally those who have some community ties, some stability, some skill, which will let them succeed in the community if we place them in a home. They don't need, as the camp youths do, a moratorium from city pressures.

They can handle, with supervision and

with the home we provide for them, the kind of pressures that they will face in the cities.

MR. LUMBARD: You keep them right in their own community, in the city -

MR. LUGER: Right. For the most part, they are located right in their own community, they go to local schools, they hold local jobs, they receive tutorial services from us, they receive counselling services from us, and where they are working in jobs or remaining in school they are doing well.

MR. LUMBARD: Now you have one of these facilities on West Twenty-first Street -

MR. LUGER: Twenty-second Street.

MR. LUMBARD: Twenty-second Street. That is actually only a couple of blocks away from Bayview Reception Center that Mr. Pierce has. If the Committee should visit Mr. Pierce's facility, would you have any objection to their going by your community house for these youths on the same day?

MR. LUGER: Not at all, except that I would warn you that we are rehabilitating the first two floors and the place is a mess. We have five other units in New York City that we will be glad to transport you to in the Bronx, the girls' facility in Staten Island, another in Brooklyn, and so on, and you are welcome to go through the 22nd Street one as well, except that it will be a rugged place physically because of the rehabilitation taking place.

MR. LUMBARD: I'm sorry, but did you mention a rule of thumb as to how many you wish to keep or try to keep in each of these particular kinds of facilities, the home facilities?

MR. LUGER: Yes. They vary, Mr. Lombard. The largest facility will hold 25 youths. Our smallest facility will hold seven. We have actually rented apartments in high rise apartments and put in our house parents with 7 youths, and they function as a family.

MR. LOMBARD: Right within the community?

MR. LUGER: Right within the community, and they are doing very well.

MR. LOMBARD: And going to the same schools?

MR. LUGER: Right.

MR. LOMBARD: Do you have any figures as to the success or failure or what your results are in these programs?

MR. LUGER: Yes, we have had follow-up studies. Some of these have been completed by the New York City Police Department who have been cooperative with us. Others have been done through contacting the probation departments who originally referred the youngsters to us. Others are done by compiling statistics of our own after-care workers, and the last massive inquiry was completed for us by the NCIC program. You are well familiar with it, Mr. Lombard, since you helped launch it in New York State.

What we find is the consistent figure which varies from 65 to 69 per cent rate of success after as much as four years of program. I really don't know how this compares with other programs. I think it's wrong to say that if youngsters come to our program and let's say 65 to 69 per cent, depending upon which survey was completed, succeed, we are better or worse

than any other one, because we may not be comparing the same kind of youngsters.

MR. LUMBARD: Is that the four-year result, you say?

MR. LUGER: Yes, after four years in the community.

MR. LUMBARD: Do you have anything else you wish to tell the Committee?

MR. LUGER: No.

MR. LUMBARD: Well, I have a couple of questions, if I may.

MR. LUGER: Surely.

MR. LUMBARD: We have a letter - the Committee received a letter, or the Legislature did, from a department that expressed a doubt as to the constitutionality of the procedure by which youth are admitted to your centers. Could you address yourself to that?

MR. LUGER: I am not a lawyer, Mr. Lumbard. We have never had any difficulty in this area at all, and our own counsel and the Attorney General in New York State have certainly been conversant with our statute. Since the youngsters come to us, those through the courts, as a condition of their probation, this condition has simply been lifted in the Family Court and in the Criminal Court Act as one of the conditions that the Judge could impose upon a youngster. Those who come to us voluntarily, since we do get parental consent and their consent, or let's say their duly-appointed guardians if there are no parents involved - legally this covers this point as well, and the mere fact that a youngster can literally run away any time he wants



to, because there is no real security there, which is another, I guess, safeguard that we would have in the youngster's best interest if he felt he were being abused.

MR. LUMBARD: In any event that procedural provision has not provided or raised any difficulty with your bill over a number of years of operation?

MR. LUGER: No, sir, that's since 1960.

SENATOR WOODCOCK: Are there any questions? Senator Kelly, do you have any questions, sir?

SENATOR KELLY: No.

SENATOR WOODCOCK: Well, thank you very much, Mr. Luger for having come down here. I am sure that the Committee and the Legislature will benefit from your testimony here.

MR. LUGER: Thank you. And good luck to you, gentlemen.

SENATOR WOODCOCK: I think we will take a break now and come back in ten minutes.

MR. LUMBARD: Mr. Luger, one of the Senators has one more question. Could you return for a moment.

There is in this same letter a doubt raised as to whether the phrase "authorized agency," with respect to those who can initiate a proceeding for youth has raised any problem in terms of definition?

MR. LUGER: No, sir. This has been carefully looked at by our own Attorney General and the Department of Law and there are no problems in this regard at all.

MR. LUMBARD: Have you had the experience that such proceedings with respect to youth have been commenced by a

principal of a school?

MR. LUGER: Yes, upon occasion a principal has asked if a youngster can be referred to us voluntarily, and we have always directed the school person to a duly-authorized agency in his area if that youngster was not known to a duly-authorized agency, so they will become involved in the case. And if they see fit, then they will in turn refer the youngster to us. Frankly, we have introduced legislation which would broaden the base of referral to include the educational people as well. I see nothing wrong with this as long as we have the safeguard for the youngster that his parents must approve of it, and he must volunteer as well.

MR. LUMBARD: Mr. Luger, this departmental letter also says that it could mean the head of a local YMCA or Boys' Club, or a church group. Have you had any such instances?

MR. LUGER: Wherever we have had inquiries from anybody other than a duly-authorized agency, we have referred them to the agency in their area to get involved in the case before the referral would come to us.

MR. LUMBARD: So the statutory provision has been no problem now?

MR. LUGER: No.

SENATOR WOODCOCK: Thank you again.

[Senator Hauser joins the Committee]

R E C E S S

[After Recess]

SENATOR WOODCOCK: General Sills, before you begin, I would say that we have expanded, if you care to comment upon it, to S 803 too, which is the Prosecutors' Bill. We have included that or expanded to that if you want to make your comments with respect to that. It is 897 too, as you understand from our prior conversation, that that bill is open for discussion with respect to your testimony.

A R T H U R     J.     S I L L S,     called as a witness, being duly sworn, testified as follows.

SENATOR WOODCOCK: Attorney General Sills, before you begin, I would just like to say that at yesterday's hearing, as you no doubt know, we had before this Committee Professor Ruth from the University of Pennsylvania Law School, Professor Blakey from the Notre Dame Law School, and Mr. Salerno from New York City. During that testimony, it appeared from Mr. Ruth and Mr. Blakey who both have experience in the Justice Department, and particularly here in the State of New Jersey in the Organized Crime Section of the Justice Department, that there is a great deal of organized crime here in the State of New Jersey and they added, much to the surprise of the Committee, the fact that not only is there organized crime, and I think they ranked New Jersey within the first three states in that category, but there is - and I may be using the wrong adjective, but for lack of a better one - widespread official corruption in connection with the organized crime and in addition there was a specific reference by Mr. Salerno to the effect that a syndicate of, I suppose, criminals - and I think that the record will show

a criminal syndicate was the word he used - did in fact interfere with an election in Secaucus with respect to the referendum on the trotting track in that town.

Now, sir, if you would care to comment on that now, I will give you the opportunity to do it. If you would care to address yourself to that at some other time, I would be happy to have the Committee hear you, whichever is your best thought.

GENERAL SILLS: I believe - you have brought this up, Senator - I would like to reply to it at this very moment.

SENATOR WOODCOCK: Go right ahead.

GENERAL SILLS: First, I would like to indicate that we all appreciate that we are here on a public hearing on three bills now, originally two, but now three, and I always thought it was three because there is reference in 802 to 803 in the County Prosecutors' Section or Division of Prosecution Section. And I want to point out that whatever Mr. Ruth or Professor Blakey or Mr. Salerno had to say with reference to organized crime in New Jersey does not in and of itself have anything to do with the merits of S 802 or 803.

What it may point up is perhaps that someone, even I, may be suspect in the manner in which I have conducted my department and the manner in which the Prosecutors of this State or the Chiefs of Police or the Sheriffs or anyone involved in law enforcement may have conducted their departments.

I think that it was the height of irresponsibility for Mr. Ruth to make a comment to the effect that there was this

pervasive situation in the State of New Jersey and then to refuse to give names.

I do believe that it is incumbent upon this Committee to have Mr. Ruth appear in executive session and to get those names from him and, if this Committee does not do it or even if this Committee does do it, I am going to ask the Governor of this State to permit me to supersede one of the Prosecutors of one of the counties and invite Mr. Ruth to testify as to what he had to say.

SENATOR WOODCOCK: Well, let me say this, Attorney General Sills, with respect to Mr. Ruth, that I specifically did not want in this record references to specific names for the very reason that we might get off on a tangent and would be talking about "Who did what to whom and where?" Now I think that this is properly within your department and not the subject matter of this Committee. But I would say in defense of Mr. Ruth, Mr. Blakey and Mr. Salerno that they mentioned this in connection with the electronic eavesdropping and wire-tap bill, and indicated that with organized crime one of the difficulties is getting evidence that could be produced in court for the purpose of getting a conviction and that they did indicate, and under questioning from this Committee and not voluntarily by any means, that the reason it was needed, the reason why we need this legislation, is so that you can combat this very serious problem that we have in New Jersey.

GENERAL SILLS: That might be true with respect to wiretapping, that is, with respect to being able to smoke out

those people who might be involved in organized crime. But, Senator, I think that you yourself now point up that we are on a tangent and it behooves me to speak to that tangent and perhaps it even behooves this Committee to become involved with that tangent. And I don't think that we can have people, whether they be New Jerseyites or people from out of the state - it makes no difference - come before committees and make statements of this kind and then refuse to go any further. First of all, nobody can answer a charge like that. As it stands now, the officialdom of the State of New Jersey is indicted. I might even respectfully say that the Legislature is indicted because legislators are also public officials. No one knows who was included in the remarks made by Mr. Ruth. And certainly Mr. Ruth himself as an individual is a responsible individual. He has held a number of responsible jobs. He was in the State of New Jersey one year with the Organized Crime Section of the United States Attorney's Office. Never once in all that period of time did Mr. Ruth ever once come to my office and indicate to me what he said before this Committee.

I am not quite sure where Mr. Ruth or where Professor Blakey get their information from with respect to what they have to say. But let me say this, merely to reiterate what I said before the Joint Legislative Committee, no one in the State of New Jersey, least of all myself or Colonel Kelly, has ever said anything but that there was organized crime existent in the State of New Jersey. We mentioned at the Joint Legislative Commission hearings the seven families which we thought were operating in the State of New Jersey. That's

been said before.

Now if it needs a tool, wiretapping, in order to smoke out these people, in order to get these people, it is not necessary for a Mr. Ruth to come in and to say that there is this widespread corruption amongst public officials without giving some law enforcement agency the information about which he is talking.

SENATOR WOODCOCK: Let me say this: That, let me say, might very well be proper and I would agree with you that Professor Ruth might come back for that specific purpose. But I don't think that he should be criticized for not revealing the names yesterday because, number one, I didn't want them for the very reason that this was not the committee that was sitting here for that purpose. Number two, General Sills, the fact is that we have had this stated not only by Professor Ruth; we have had it in publications, nationally, locally, and what not, with respect to the problem of organized crime. And I will say, General Sills, that you have stated this yourself before the Committee back in January with Colonel Kelly and the rest of your department, with respect to that.

I appreciate your remarks, but I don't think that we ought to point the finger at Professor Ruth. What we ought to be pointing the finger at is the problem. I bring this up today only for this purpose, the purpose of bringing it to your attention publicly so that we can get some action on this and I think we ought to have it. Other than that, I don't think this Committee need discuss it, except if you care to.

GENERAL SILLS: May I just ask this question, Senator: You say, I bring this up to you so that we may have action on

it. May I ask: Why kind of action it is you are talking about?

SENATOR WOODCOCK: You suggested the action yourself, General Sills. You say that you will supersede some Prosecutor in a county for the purpose of conducting that investigation. I think that this is proper and I think this is something you ought to do if you think it is proper.

GENERAL SILLS: No. I was just trying to find out whether you thought there was a relevancy between that and the action that you sought, namely, the passing of S 802. That is really what I was talking about.

SENATOR WOODCOCK: Except in the context if we are going to get after organized crime, this is a proper instrument to be used. I think that that is what Professor Ruth and Professor Blakey and Mr. Salerno said yesterday, that this is the thing that we need for that purpose.

MR. LUMBARD: General, in that regard, when you were here last spring, we also, you and I, had a colloquy about electronic surveillance. As I recall the testimony, you said at that time you were still uncertain in your own mind as to whether or not there should be electronic surveillance. I think the words you used were that there should be a public dialogue.

GENERAL SILLS: That's right.

MR. LUMBARD: And we still haven't heard of the committees with which I have been associated with the Legislature whether or not you favor electronic surveillance. Now if those who are



proponents of electronic surveillance feel that the most powerful reasons electronic surveillance is needed are, one, official corruption, two, organized crime, it would seem to me that the public dialogue to a certain extent that you called for would necessarily have to involve some comments about organized crime. There really isn't any alternative because if you are not going to mention organized crime, you can't have the public dialogue.

GENERAL SILLS: Well, it all depends on the setting in which you put it, Mr. Lumbard. If I come in here and I say that the members of the Legislature are corrupt, I am sure that immediately somebody is going to ask me why and how I come about to say such a thing. And you must recall that I didn't open up this subject to the Committee. Senator Woodcock immediately asked me what I thought about it and I am indicating what I thought about it.

MR. LUMBARD: Let me get down to specifics then.

GENERAL SILLS: Sure.

MR. LUMBARD: Are you now for Senate Bill 897, which would allow electronic surveillance in the State of New Jersey? Have we had the public dialogue? Are you now convinced?

GENERAL SILLS: I am not convinced about 897, no.

MR. LUMBARD: Are you convinced about the subject matter?

GENERAL SILLS: Let me say this: I am not even convinced about the subject matter, but I am taking the public position right now, and I have so indicated in the statement which I have given to the Committee, which is before them --

MR. LUMBARD: I am sorry. I haven't had a chance to

read it yet.

GENERAL SILLS: All right. But in this I indicate - and I discuss wiretapping with the background of Title III and the Supreme Court cases - and I make some specific comments about 897.

MR. LUMBARD: Well, maybe we should go to the statement.

GENERAL SILLS: All right.

SENATOR KELLY: Attorney General, I just want to ask you a question before you get into your statement. Certainly in the Legislature when you hear a witness come before us and indicate corruption in all levels of government - and this could be not only in our police departments or the State Police, for which I certainly have a high regard - I think it is the West Point of all police departments right here in New Jersey - but I am concerned that it could reflect even on our Supreme Court. I don't know who he meant at this point. But if there is organized crime - and this seems to have been substantiated by every competent authority, that this exists in the State of New Jersey - and if one of the forms of communication in the syndicate is telephonic and otherwise, then there is a question in my mind what other source we have, what other tools our police are going to use if they can't use this.

GENERAL SILLS: Well, really there is no sense in my answering that question until I read my statement, Senator, because I have indicated that I have now, while not convinced with respect to how effective wiretapping is going to be - I am now indicating that I favor wiretapping with certain safeguards and if I will be permitted to read my statement --

SENATOR KELLY: Right. I want to ask you one other question before you get into it because it does look lengthy. Did Mr. Ruth ever visit your office?

GENERAL SILLS: Never.

SENATOR KELLY: The year he was involved in the Organized Crime Unit in the State of New Jersey, did he ever visit your office at all?

GENERAL SILLS: Not to my recollection.

SENATOR KELLY: Not at all.

GENERAL SILLS: Not to my recollection at all. As a matter of fact, I understand he was with Mr. Hunley in the Organized Crime Section in Washington. I visited Mr. Hunley there and I don't think I ever met Mr. Ruth at that time and the only time I could perceive that Mr. Ruth might have gotten the information which he says he has was at that particular time and that goes back now to the Valachi Case. That was back in what? 1964 - 1965 - around that time. I have never had any indication from Mr. Ruth with respect to names. Now he didn't have to tell me about organized crime. We know and we have said for some time that we have organized crime in New Jersey. I am only talking now with respect to the adjectives used to describe the situation in New Jersey and whether New Jersey ranks first, second, third, fourth or fifth, whichever it may be - and frankly I don't know how people go about tabulating it -- It is bad enough that you have it. Who is number one? Mr. Lumbard, would you know who number one is?

MR. LUMBARD: General, I could give you an opinion, but ---

GENERAL SILLS: Then it would all be opinion in other words.

MR. LUMBARD: Well, necessarily it would be opinion. The more you say, the more I want to question you. So why don't you start with your statement. Then we can get to the rest. All right?

GENERAL SILLS: Right. Since I have indicated my position, perhaps I should leave this Committee with reading the opening remarks and get specifically to 897, what I have to say about 897.

I have these specific comments. This is on page 2.

1. S 897 does not provide that the State shall have the right to appeal suppression orders. Title III of the Omnibus Crime Act provides that Federal prosecutors may appeal such orders as of right.

2. S 897 provides that any person who is a party in any trial has standing to move to suppress evidence procured through electronic surveillance, even though he was not a party to the intercepted conversation which constitutes, or leads to, such evidence. Now Title III confers standing only to a person who is a party to any intercepted wire or oral communication or any persons against whom the interception was directed. And I believe this latter definition to be more acceptable.

MR. LUMBARD : General, since these are specific items, maybe we had better take them one by one because otherwise they will all become chop suey. All right? In other words, you would confine rather than broaden the class of persons who

could attack --

GENERAL SILLS: On this, yes.

MR. LUMBARD: I am talking about item 2.

GENERAL SILLS: Yes, sir.

MR. LUMBARD: Why?

GENERAL SILLS: Because I don't think we need go beyond any person against whom the interception was directed. I don't think it is necessary to open it up. I think rules of evidence of a courtroom would apply in respect to any other defendant who is not involved and I don't see the reason to give him what people are accustomed to calling another technicality upon which to hang his hat.

MR. LUMBARD: We are glad to get your opinion. One of the concepts that was embraced in this was to the effect that a conversation might be picked up that involves other parties innocently and they should perhaps be given a remedy. But if it is your opinion they should not, I'm glad to get it and I am sure the Committee is too.

GENERAL SILLS: S 897 provides that a "'private place or premises' means an enclosure including a vehicle used on the public highway, or an airplane, or a boat not open to the public, from which a peace officer would be barred in the absence of a lawful warrant." I believe that in the case of Katz against the United States a private conversation is one which the parties thereto intend to be private under circumstances justifying their intention. For example, two or more parties may hold a private conversation in the middle of an open field, as long as it is their intention that the

conversation be private. For law enforcement authorities to eavesdrop on this conversation without a warrant would, under the Supreme Court's holding in Katz, violate the constitutional rights of the parties involved. Thus, I believe, this definition may pose serious questions under Katz.

MR. LUMBARD: Now, General, since you are being specific about the bill, could you, instead of just telling us there is a problem with particular language, also tell us how you would change it?

GENERAL SILLS: Well, I think that Professor Blakey in his model statute and in the one which my office drew, we indicated exactly how it should be.

MR. LUMBARD: Fine. I want to get the remedy that you propose in addition to just the problem.

GENERAL SILLS: S 897 includes among the crimes for which there can be wiretapping "or other indictable offense punishable by imprisonment for more than one year". I believe that this is much too broad. I believe it should be held to the offenses enumerated in this Bill, plus the addition of loan-sharking.

MR. LUMBARD: Why?

GENERAL SILLS: Well, for the very same reason that I answer the very next question - for which I suggest the very next change. So if you will permit me to read that.

Because of what I believe to be the great dangers inherent in wiretapping, I should not in the first instance like to see a law which would permit wiretapping or mechanical overhearing of conversation in the absence of a warrant. And that is the

very same reason why I would not like to see such a broad provision as "or other indictable offense punishable by imprisonment for more than one year". Because that could run the gamut of all kinds of offenses or crimes here in the State of New Jersey and I think you might just as well say any crime as say that.

MR. LUMBARD: Do you have a proposal as to the crimes which you would enumerate in such a statute?

GENERAL SILLS: I did. I indicated specifically.

MR. LUMBARD: You would accept those in 897 other than that general phrase.

GENERAL SILLS: Plus the addition of loan-sharking.

MR. LUMBARD: As enumerated, right.

GENERAL SILLS: I say that.

There is some question as to whether or not the United States Supreme Court would consider any circumstance of wire-tapping to be constitutional without a warrant. In the Katz case it clearly stated that electronic surveillance was permissible only when a disinterested judiciary stands between the eavesdropper and the citizen. This provision, which states that there may be wire-tapping without a warrant "in any situation where time is of the essence", would seem to reject this majority holding of the Supreme Court and for that reason may be of dubious constitutional validity. In any event, I believe that the standard as set forth in S 897, that is, "where time is of the essence", is much too vague and indefinite. I think it could open the door to abuse.

MR. LUMBARD: Are you aware that the same constitutional problem was posed in the Senate floor debates on that issue and was rejected by the Senate?

GENERAL SILLS: That was on the emergency provision.

MR. LUMBARD: Right.

GENERAL SILLS: I don't think they used the words "time is of the essence".

MR. LUMBARD: Right. But the point I am trying to make is: Title III was passed after there had been a debate on that question and the Senate rejected your position, I think, two to one.

GENERAL SILLS: I understand that. You know, this is sort of becoming like a dialogue between you and me. I have been asked to come here to indicate what I think or what I believe with respect to 897. Now if every time I am going to say something, you are going to tell me what someone else said, we can be here all night. I know that.

MR. LUMBARD: Well, General, I am ready to be here all night, but the point is --

GENERAL SILLS: Well, I am not. I have another engagement.

MR. LUMBARD: [Continuing] -- we have to draft a new bill and we want to know exactly what will be the best bill for New Jersey. Now if you have problems with the bill, we wish to hear them and that is what we are directing ourselves to, specifically.

GENERAL SILLS: Isn't that what I am doing too, Eliot?



MR. LUMBARD: Well, no, but some of them, General, like you say you've got a problem ---

GENERAL SILLS: Isn't it more important that you know what Title III says than I? You are the one that is doing the drafting. Now if you know that it was disregarded when they wrote Title III, that's fine. You have that information. I know it too, but for you to tell me for whatever the sake is, I don't see that we get anywhere.

Also in S 897, in Section 18, it is said that disclosure may be made "to an attorney". Unless otherwise defined, I am unable to understand the reason for this and I would say I can't see why just any attorney should be permitted to receive the disclosure unless I am reading that section wrong.

MR. LUMBARD: You would strike that.

GENERAL SILLS: I would strike that and I don't think just any attorney by virtue of the fact that he is an attorney should be available to receive the disclosure. I think it should be somebody in the line of duty, as you might say, who has a duty to perform or something of that nature, defendant lawyer in the case or something like that.

Section 13 of this Bill only requires notice of electronic surveillance, which the Supreme Court held in Berger to be of utmost constitutional importance, be given to those whose conversations have actually been overheard. It does not provide, as does Title III, that notice be given to all those named in the order authorizing electronic surveillance or in the application for such an order.

Now in this case, you see, I am on the other side. Whereas

in the first instance I felt at the beginning it was too broad to give standing to everyone, in this case I do believe that notice should be given to anybody whose name was in the application or in the order, whether they were wire-tapped or not or bugged.

I believe also - this is technical - that this bill should contain a specific repealer of the present law, which makes it a misdemeanor to wire-tap.

As I have indicated, and I am sure many others have before me, the use of electronic surveillance can pose serious threats to one's freedom of action. For this reason I make the following recommendation.

I recommend that electronic surveillance be conducted solely at the State level. Only the Attorney General, or a county Prosecutor with the Attorney General's approval, should be permitted to apply for a warrant authorizing electronic surveillance. The only court which should be authorized to issue such a warrant should be the Superior Court and, preferably, the Assignment Judges thereof. Once a warrant issues, the actual surveillance should be conducted solely by the New Jersey State Police.

Conferring sole jurisdiction to apply for a warrant upon the Attorney General, and that includes the Prosecutors, will insure a uniform standard in determining under what circumstances a warrant should be sought. The same reasoning applies in limiting the application to issue warrants to the Superior Court.

I suggest that the State Police be the agency for the

State to conduct electronic surveillance because sophisticated electronic surveillance equipment is quite expensive and is most probably beyond the budgets of local police departments. The training and experience necessary to operate such equipment is likewise quite demanding, and since the State Police already has an extensive technical capability, it is far more likely than the local police departments to be able to supply the necessary expertise in this field. Finally, the State Police, as the central law enforcement agency for the State, will be able to provide the necessary control of the use of electronic surveillance devices. Thus, duplicate investigations by two or more local law enforcement agencies of the same subject will be avoided through the use of the State Police to conduct such an investigation and to report the results to the concerned local law enforcement agencies.

That is my statement, Senator and members of the Committee, on 897.

Now if I may with respect to 802 ---

SENATOR WOODCOCK: Go right ahead.

GENERAL SIILS: On April 22, 1968, a majority of the Joint Legislative Committee recommended the establishment of a New Jersey Department of Criminal Justice. Significantly, the report downgraded the need for socio-economic reform in relation to crime control. The report stated, and I quote:

"There are many valid reasons for social reform. However, we should not delude ourselves or the public as to their effectiveness or relationship to crime control."

This was, at the least, an unfortunate utterance. In this day and age we cannot be insensitive to the need across the Nation for socio-economic reform as a means to rectify injustice and deprivation. Without justice we cannot achieve law and order, let alone eliminate crime.

An editorial in the Washington Post recently said:

"Reducing crime is not just a matter of catching more criminals; it is also a matter of eliminating the slums, the social disruption, and the economic deprivation which have always bred crime."

Just yesterday former Ambassador Goldberg stated:

"We desperately yearn for restoration of law and order, essential in a democratic society dedicated to liberty under law. But we have ignored the basic truth that whenever legitimate grievances go unredressed, confidence in the law declines and instability and violence arises."

Unquestionably society is beset by turmoil today. It is turmoil which threatens the very fabric of our democratic institutions and heritage. It is turmoil sustained by anarchists who preach hatred and violence. It is turmoil sustained by a disenchanted younger generation disillusioned by society's failures. It is turmoil spawned by many complex factors and these factors make impossible the "simple" solution.

No one person has a monopoly on the desire to reverse the upswing in crime. You and I, and all Americans, are allies in the same army, allied against the same enemy. There may be distinctions in one's approach. Drafters of S 802 feel they can achieve a victory against the forces of crime by building

a new general staff. I say, in broad language, that two things are necessary. First we must make a determined effort to root out the causes of crime and, secondly, we must provide those entrusted with the task of law enforcement with more troops and ammunition. This is the distinction between us - the means and not the objective.

If the objective is to be met, the task is far more demanding and far more deserving of attention than that which has been accorded thus far. It is simply inconceivable to me that any legislation developed from eight hearing days could set forth a well thought-out, integrated system superior to what we have today. That which was produced, in the form of S 802, simply shifts emphasis from combatting crime in the streets to organizing a new bureaucratic department.

I have many objections to the proposed department. In general they may be summed up by saying that it would accomplish less than the existing agencies covering law enforcement, rehabilitation, and criminal justice in this State and would cost more, even without additional money for manpower and tools which are desperately needed today.

Specifically, the system set forth in S 802 represents a dangerous first step toward a centralized police state, one in which all other considerations are subordinated to the overriding concept of "order." There is no place quieter than the grave. Concentration camps and prisons are models of order. But our society rejects the concept that order, however achieved, is preferable to the vibrancy and movement which has - since its inception - characterized our Nation.

I believe this department will move us, conceptually, into a phase of law enforcement far different from that to which this Nation and this State have traditionally been deeply committed. Totalitarian governments have boasted for years that crime in their countries has not reached the proportions prevalent in the United States. These countries boast of their "centralized" and "efficient" police departments. I question whether liberty-loving people such as we are would be willing to effectuate a "cure" which might be a greater affliction than the "disease."

S 802 would lump into one department functions of police, youth, prosecution, rehabilitation involving criminals and non-criminals, and parole -- traditionally diverse and distinct functions which, by their very nature, demand to remain independent entities. And S 802 states that the Commissioner "shall be . . . qualified by training and experience to perform the duties of his office."

The rehabilitative process, the police process, and the prosecutorial process all require fundamentally different attitudes and assumptions which could not be shared by one man. The Commissioner need not be an attorney. Thus, he could be a layman in charge of County Prosecutors. Whether he be a lawyer or not, it is inconceivable that a man could be found with the necessary training and experience to perform the duties of the office -- for he must be a sociologist, psychologist, trained police officer, juvenile authority, an expert on narcotic addiction, a penologist, guidance counsellor, educator, rehabilitator, and also have expertise in the laws of this State

and Nation. I do not believe such a person exists.

MR. LUMBARD: Do you think Attorney General Clark has all those qualities?

GENERAL SILLS: Attorney General Clark --

MR. LUMBARD: He runs the Bureau of Prisons.

GENERAL SILLS: Attorney General Clark doesn't have all of these particular functions. He doesn't have youth camps. He doesn't concern himself with civil commitment on narcotic addiction. While penology is in his department, you and I well know that it has pretty well been on an independent basis in that particular department. And if we are going to talk about Attorney General Clark, I didn't see you advocating the taking away of criminal jurisdiction from Attorney General Clark.

Now if I any be permitted to continue, I think it should be noted that the Divisions of Youth and Narcotics Control contain elements not related to criminal activity. By the inclusion of these functions, it may well be that a constitutional difficulty arises. I refer you to Article V, Section 4, Paragraph 1 of the Constitution.

As one of its findings, S 802 states that it will stop and reverse "fragmentation." This bill actually does its own fragmentizing by carving out portions of the functions of the courts and the Departments of Community Affairs, Institutions, Labor, and Education, as well as my own, which functions are, for the most part, inextricably intertwined with other functions where they now exist.

It has been said and just now suggested again that the proposed Department of Criminal Justice is modeled after the United States Department of Justice. The truth is, however, that the Federal System does not have a United States Attorney General for civil matters and a United States Attorney General for criminal matters. Moreover, the Attorney General of the United States is a lawyer, not a layman or police official, and he heads the Department of Justice. The American concept has always been to have agencies of this type supervised by civilians.

The Report which was the forerunner of S 802 made this following comment:

"This is New Jersey's system of administering criminal justice. In reality it is no 'system' at all. It is a haphazard assemblage of historical legacies and political compromises - mired in neglect. It grew in response to demands of distant eras."

In Professor Heinz H. Seelbach's analysis of the "Organization and Functions of the Departments in New Jersey State Government," he says:

"The Department of Law and Public Safety Act of 1948 established New Jersey as the only State in the Union having all of its major law enforcement functions administered through one principal department."

Reposing criminal jurisdiction in the Attorney General, while it has its foundation in the common law, is not an obsolete method for the enforcement of criminal laws. On June 10, 1968 at the National Conference of Attorneys General,



both consultants to the Joint Legislative Crime Study Commission were present to hear a third panelist, Assistant Attorney General Charles Rogovin of Massachusetts, former Chief District Attorney of Philadelphia and Assistant Director of the National Crime Commission, state, in talking about the basic responsibility for acting in the organized crime field, and I quote:

"... the basic responsibility is going to have to be assumed by the Attorneys General of the several jurisdictions."

He further stated:

"The Attorneys General's capability should have within it investigative and prosecutive capability to deal statewide with a problem which has been very briefly indicated by Mr. Salerno as one which has no local limitations. There is no such thing, as far as I know, of organized crime that does not cross city, county and in some cases state lines. Most logically, Attorneys General with statewide criminal jurisdictions are best equipped for this kind of effort. But that is not to say there should be an attempt, in my own judgment," - this is Mr. Rogovin - "to build a massive capability at the state level. Rather, there is going to be a necessity to provide leadership in the states, such as Mr. Sills in New Jersey and those other statewide law enforcement forces, those who have county police and municipal agencies. It has to be a significant function of the Attorney General unit to stimulate an interest and develop the expertise if any state effort is going to be successful."

Article 5 of S 802 seeks to transfer to the Department of Criminal Justice, "All the powers, duties and functions of the Attorney General and the Division of Law . . . relating or pertaining to criminal investigation and the enforcement and prosecution of the criminal business of the State and of any County of the State, . . .".

The Attorney General is a constitutional officer, with a common law inheritance. The collected decisions, both in this State and throughout the United States, clearly hold that the Office of the Attorney General carries with it extensive common law powers vesting it with both criminal and civil jurisdiction.

The proposal in S 802 to strip the Attorney General of his law enforcement jurisdiction raises a clear constitutional issue.

I refer you to Volume I of the Convention Proceedings of the Constitutional Convention of 1947. Mr. Ronald D. Glass proposed an amendment to the original draft, the purpose of which was to provide that the Secretary of State and the Attorney General be made Constitutional officers. The amendment was adopted unanimously and in the course of the debate Mr. Glass said:

"If the Attorney-General does not have constitutional status, with the attendant right of exercising all the common law privileges and constitutional powers of that office, then the same Legislature which might pass unconstitutional laws could curb his powers, vastly decreasing his effectiveness as a spokesman for the people."

Judge Robert Carey added:

"We want to see the men who fill those places protected by all the powers that constitutional status will give them."

Thus, the Constitution preserves the Attorney General's common law powers intact. Of course, this does not mean that the Attorney General is immune from legislative direction. The Legislature may increase, alter, or abridge his duties. But eliminating either his civil or criminal jurisdiction would be tantamount to eliminating the office itself and that, I suggest, cannot be done constitutionally.

Even assuming the power to eliminate the Attorney General's criminal jurisdiction, many confusing questions eventually will arise. Is criminal jurisdiction by this bill restricted to conduct which may be punished as a high misdemeanor or a misdemeanor? In the State of New Jersey there are certain acts which are considered offenses and yet are not judicially regarded as "crimes." Nevertheless, conviction thereof may result in incarceration for a substantial period. There are other violations which are regarded as quasi-criminal in nature.

Moreover, there are statutes which do not designate whether the violation thereof is a crime or an offense, but merely provide for a penalty which may be a fine or imprisonment. The resultant confusion is obvious. And the answer, I suggest, is not to say that all of these powers and duties shall vest in the Commissioner who will then be getting injunctions for water pollution because willful disregard thereof by an individual could result in imprisonment.

This bill fails to take cognizance of the inter-relationship within the various statutory areas of both criminal and civil matters which may be subject to prosecution. For example, disorderly persons offenses are set forth in 2A:170-1 through 96. A disorderly persons offense is not considered a crime. The general penalty is six months imprisonment or a fine of not more than \$500 or both. Disorderly persons offenses are not indictable and may include activities generally considered minor and not calling for criminal prosecution in the well understood sense of the word. Thus, in addition to enumerating as disorderly persons common thieves, burglars and pickpockets; users of narcotics; possessors of lottery slips; there are also classified in this category fortune tellers; spitters on the sidewalks, advertisers of marathons; buriers of dead diseased poultry; those who without authority use players in operas; those who defraud hotel or restaurant keepers; those who sell tickets in excess of the established price and those who fail to pay their fare on public conveyances. It may be seen that the nature of offenses covered under the disorderly persons act are such that in the layman's sense both criminal matters and non-criminal are included.

The general powers of the Attorney General list a number of other areas in which a similar lack of fungibility in classification exists. N.J.S.A. 19:34-1 to 63, the crimes and penalties chapter of the election law set out offenses clearly delineated as misdemeanors while, at the same time, including such items as betting on elections and disobedience of

subpoenaes which call for civil penalties.

The enforcement of tax laws and tax regulations is generally considered to be civil in nature. N.J.S.A. 54:32B-26 (b) provides that the failure to file a return required by the sales and use tax act, or the filing of a willfully false return, or the failure to file a registration certificate and such data as the director by regulation may require, or the failure to display a certificate of authority is a misdemeanor punishable by up to \$1,000 or imprisonment for not more than one year or both. S 802 will require these prosecutions to be handled by the Commissioner of Criminal Justice. In fact, what is needed is not an expertise in criminal law but a background in general taxation.

New Jersey statutes are replete with examples of matters peripherally criminal which stem from areas of civil control and which require a prosecutor to have a background in the civil areas delineated.

Throughout the statutes provisions call for both criminal and civil prosecution within a single section. For example, 17:12B-178 requires prosecution by the Attorney General in a civil action for failure on the part of a savings and loan association to discontinue "illegal or unfair practices." In like manner, N.J.S.A. 17:52-23 speaks to a civil action prosecution by the Attorney General for a violation of an order of the Commissioner of Banking and Insurance demanding that a Business Development Corporation cease conducting its business in violation of "any law of this State."

There was no need for earlier legislators to refrain

from combining criminal and civil prosecution references in a single section of the law because the Attorney General was the one person vested with authority in both areas.

Pertinent to the foregoing, consideration must be given to the absence of specific repealers in S 802. It is at best conjectural whether the absence of specific repealers in section 73 of S 802 can serve to cancel the effect of those provisions of the New Jersey law which authorized the Attorney General to act in criminal matters.

No thought has been given to the effect of S 802 on the function of the Attorney General as legal advisor to the Governor in his rendering of opinions relating to the import and significance of enacted legislation. Is the Attorney General to be precluded from rendering Attorney General's opinions concerning the criminal law or those statutes which touch upon the criminal law?

No consideration has been given in S 802 to those areas of illegal activity presently restrained by State action other than criminal prosecution, for example, the imposition of alcoholic beverage taxes on persons illegally manufacturing such beverages.

And what of the enormous task of changing over agency rules and regulations and the rules governing the courts of New Jersey which will be necessitated by shifts in responsibility for the enforcement of criminal law.

Even if all these complexities were not present, I submit that fundamentally the powers of the Attorney General in the criminal law field should be enhanced rather than

diminished or even eliminated.

Permit me to quote from the remarks of Professor Henry S. Ruth, Jr. of the Pennsylvania Law School. And I am sorry that Mr. Lumbard is not here to hear this.

SENATOR KELLY: Well, why don't you wait a minute. He might be right back. If you feel that sorry, we will get him right back.

GENERAL SILLS: All right. I would because there was some controversy as to whether Professor Ruth had made these remarks some time in the past.

[Short interval, awaiting the return of Mr. Lumbard to the room.]

SENATOR WOODCOCK: All right. I think we can continue now.

MR. LUMBARD: If it was a break for me, I'm sorry.

GENERAL SILLS: It was my fault, Mr. Lumbard. I said I wish you would be here to hear this following quote which I am going to give and Senator Kelly suggested, well, then perhaps we might wait.

MR. LUMBARD: Mr. Lanning gave me a message which said, "immediately call." So I called.

GENERAL SILLS: I appreciated it; it gave me a chance to get a glass of water.

I had just said that I thought that if all these complexities were not present, I still thought that fundamentally the powers of the Attorney General in the criminal law field should be enhanced rather than diminished or even eliminated.

Now I am on page 11. Permit me to quote from the remarks of Professor Henry S. Ruth, Jr. of the Pennsylvania

Law School, and these remarks were made at the Conference of the National Association of Attorneys General.

MR. LUMBARD: As we lawyers would say, are you now adopting him as your witness?

GENERAL SILLS: I am now going to quote what he had to say there, which at one time he didn't think he had said. He states, quote:

"One of the recommendations in the National Crime Commission has to do with the Attorney General of each State making himself the Chief Law Enforcement Officer of that State. . . . If you live in a State like Pennsylvania and have an Attorney General like William Sennett you will trot out the common law and take criminal jurisdiction and organize a crime unit. . . . In other words, if he is not the Chief Law Enforcement Officer, he can take the lead in at least the problem of organized crime enforcement. I think with a new Federal Crime Control Act, each Attorney General is going to get into this field whether he wants to or not."

Professor Ruth expresses the opinion of the National Association of Attorneys General. The Committee on the Office of the Attorney General, chaired by General Breckenridge of Kentucky and Vice-Chaired by General Nelson of Arizona, agreed in a meeting held on August 16, 1968 in Washington, that a state planning agency which fails to recognize the Attorney General as Chief Law Officer with inherent, on-going responsibilities for the coordination of the administration of criminal justice,



and with original jurisdiction and follow-up responsibility of the Department of Law, would not constitute proper representation.

Now there are other serious practical problems in lumping the vast array of services in a new department. I am sure these problems will be or have been touched upon by other members of the Executive Branch who have testified or who will testify before this Committee.

MR. LUMBARD: General, on that point, what other members will testify, just so the Committee can know because we are having a terrible schedule problem right now.

GENERAL SILLS: I don't know. I believe I was told Mr. Wescott was on this morning. I understand Mr. Ylvisaker will testify. Those are the two whom I had in mind when I drafted this.

MR. LUMBARD: Very well.

GENERAL SILLS: There are financial considerations involved in determining the acceptability of S 802. In fact, large sums of money would be wasted on the duplication of administrative services which are now provided by other departments affected by S 802. In terms of supervisory personnel alone the proposed department would involve a Commissioner, a Deputy Commissioner, and 8 Assistant Commissioners. Only one of the Assistants would come from existing agencies. The other 9 positions, together with the usual administrative support, would amount to \$275,000. My fiscal officers estimate that the entire bill indicates about one and one-half million dollars in duplicative expense.

S 802 would appropriate \$1 million for a proposed Division of Narcotic Addiction. This Division would be required to operate a civil commitment program. During this year alone the civil commitment program, I understand, in New York will cost approximately \$53 million, last year it was \$75 million.

I have recently been told that there was some question about the budget in New York this year. It had been reduced to \$28 1/2 million and then I think it was increased to over \$30 million. So I may be in error with respect to the budget of \$53 million. I know that was what Governor Rockefeller asked for. But it may have been that he was cut back and that was indicated to me just early this morning.

SENATOR WOODCOCK: General Sills, as we have indicated, we have some problems with scheduling and quite frankly I have some problem in seeing the relevancy of financial objections to a bill because basically this is going to be a problem of an Appropriations Committee and not the problem of setting up the administrative program. In other words, I think if we are going to address ourselves to the question of whether or not we ought to have a civil commitment program with respect to narcotics addicts, we can hear that here. But if we are going to talk about the cost of that program, I think this is something that the Senate can discuss. I don't think, in my own mind, that is a valid objection to this bill on that basis.

GENERAL SILLS: May I respond?

SENATOR WOODCOCK: Yes.

GENERAL SILLS: The very next sentence, if you will note,

indicates that if there is to be a recognition of the problem, recognize it. Don't waste \$1 million for a bureaucratic structure.

Now the point of that is this: If you are saying - and I am very pleased to hear you say it - that you are considering and you favor spending these large sums of money for a civil commitment program, I join with you. But if you are saying that you can't give it to the present administration as it exists without spending this additional million for a bureaucratic structure in order to do it, then I am saying I disagree with you. That's my point.

SENATOR WOODCOCK: Then you tell me what we have currently that we could appropriate that money to that could carry out the program.

GENERAL SILLS: You just indicated to me that's a matter for the Legislative Appropriations Committee, the cost of the program, itself.

SENATOR WOODCOCK: No. I am asking you under the present administrative structure that we have in the State of New Jersey, what department ---

GENERAL SILLS: I say that you make a Division of Narcotics Control and you place it in the Department of Institutions and Agencies where I believe it belongs and all of the structures which may be existing in different areas of the State can be joined together in that Division. In the State of New York the Narcotics Control Commission is not in a Department of Criminal Justice and as a matter of fact, it is an independent agency and reports directly to the Governor and the Legislature.

SENATOR WOODCOCK: We can argue about --

GENERAL SILLS: I am not arguing; I'm stating facts.

SENATOR WOODCOCK: What I am saying is that we can have a difference of opinion as to whether it ought to be in Institutions and Agencies or in a Department of Criminal Justice. But the fact is that we do not currently have that department available whether the Legislature were to appropriate the money or not.

GENERAL SILLS: But what I am saying, Senator, is that you can have it without spending a million dollars.

SENATOR WOODCOCK: You mean it wouldn't cost you a cent to set it up.

GENERAL SILLS: Not for the administration. You could set it up within Institutions and Agencies where you now have a framework.

MR. LUMBARD: General, wherever it is set up, perhaps you and I could agree that competent personnel in this area are so difficult to find that the first year's appropriation above, say, a level of a million dollars would be foolhearty; you couldn't spend it. You couldn't get the people, the doctors, the Commissioner and organize your department. And just as a matter of information, that figure was picked as a first year to organize, to get going, to get started. So I think answering that a million dollars doesn't run the full program really misses the point. Of course, it doesn't run the program.

GENERAL SILLS: That's obvious. All I am saying is that you don't have to spend that million. What you do say to me about the difficulty of personnel does heighten the reason why it seems to me rather ridiculous to talk in terms of going away

from the expertise which we now have in Institutions and Agencies. We are not going to be able to duplicate people who work in Institutions and Agencies in this new Division which is going to be under another head, but the same doctors who are working in Institutions and Agencies today, who are handling the problems today, could still be working there.

MR. LUMBARD: In other words, I gather you are for a civil commitment program for narcotic addicts.

GENERAL SILLS: Oh, definitely. That's in the statement - definitely. I'll come to it.

MR. LUMBARD: Right. Glad to hear it.

GENERAL SILLS: I was just glad to hear that Senator Woodcock was for it. You probably didn't hear me.

MR. LUMBARD: Well, I think he has been for it for a while, but he can speak for himself.

GENERAL SILLS: I made a trip to California in 1965, I believe it was, when I at that time studied the situation as it existed in California and I have been in favor of such a program since then, although the California system varies somewhat from the system in New York.

MR. LUMBARD: Have you so recommended one to the Legislature previously?

GENERAL SILLS: I don't recommend to the Legislature. I discuss what I have to do with the Governor. It is the Governor who recommends to the Legislature.

MR. LUMBARD: Has the Governor recommended such a program to the Legislature?

GENERAL SILLS: I believe that the Governor has taken this

up with the Department of Institutions and Agencies and they would have to speak to that rather than I.

MR. LUMBARD: But, General, we are here confronting a fact and isn't it a fact that the Legislature has never received from the Executive Branch of any part a recommendation for a civil commitment program for narcotic addicts?

GENERAL SILLS: The Governor and I don't agree on everything and the Governor appreciates I am entitled to my views on certain things. I don't believe in the death penalty; he does. There are many things which -- Colonel Kelly says he does too -- but there are many things which I differ with the Governor upon. But I am here to express my views.

MR. LUMBARD: Right.

GENERAL SILLS: And my view is that I think it is a worthwhile project, but I think that you are expending a million dollars where you don't have to.

Now financial objections to S 802, of course, are not limited solely to the matter of duplicating present administrative costs. I am sure that representatives from other departments, such as Community Affairs and so on, will come before this Committee and will elaborate in great detail on the financial burden which would be imposed upon the citizens of this State by this new department. I point out only as an example that, if Corrections were taken from the Department of Institutions and Agencies, the program of using prisoners to service State institutions in the same department would be impaired at great cost.

SENATOR WOODCOCK: General, would you tell me how that

happens?

GENERAL SILLS: Yes. At the present time Corrections and Hospitals are in the Department of Institutions and Agencies. At the present time the Commissioner of the Department ascertains which prisoners he will allow to go out and do work in the various hospitals and on the various programs which are had by way of rehabilitation and otherwise in the Department of Institutions and Agencies. Those men, while they might be available from the Commissioner of Corrections to institutions would not necessarily be available, and as a matter of fact points out one of the great things which I think to be wrong with this entire concept. If the Commissioner of Criminal Justice is a man who is police oriented, for example, he is apt to say, "I won't let these guys out of jail. They don't belong out of jail," and he may differ with the Commissioner of Institutions and Agencies. The philosophies of the heads of the two various departments are bound to be dissimilar and if they are going to be the same, then you don't need two.

SENATOR KELLY: Attorney General, how about with the Federal Bureau of Prisons, aren't they under the Justice Department and isn't the Attorney General of the United States the chief law enforcement officer?

GENERAL SILLS: Yes, but J. Edgar Hoover is not in charge. That's the point that I am making here.

SENATOR KELLY: Well, he may not be, but the Bureau of Prisons still comes under the Attorney General, doesn't it?

GENERAL SILLS: It is within the department, yes.

SENATOR KELLY: So what you are saying in essence is if everything came under you, it would be all right. Is this what you are saying?

GENERAL SILLS: No, I am not saying that because I happen to differ with respect to the Federal system in that regard. I believe that prisons should come under a different setup. It just so happens that with every Attorney General, it hasn't made much difference because they have permitted the head of the prisons to do pretty much what he thought ought to be done in that area.

SENATOR WOODCOCK: If I may, General, you say in your statement here, "I point out only as an example that, if Corrections were taken from the Department of Institutions and Agencies, the program of using prisoners to service State institutions in the same Department would be impaired at great cost." "Would be." Now are you saying "might be" rather than "would be"?

GENERAL SILLS: I think it would be.

MR. LUMBARD: How.

GENERAL SILLS: I just explained how.

SENATOR WOODCOCK: Let me say I don't think you did. You said this might happen because you would have a Commissioner of Criminal Justice that was police oriented and would not permit the prisoners to go out and work at the institutions. Now, "It ain't necessarily so," is it?

GENERAL SILLS: Necessarily so? Absolutely so? No. Practically so? Yes. And I think we have to take that into account.



MR. LUMBARD: Yes, but who controls the Commissioner, isn't it the Governor? He is an appointee of the Governor. He would be a member of the Governor's cabinet and completely subject, just as you testified a minute ago about your own narcotic views, he would be subject to the Governor.

GENERAL SILLS: Yes, but --

MR. LUMBARD: Isn't that the whole point?

GENERAL SILLS: No, it is not the whole point because if that were the whole point, you could take one department and just have one department under the Governor.

MR. LUMBARD: No. The Governor sets the policy for all State agencies.

GENERAL SILLS: You and I know that one man can't possibly do everything that he is responsible to do and he must leave the doing of a lot of it to subordinates and generally speaking, it is the subordinates, the cabinet, whose views prevail. And the Governor cannot get into the day-by-day detailing of every single department and if you are practical enough ---

SENATOR WOODCOCK: If I may just say this, General, I have been down here long enough to know that if a department here suddenly came in with a budget that requested that we now pay for the laundry that we used to have done by the prisoners, if the Governor didn't do it - if the Governor didn't do it - I am certain that this Legislature would make sure that was corrected. Now I really don't think that this is valid. I think this is purely speculation.

GENERAL SILLS: Well, Senator, certainly you are entitled to your opinion. But let me say this: If you have ever spoken to policemen, you will hear them say again and again, "I put that fellow away three times and now he is back on the street again." Now if you put a police-oriented Commissioner at the head of that department and the man comes up for parole, what is he going to say?

MR. LUMBARD: General, just ---

SENATOR WOODCOCK: If I may just say, if the Governor of the State of New Jersey directs the Commissioner of Criminal Justice and he says that you shall release these prisoners to these institutions for these purposes ---

GENERAL SILLS: Then it will happen. But if the Commissioner of Criminal Justice is able to show the Governor that if he doesn't allow him to run his department his way, he is not going to be able to get the results which he wants, then what is the Governor going to do?

SENATOR WOODCOCK: He is going to make a value judgment, isn't he?

GENERAL SILLS: Yes.

SENATOR WOODCOCK: In other words, if that were to happen today - if that were to happen today - that the gentlemen running prisons say, "We can't effectively do the job of rehabilitation," and whatever else they do, "if you are going to release these people to go out there and work," then the Governor of the State of New Jersey must make that value judgment now.

GENERAL SILLS: You are going to have the Governor making

more value judgments than he can measure in dollars.

SENATOR WOODCOCK: Let's say, I disagree.

MR. LUMBARD: General, one minor point, parole under the proposed 802 would be made by a Parole Board, which would be independent of the line of administrative function. So it wouldn't be the Commissioner that says, "Kick them out." The parole decision would be made by the Parole Board.

GENERAL SILLS: Unless you have changed the bill as I have it, as I recall it from a State institution, it must be done on the recommendation of the Assistant Commissioner and if it is a county, it must be on recommendation of the Warden. So I don't see how you can say they are independent. May I refer you to the bill?

MR. LUMBARD: No, General, you don't have to refer me to the bill. The bill is drafted along the traditional American line, as Commissioner McCorkle here ---

GENERAL SILLS: According to the Article of Independence of the Constitution?

MR. LUMBARD: Just a second. Just a second. You said you wanted to talk; now let me talk. All right?

GENERAL SILLS: Yes, but I am under oath and you are not. You see, I am supposed to be testifying and you are not.

MR. LUMBARD: Well, you keep asking what you call rhetorical questions, which sort of lead to a dialogue.

GENERAL SILLS: If they are rhetorical, they don't call for an answer.

MR. LUMBARD: Well, ---

SENATOR KELLY: That's conjecture.

MR. LUMBARD: General, let me just say that ---

GENERAL SILLS: Not if you know the definition of the word.

MR. LUMBARD: [Continuing] -- the standard way that prison systems are organized is that the institutional head - and this would seem to be quite proper - is involved in making a recommendation to the Parole Board about parole, but the decision-making power is in the Parole Board and that is the way it is under this bill. And if it isn't, please so inform us. I might add that we have heard from the Parole Board and they don't object to this.

GENERAL SILLS: No, not if you are going to give them full-time pay or full-time salary, I don't suppose they will.

MR. LUMBARD: Well, maybe that is what ought to be. Maybe parole is an important enough function now to call for a full-time professional like police. Maybe that is a very good point.

GENERAL SILLS: "Parole from any State correctional institution shall be granted only after recommendation by the Assistant Commissioner. Parole from any county penal institution may be granted by the State Parole Board on recommendation of the Chief Executive Officer of the institution." [General Sills read the foregoing from Senate Bill 802.] Now if you think that ought to be changed, fine.

May I proceed, Senator?

SENATOR WOODCOCK: Go right ahead.

GENERAL SILLS: There are other specific objections, some technical, some substantive, which I have. In the interest of

time, I shall conclude my critique with comment on certain specific features.

Article 4 of Senate 802 would create a Division of Youth within the new Department. The major premise established by the framers seems to be, whether or not a youngster has committed an act of juvenile delinquency, he is a potential criminal and therefore should come within the jurisdiction of a law enforcement agency.

MR. LUMBARD: That is not the premise.

GENERAL SILLS: Now if you want to testify, Mr. Lumbard, that is fine. But, Mr. Senator, if I may kindly ask that I be permitted to finish and then questions can certainly be asked of me. I have a right to my opinion. People have a right to disagree with it, but if they want to testify to that effect, let them get under oath the same way as I am.

SENATOR WOODCOCK: Go ahead, General. Go right ahead.

GENERAL SILLS: My premise is that all youngsters are potentially good citizens of this country. Under Article 4 a youngster cannot stray one step. All he need do is arouse the wrath or anxiety of a parent in a given case, and he may be referred to a youth camp. It may be that his problem was emotional. It may be that his problem was his parents' emotions. It may be that he has a mental retardation. But all that need occur is that he be between the ages of 15 and 18, and that, if illegitimate, his mother consents, or if both parents so decide, he can be sent to this camp for a period not to exceed two years without a hearing! Should this youth leave the camp without permission, he would be considered an escapee and may be

"apprehended, restrained, transported to, and returned to such institution by any peace officer." Why do we seek to alienate our youth and stimulate hostility to our society?

This proposal raises fundamental moral issues which I trust are obvious to the members of this Committee. Constitutional questions are also involved. In view of In Re Gault, I cannot conceive of this provision being held constitutional.

Now the next was the matter of the civil commitment program, and we have discussed that somewhat. I point out that this is identical to the New York program and it includes a portion of the New York law which was declared unconstitutional in the matter of Paul James.

It is questionable whether the Narcotics Division, at least to me, should be in a law enforcement department. I do not believe so.

This is not to say that I object to a civil commitment program - only that it should not be run by a police-oriented department where philosophies are antagonistic.

Article 5 of S 802 would subordinate the County Prosecutors to the direction of an Assistant Commissioner who would head the Division on Prosecution.

Section 32 makes evident that along with S 802 there will need be the adoption of S 803, which I thought at the time was not a subject of the public hearing. There is no power or authority - I believe we agree - without the amendment of 2A:158-1, and that's in 803. I oppose 802 and 803. I believe that the County Prosecutors will testify themselves. Succinctly, however, I object because:

1. A layman is being put in charge of lawyers.
2. The County prosecutor is eliminated by virtue of the authority vested in the Commissioner, a Deputy Commissioner and Assistant Commissioner to pick his staff and to assign him from county to county.

I move down to the Division of Rehabilitation. This is another indication, I believe, of placing a concept in a department which is police oriented and therefore has a basically different philosophy. This is not to say that a policeman's philosophy in his work is wrong, but rather that his views and that of a corrections officer are apposite. My own concept is that the needs of society for rehabilitation of criminals must be viewed from a broader base than that which a policeman establishes.

This condition is aggravated, I say, by the fact that the parole board is placed in the proposed department and that no person is entitled to consideration for parole from a State institution except upon the recommendation of the Assistant Commissioner and, as I indicated, from the county by the Chief Executive Officer of the institution. Today the Parole Board acts, and should, whether they are full time or part time, independently of any other person of any kind or nature whatsoever. It is housed in Institutions and Agencies, but only for "housekeeping purposes." Here it is part and parcel of the department, subject in one case to the recommendation of a local warden. All of this, I believe, reflects built-in conflicts.

This leads me to my final observations concerning the

efforts of my office to increase its capacity in the effort against crime and the manner in which we would make maximum use of our manpower should it be increased.

In my budget request for the current fiscal year, I requested 20 additional Deputies. At that time I noted the urgent need for at least four additional Deputies to be assigned to criminal work.

Since I was not even given one additional Deputy for this purpose, I had to reassign two from their much needed duties on the civil side to the criminal section. It was simply a matter of priorities, with certain other functions of the Division suffering. At present, there are five Deputies assigned to the Criminal Investigation Section working under the supervision of an Assistant Attorney General. Of these five, I added two originally for the sole purpose of handling organized crime matters. Almost immediately, one was swallowed up by the general activity of the criminal section. The other had to be assigned to a Camden County Grand Jury investigation.

If I received two additional men and assigned them to organized crime, the chances are they would also be swallowed up by the general activity of the criminal section. The only possible way to avoid this would be for the Division to have enough people to stay abreast of the general activity of this section.

I shall not detail here what it is the criminal section does. I refer you to my original testimony. In sum, it represents the criminal law enforcement arm at the highest level



of State government and, clearly, in a State the size of New Jersey, a total of six lawyers to render this service is inadequate for effective coverage.

In order to repair the deficiency, it is continually necessary to utilize the services of lawyers on the civil side. And this deprives the other agencies of the State of much needed support.

In our budget request for the coming year, we shall ask for ten additional Deputies to be assigned to the civil area and ten to the criminal. Should the ten requested for the criminal area be approved, it would then be possible to implement the goals set in our office as far back as November of 1966 as indicated in the memorandum and chart attached, which I will not discuss unless you ask me to.

We believe that this method would be the most effective and economical way in which to attack the existing problems. There is a vast difference between this plan and the concept embodied in S 802. In the first place, it could be implemented immediately. Secondly, it would be far less expensive. At its fullest complement it would have a total cost of an additional \$500,000 or \$2.5 million less than the proposed Criminal Justice Department. And finally, it is oriented to law enforcement and law enforcement alone.

One of the great fallacies of S 802 in my opinion is that it suggests to the public that a "system" can solve the crime problem. One necessary element that cannot be incorporated into a "system" in a democratic society is public involvement and support.

In its report, "The Challenge of Crime in a Free Society," the President's National Crime Commission said:

". . . controlling crime depends to a great degree on interaction between the community and the criminal justice system."

It further stated:

"It must begin with an understanding by the community of the limited capacity of the criminal justice system for handling the whole problem of 'crime.' Until the public becomes fully aware of what the system can do and what it cannot do, it cannot give the system the help it needs. The Commission finds, first, that America must translate its well-founded alarm about crime into social action that will prevent crime. . . We will not have dealt effectively with crime until we have alleviated the conditions that stimulate it. To speak of controlling crime only in terms of the work of the police, the courts, and the correctional apparatus, is to refuse to face the fact that widespread crime implies a widespread failure by society as a whole."

The problem of crime, as I see it today, will not be solved by playing chess with existing agencies within the Executive Branch of government, nor is it a problem solved by more convictions. Rather, it stems from our inability to arrest and, if convicted, to rehabilitate criminal offenders. And related thereto, it stems from our failure to provide the existing law enforcement system with the necessary tools - money

and legislation.

We do not need a new bureaucracy. I say to the Legislature, give us the money we have asked for, give us the investigators we have asked for, give us the facilities we have asked for, and give us the legislation we have asked for on a bi-partisan basis, and we will get the job done.

SENATOR WOODCOCK: Is that it?

GENERAL SILLS: Yes, sir.

SENATOR WOODCOCK: Mr. Lumbard.

MR. LUMBARD: General, how many Attorneys General in the United States of the fifty are civil, such as in New York?

GENERAL SILLS: Well, it would be difficult to say because at least 42 have criminal jurisdiction. New York, for example, has jurisdiction with respect to habeas corpus and, therefore, --

MR. LUMBARD: Very limited.

GENERAL SILLS: [Continuing] -- while it doesn't have other kinds of criminal jurisdiction, it does have that. But I'd say 42 of the states have it. I would say about - well, more than half - 30, I believe, have pretty wide criminal jurisdiction.

MR. LUMBARD: About half, maybe 30, are involved in crime.

GENERAL SILLS: Yes.

MR. LUMBARD: -- in a substantial way.

GENERAL SILLS: And not one state in the Union has a Department of Criminal Justice.

MR. LUMBARD: Well, as you said, there is no magic way. Are you here testifying for the administration or as an individual? I was uncertain as to that.

GENERAL SILLS: I am here testifying as the Attorney General.

MR. LUMBARD: As the Attorney General.

GENERAL SILLS: That's right.

MR. LUMBARD: Are you familiar with a report by the States Urban Action Center, Incorporated, called, "Action for Our Cities - a Preliminary Report."

GENERAL SILLS: I am familiar with the report, but not with the total contents of it. I have not studied it.

MR. LUMBARD: Well, in this report on page 18 - and I hand you a copy - on page 18 there is a recommendation for a State Crime Control Department. The reason I raise this is, this is something I had nothing to do with. And it says: [Reading] "State law should establish a State agency directly responsible to the Governor, having responsibility for all State crime control functions and having the authority to assist, coordinate and supervise local law enforcement officials." And it goes on to describe that. One of the trustees of this organization is Governor Hughes. Did you know that?

GENERAL SILLS: No, I did not.

MR. LUMBARD: Were you aware ---

GENERAL SILLS: I see one is also Nelson Rockefeller.

MR. LUMBARD: That's right.

GENERAL SILLS: And New York doesn't have a Department of Criminal Justice.

MR. LUMBARD: Well, many states don't. I am just asking you if you knew that Governor Hughes was a trustee.

GENERAL SILLS: I know nothing about it. I don't even know, very honestly, -- I think this came into my office a few days ago, if I recall correctly.

MR. LUMBARD: Well, this has been out for some time.

GENERAL SILLS: Well, I didn't have this at all. I have never had a chance to read it. I have had no opportunity to see in what context it is being used. And if they are saying what you say they are saying, then they differ from what I have to say.

MR. LUMBARD: Well, the trustees are Robert F. Wagner, Chairman, former Mayor of New York; Elmer Anderson, Co-Chairman - I believe he is now or was Governor of Minnesota - other trustees - Ivan Allen, Jr.; Ben Barnes; George Christopher, the Mayor of San Francisco prior to the present one.

GENERAL SILLS: Does it say it should not be under the Attorney General?

MR. LUMBARD: It doesn't discuss the Attorney General one way or the other. I believe it doesn't.

GENERAL SILLS: See, it is my contention, Mr. Lumbard, that we have in the State of New Jersey today a Department of Criminal Justice, except that it is called the Department of Law and Public Safety. It does not have within it the things that you would like to have within it. But if you felt that that kind of a system was the best kind of system, I don't see why there was any reason not to suggest that those functions be put in the Department of Law and Public Safety. I would still be against it, as far as I am concerned. But I just don't see why from out of nowhere you come up with a plan which says, divide

the Attorney General in two, take away criminal jurisdiction from him, put this Criminal Justice Commissioner in charge of all the Prosecutors of the State of New Jersey, all of the youths of the State of New Jersey, all of the narcotic addicts, the rehabilitation program. I am just unable to see why there is a reason for having the two.

Now if I am a bad Attorney General and I don't do the proper job, please don't spend all these millions because of me. Just point it out and prove it to me and I'll quit, you can get another Attorney General and call him what you want. Call him the Commissioner of Criminal Justice, even though he is the Attorney General. But you don't have to start a new department for it.

MR. LUMBARD: General, since you offered me a few suggestions before, let me offer one to you. I think it would be in error if I didn't say that the proposal was of a Committee of Senator Forsythe and not me. I mean, I only work for the Senator and that Committee. We made a recommendation. So why don't you leave me out of it. All right? I like to believe that Senator Forsythe is independent enough so that if he opposed this, it wouldn't have gotten by him whether I suggested it or not.

GENERAL SILLS: Let me say then that the word "you" is in the plural. If "you'se" will be much more indicative, let me say "you'se", meaning those who were the sponsors of S 802.

SENATOR WOODCOCK: Not H-u-g-h-e-s.

GENERAL SILLS: Not H-u-g-h-e-s. Y-o-u-apostrophe-s-e, if there is such a word, Senator.

MR. LUMBARD: General, part of your report is concerned with the inter-relationship of crime and civil matters, the two of them, I gather because you feel certain statutes could be enforced by both channels as you say in your statement. What is the necessary inconsistency between having it both civil and criminal, as, for example, in New York?

GENERAL SILLS: I am sorry. I don't get the question.

MR. LUMBARD: Well, in New York the Attorney General is largely civil. They manage to function, do they not, without this inconsistency problem between civil and criminal that you emphasize in your statement?

GENERAL SILLS: You didn't get the point of what I was saying.

MR. LUMBARD: Please clarify it.

GENERAL SILLS: First of all, in the State of New York at the primary level, crime is handled by the District Attorneys and they try the cases in their various districts. It has nothing to do with the Department of Criminal Justice. The laws of the State of New York were written with that understanding in mind. The laws of the State of New Jersey were written with the understanding in mind that the Attorney General has both criminal and civil jurisdiction. What I am trying to say here is that S 802, if it were to be adopted, if it were constitutional, does not do the job. It is going to cause a lot of confusion because you just can't say all of the criminal jurisdiction is transferred. You are going to have to say it is taken away. You are going to have to repeal the common law power of the Attorney General as well. Then you are going to have to go into each and every one of these statutes which makes particular

reference to the Attorney General and you are going to have to say in those cases which are either quasi-criminal or which just say that for a violation of this statute, there shall be a fine of \$10,000 or imprisonment of one year, whatever it may be - you are going to have to say who has got that jurisdiction. That is all I am pointing out there.

MR. LUMBARD: Well, I think you and I as lawyers perhaps have a very great difference then as to whether there is a problem here or not. For example, many persons can make an individual citizen's arrest. Yet that doesn't confuse the police or trip them up. I mean, there are many people who can enforce the law, starting from the citizens, if it happens in front of them, on to others, and that there may be several people who can enforce a statute doesn't mean that it is unenforceable.

GENERAL SILLS: Now, Mr. Lumbard, I am talking about statutes which refer directly to the Attorney General. I am talking about S 302. I am not talking about common law rights of citizens to make arrests. Come on now! There is no analogy there at all. You ought to know better than that. You have been in this too long. Come on now!

MR. LUMBARD: I think you have a problem that doesn't exist in so far as that is concerned.

GENERAL SILLS: Which problem is that?

MR. LUMBARD: The inter-relationship between the civil and the criminal.

GENERAL SILLS: Mr. Lumbard, very frankly --

MR. LUMBARD: We differ.

GENERAL SILLS: Not only do we differ, let me say this, and



I don't say this just to create a controversy, but very honestly I don't think you are sufficiently familiar with the laws and statutes of the State of New Jersey or the history of the laws of the State of New Jersey to make a valid comment on that. I really don't.

MR. LUMBARD: Well, perhaps that's up to the Senate.

GENERAL SILLS: No, that's not up to the Senate; that's up to whoever wants to be up to it. It is up to the Senate as to whether they want to pass 802. The courts later on will decide whether or not jurisdiction was taken by the Attorney General.

May I ask a question, Mr. Lumbard? Have you read the Convention Minutes of the Constitutional Convention of 1947?

MR. LUMBARD: No, I have not read them.

GENERAL SILLS: I would suggest that before reflecting upon this problem, it behooves any lawyer to read the historical reference to the constitutional words which incorporate the Attorney General and the Secretary of State.

MR. LUMBARD: You would say that to all the lawyer members of the Legislature too.

GENERAL SILLS: I say that to any lawyer. I have said it here today.

MR. LUMBARD: Let's go to the premise, you say, which underlies the section on youth, page 14 of your statement.

GENERAL SILLS: Yes.

MR. LUMBARD: You say, "The major premise established by the framers seems to be, whether or not a youngster has committed an act of juvenile delinquency. . ." How do you

read that in that section?

GENERAL SILLS: I read that in the section which starts out by saying that there shall be set up youth camps and that if the Commissioner feels that it will be to the benefit of the child and if the child is illegitimate, if his mother consents - his father has no rights evidently - or if the father has abandoned the mother, he has no rights either or if both parents consent, that this child, even though he has not been guilty of any act of crime or juvenile delinquency, may be sent to this camp. Now this is called a Department of Criminal Justice. I would assume that the reason why you want this child sent to this camp is to make sure that he does not become a juvenile delinquent or a criminal. You start with the premise that all these children may very well do that and this child doesn't get a hearing. I think that is unconstitutional under In Re Gault.

MR. LUMBARD: Well, General, I am sorry you weren't here earlier because some of these questions were raised and we had here the Commissioner of the New York agency, Commissioner Luger.

GENERAL SILLS: Did he tell you they drafted their law prior to the time of In Re Gault and they have In Re Gault in mind now?

MR. LUMBARD: General, the statute is dated in 1960 so it is also obvious that it was before In Re Gault. But equally so, you and I apparently have a lawyer's difference and so does the Attorney General in New York and everyone else that In Re Gault hasn't a thing to do with what they do. They

do not make findings of delinquency. It is a voluntary program. I would only say to you - and this is merely for information - his testimony will be available to you. He was brought here to talk to this very point, whether or not it is a juvenile delinquency program after findings of delinquency, and it is not. It is not proposed as such, does not operate in New York as such and is a completely separate thing.

GENERAL SILLS: Right. This only goes to the question of In Re Gault.

MR. LUMBARD: No. It goes to the program operation as well. It goes to the kind of thing that is within this. It goes to whether or not the assumption on which you operate is accurate.

GENERAL SILLS: Is he in a Department of Criminal Justice?

MR. LUMBARD: He is in the Executive Department in New York State, but that doesn't seem to me to make any difference whatsoever to the constitutionality.

GENERAL SILLS: You asked me a question. To me it makes the biggest difference in the world. If I have a Commissioner of Justice, as it is called, Commissioner of the Department of Criminal Justice, and he runs camps and I am sending a child to that camp who has not been involved in an act of juvenile delinquency, I say that you create the aura of treating this child as though he were a potential criminal. This is non-existent in New York.

MR. LUMBARD: No, no.

GENERAL SILLS: It is a separate, independent agency.

MR. LUMBARD: That is a valid point on which reasonable

men could take one opinion or another. But it is not the same as this assumption that a youth has committed an act of juvenile delinquency. There is no such assumption, as you stated on page 14.

GENERAL SILLS: I say it is a major premise.

MR. LUMBARD: You say it is an assumption that a youth has committed an act of juvenile delinquency.

GENERAL SILLS: I say whether or not a youngster has committed an act.

SENATOR WOODCOCK: Gentlemen, I think we had better break here because the girls have been taking dictation here for quite a while.

GENERAL SILLS: I am due in 15 minutes in Asbury. Do you think I'll make it?

SENATOR WOODCOCK: We will take five minutes.

GENERAL SILLS: Am I excused, Senator?

SENATOR KELLY: I just wanted to ask one fast question and I'd be finished. I think Senator Italiano wanted to ask a question.

SENATOR WOODCOCK: Would you be available tomorrow?

GENERAL SILLS: No. In fact I am in the middle of drafting my speech which I am giving tomorrow, which may be of some interest to you, "The Moment of Death and the Legal Complications in the Transplantation of Organs."

SENATOR WOODCOCK: Well, I think I am approaching it.

SENATOR KELLY: I would just like to ask this one fast question. Just as in building a home, you need your carpenters and your tools and so forth, I think with the State Police we

have the carpenters to do the job to build a defense against syndicated crime and organized crime, but they do need some tools. I think one of the tools - and I had some reservations about it myself, Attorney General - that they possibly need to do the job is electronic devices. I think that they need this very badly, particularly from some of the testimony we have heard here. I wonder if you as Attorney General -- I am not questioning your integrity or honesty. I have never had anything before me to make me even question it. I want you to know that, sir.

GENERAL SILLS: Thank you.

SENATOR KELLY: But I do question any reservations we have about giving the State Police the tools to do this job.

GENERAL SILLS: Senator, you pass this bill, 897, with or without the recommendations that I and others have made and the very first thing you will get will be a supplementary bill for moneys to expend in order to obtain the equipment necessary for this kind of surveillance. You will recall that when I read my statement with respect to wiretapping, I indicated that this was one of the reasons why I thought the matter ought to be left to the State Police, namely, that it was going to be so expensive that you weren't going to be able to get the local departments to get the best equipment and that we would get this at the State level.

I might point out to you that under S 802, not only would the State Police not get more tools, tools would be taken away from them as such. There would no longer be under the Superintendent the planning and the research and the uniform crime

reporting and the intelligence unit. This would now be a staff function under the Criminal Justice Commissioner. So the integral whole of the State Police will be excised by S 802.

SENATOR WOODCOCK: Senator Italiano.

SENATOR ITALIANO: Attorney General, I have a little problem in my mind with your objections beginning on page 3 and going on to page 4 regarding 802, ". . . a centralized police state, one in which all other considerations are subordinated to the overriding concept of 'order', and particularly, 'I question whether liberty-loving people such as we are would be willing to effectuate a 'cure' which might be a greater affliction than the 'disease.'" How do we reconcile this feeling with your acceptance of electronic surveillance and wiretapping?

GENERAL SILLS: Might I refer you to Professor Blakey's statement on that. I think he makes a beautiful observation on the first page. For many years I was opposed to wiretapping. I still have, very frankly, within me a certain revulsion about going into the private, so-called, conversations of other people.

SENATOR ITALIANO: Yes because we have to agree it is an invasion of privacy.

GENERAL SILLS: That's right. Now I had two grounds originally when I thought about this problem. The one was the constitutionality of it. The other was the invasion of the right to privacy. The feature of constitutionality was removed by the United States Supreme Court when they decided the Katz case. I am now faced with the problem of the upswing

in crime. I am faced with the fact that almost every law enforcement officer says that in order, especially where organized crime is concerned, to delve into this particular problem, you need this tool. There is no question that it's a tool and that it's an effective tool. And, therefore, you have to balance this effective tool against the invasion of privacy.

Now, I don't believe in being absolute about anything but I do believe that if you have the electronic surveillance device and you have safeguards, especially as I indicate that in every instance there be a warrant and there not be any instance where you are permitted to wiretap without a warrant, I think that you will have the safeguards.

Now, as I remember originally, as a matter of fact, Professor Blakey, in dealing with the National Crime Commission, said that he thought the law ought to be of eight years' duration. He wanted to see how it would work.

I went over this in my mind, thinking of should we think in terms of making it an experiment for X number of years, but I decided against that.

Professor Blakey also said at that time that he thought one warrant ought to be issued for each million of people in a given county or in the State, so that, New Jersey, for example, would get thirty-five on the State level and you would have to pro rate it - five, I think it was, for each million - you would have to pro rate it in the counties. Bergen and Essex probably would get five and then you would have to go on down.

I didn't think that was particularly practical and,

when I finally came to the conclusion these past couple of months that we would have to go this line, as long as we are going the line, I thought we ought to have a practical solution to the problem.

SENATOR ITALIANO: You don't think then that the number of warrants issued would be a practical solution as an added safeguard?

GENERAL SILLS: Not on the basis of his formula. Yes, I think there would be - of course, it would be a limitation. I fear very much the fact that everybody and his uncle would have the right to apply or to use the tap instruments. That's why I recommend again that only the State Police be permitted to use them. Yes, I think it's something to think about, yes.

SENATOR ITALIANO: I was led to believe that Hogan, was it? only used it 75 to 90 times at most.

MR. LUMBARD: Per year.

SENATOR ITALIANO: Per year, yes. So perhaps a limit on the number of warrants available to be issued would -

GENERAL SILLS: I think it's a valid point, Senator. I think it's something that people have to discuss.

SENATOR ITALIANO: What about limiting the time to five or ten days rather than twenty days?

GENERAL SILLS: Well, there I think somebody is going to have to make an educated guess as to what the United States Supreme Court is going to think about this.

SENATOR ITALIANO: Well, forgetting the United States



Supreme Court -

GENERAL SILLS: The lower the amount of time, probably the more constitutional it will be. At the same time there are some practical difficulties involved. The original bill we drafted said thirty days, along with Title III - and I think your bill here has twenty days. I think twenty is not too long.

SENATOR ITALIANO: Forgetting the constitutional aspect of it, with regard to built-in safety features, realizing that it is an invasion of privacy and it is an extreme measure in our society anyway that we are facing here, perhaps a limit of a reduced number of days would be a safety factor. don't you think?

GENERAL SILLS: There is no question but that it would be an individual safeguard. The question is, would you be removing the effectiveness of the tool.

SENATOR ITALIANO: Do you think it would if it were reduced?

GENERAL SILLS: It would have to. The lower the amount of days, it just stands to reason it would have to. I have no personal objection to the ten-day feature or trying it, and if it didn't work, coming back to the Legislature and asking for more, but I am content to go along with the twenty-day feature.

SENATOR WOODCOCK: Have you anything else, Senator?

SENATOR ITALIANO: No.

SENATOR WOODCOCK: Senator Hauser?

SENATOR HAUSER: I have no question but I just want to be recorded as having arrived late because of the untimely death of my close friend, Hudson County Clerk John J. Grogan. My lateness was due to the fact that I had to attend the family until two o'clock this afternoon.

SENATOR WOODCOCK: General, I know that I have some questions and I know Mr. Lombard has, but since you were supposed to be in Asbury Park five minutes ago, I don't want to detain you. I do want to apologize for not having you earlier.

GENERAL SILLS: Senator, no apology is necessary. I know this is not unusual in legislative hearings either here or in Washington, and one must be attuned to it.

SENATOR WOODCOCK: I do want to thank you for attending this afternoon, and I think that we can conclude from your testimony and the dialogue here today that reasonable men can differ.

GENERAL SILLS: De gustibus non disputandum est.

MR. LUMBARD: Colonel Kelly, did you want to say a few words.

SENATOR WOODCOCK: We will take a five-minute break.

[FIVE-MINUTE RECESS]

AFTER RECESS

SENATOR WOODCOCK: I might say before we begin, gentlemen, that I have been informed that Commissioner Ylvisaker is not going to appear today. I believe he had a speaking engagement in Northern New Jersey, but he will make himself available tomorrow. So we will conclude today's hearing with Colonel Kelly who has been kind enough to come back today to give us the benefits of his thoughts on Senate Bill 802.

C O L O N E L D A V I D K E L L Y, being duly sworn, testified as follows:

MR. LUMBARD: Colonel, do you wish to address yourself to 802 or 803, or both, or just one, or what?

COLONEL KELLY: My primary concern would be 802. I will address myself to 802. Yesterday I addressed myself to the wiretap bill 897, and I think I expressed my views in that area. I will confine my words today to 302 and I want it specifically understood that I am concerned with the police end. I am not familiar with the rehabilitation of narcotic addicts. We have some background in that but I am not an authority, and I am confining my thoughts and words to the Division of State Police and the police problems.

I need some clarity and I am going to make some recommendations. And maybe you can answer some of the questions here for me. I am concerned with that portion of Article 2 that deals with the Division of State Police, specifically lines 3, 4, 5 and 6.

MR. LUMBARD: That's on page 6 of the bill?

COLONEL KELLY: Right. "The Division of State Police in the Department of Law and Public Safety, together with all its functions, powers and duties, other than those which may be by this act assigned to the Division of Policy, Planning and Research, is continued and transferred as the Division of State Police..." Well, with regard to the Division of Policy and Research, as I read it, it says: "The commissioner shall also have the authority to establish" the division of policy and research.

MR. LUMBARD: Which is optional, not mandatory. There is a big distinction.

COLONEL KELLY: I realize that and I will direct my remarks to that. I realize that, and seeing that it is not firmly entrenched and is not confined within the organizational TO, I would like you to understand that we are kind of "pitching" for this in terms of maybe we can relay to you some of the problems that we have and maybe, in relating these problems, you can understand what we do in this area. For example, the things that you are talking about in the Division of Policy that could be created - first, lines 21 and 22 on page 5, "identification of perpetrators of crime," we do have the State Bureau of Identification and we perform this mission - we, the State Police.

Page 5, line 22, "criminal intelligence." The State Police has a central security bureau that collects, compiles, analyzes, disseminates, and uses this information, and it goes

out to all police departments.

Page 5, lines 22 and 23, "development of evidence for use in prosecution of offenders." The State Police Laboratory conducts thousands of examinations on submitted evidence and provides expert court testimony.

We stated here about two or three months ago the problems that we did have in the laboratory, and the Senator and yourself were up to our crime lab. Let me tell you what has happened. We have decreased our pending cases from something like 600 to about 103, and those cases are down to a minimum. And how do you think we did this? We hired five, six, seven or more chemists. I don't know whether I am legally right in doing this, but we're doing it.

MR. LUMBARD: I don't suspect anybody is going to sue you to find out.

COLONEL KELLY: I'm involved in two or three suits now. They will have to get in line.

The point that I'm making is that we do these things that you propose in the Division of Policy and Planning. We have, and I want to state right now as to another bill with regard to satellite laboratories - we are for the satellite laboratories, but I think first if there were more emphasis on the central laboratory here, for three hundred thousand dollars and two or three more chemists, we can provide more efficient service and better and faster service. We have proven that. Our work load has grown and is growing every day.

MR. LUMBARD: You think we should do both, in other words?

COLONEL KELLY: Right.

MR. LUMBARD: Central lab and satellites.

COLONEL KELLY: Right. We will have to do this eventually.

MR. LUMBARD: The big stuff in the central lab and the easy, insignificant stuff in the satellites.

COLONEL KELLY: Right.

MR. LUMBARD: Whether it is alcohol or water - why send that to Trenton?

COLONEL KELLY: Right. But I say now the bill emphasizes satellization, but I think primarily it should be for the central place for -

MR. LUMBARD: You see, Superintendent, the point of the bill is not to emphasize necessarily one course or the other but to keep it open, to keep the administration of it as flexible as possible so that the Commissioner could go in all the directions you propose. The theory of the drafting of the bill has been to give the maximum options and flexibility in administration rather than to try to get tied down to definite things.

COLONEL KELLY: I am making this point because of Bill 830.

MR. LUMBARD: 830?

COLONEL KELLY: Yes, this is for three hundred thousand dollars.

MR. LUMBARD: That's the bill with the number of the labs?

COLONEL KELLY: Right. This bill proposes to give \$300,000 to establish regional laboratories and this is what I commented on. It is not in S-302 but it supports 802.

MR. LUMBARD: Well, 830, I think if you recall, Senator Forsythe's conversation was a suggestion because local police departments, especially in and around the Newark area, were having to hire private laboratories to do their lab work, and this obviously leads to lack of control over evidence and a lot of very bad things, and there is really no "out" for that until you get to the satellites to a certain degree.

COLONEL KELLY: With this, we agree.

MR. LUMBARD: So I would think that we share goals, not that we differ. Isn't that your understanding from the bills themselves?

COLONEL KELLY: From the bill itself, I wasn't sure whether the satellization came first or the increase in the central agency, and I wanted it understood that I would prefer that the central agency would be first. We are two hours different in time.

MR. LUMBARD: But we would eventually do both.

COLONEL KELLY: Right. Eventually both.

MR. LUMBARD: You see, when you say one over the other, that makes it a difficult posture, for the Legislature has to pick you over the local police, whereas the theory was to pick both.

COLONEL KELLY: I think you missed the point. First, you missed the point in dollars and cents. You only appropriated \$300,000, and \$300,000 would probably take care of one

'satellite. The second thing is, this is for - I know what you are going to say - the second thing, the laboratory is for the local police. Ninety-five per cent of our work is local police work.

MR. LUMBARD: I understand that. It is not a matter of contest really.

COLONEL KELLY: O.K. Where am I? Page 5, lines 25, 26 and 27 - "liaison between the department and the Judicial Branch.." I would like to state right now that we have a pilot study, UJR, which is a judicial reporting system and the pilot study is now going on. It started in July in Mercer County. We have established the format, we have established the form, and it is practically the same as the uniform crime reporting system. We expect to put this into effect in January of this year, so we do have a liaison with the judicial system as it relates to reporting and a follow-up of crime.

MR. LUMBARD: Colonel, the point here again is not to exclude but to draft language which is broad enough to include, but also includes other interests; for example, if the Department were created with the scope, it would - then it has interests far beyond your own; for example, in the area of juveniles, changes in the law would reflect the institutions with the juveniles, would reflect the courts, the work load of the courts would back up, as indeed has happened with Gault, as a result of the Gault decision. So this was to have merely something that would cover the whole spectrum of the whole



system, not just police.

COLONEL KELLY: I realize that. I can understand this, too. I am saying within the computerization of this type of thing, and if this computerization on this same thing were checking with courts and were checking daily with courts, and the courts are reporting to a system, we have established this system already - juvenile courts, the county courts - and the reporting system, the format for reporting has been developed and is being tried right now. All judicial actions from the day and time that this man is arrested will be recorded on the format type thing that we have.

MR. LUMBARD: Well, what you are doing is a careers-in-crime type of thing. Right? The program which you started is like the FBI's "Careers in Crime"?

COLONEL KELLY: Possibly, but our problem was that we never did have a full recording of the man arrested. He lost him in the system somewhere. Now the courts found that they had a problem too in processing. There was a shortage of courts and a shortage of lawyers.

MR. LUMBARD: Well, Colonel, is there anything in the bill which would forestall you from doing a careers-in-crime program?

COLONEL KELLY: No.

MR. LUMBARD: Or any other.

COLONEL KELLY: There is when you say that there will be a Division of Policy Planning and Research and you give this Division of Planning and Research all of this authority and all of this responsibility.

MR. LUMBARD: But it's all optional, and the Commissioner over the whole department can either give it or not give it. The whole policy planning is optional.

COLONEL KELLY: I agree.

MR. LUMBARD: He doesn't even have to establish the whole thing if he doesn't want to.

COLONEL KELLY: The plan is established. It is established already within our division.

MR. LUMBARD: I'm just making a suggestion. I'm not sure this is a legislative matter but it's more for the Governor and the Commissioner, unless I misinterpret you. Well, how would you change the statute? Maybe that's a better way to get at it.

COLONEL KELLY: By putting the Division of Planning and Policy under the State Police. It's as simple as that.

MR. LUMBARD: But then what about policy planning as a function for probation? You have a separate one in probation.

COLONEL KELLY: You have people who do this in the other agencies, in the Rehabilitation and these other divisions that you do have, where it properly belongs.

MR. LUMBARD: Well, that's a different thing. I mean, that's a choice for someone else.

COLONEL KELLY: I agree, but if you don't ask me you're not going to find out my opinions.

MR. LUMBARD: We are trying to find out.

COLONEL KELLY: One of the things you are talking about - you are talking about reporting and intelligence

systems. And, as I said yesterday, there is an in-trust among police officers - the LEIU - and you don't get into the LEIU unless you are personally acknowledged, as you can understand. And we talk police language. Now we are the only agency in the State in this. You can't afford to give this to a policy-making group.

MR. LUMBARD: I really don't think that the LEIU would, by this language, go out of the State Police. I can't see that, frankly.

COLONEL KELLY: We don't have the certainty of this either.

MR. LUMBARD: You see, it's the difference between optional language and mandatory language. It simply says that the Commissioner can have an intelligence file. Let me just make a point. I don't want to extend this. Perhaps the best intelligence file in organized crime in the State of New York is in the Parole Board. The Parole Board gets terrific information if they want to collect it, and they do in New York. They have a far better file than the New York State Police - not to cast aspersions on them, but it's in the nature of the parole process and results, if the parole administration is conscious of it, in excellent information as to associations, etc., etc.

COLONEL KELLY: Can I assure you that we have this in the State Police?

MR. LUMBARD: I'm not trying to say you don't have it in the State Police. I'm trying to say that other elements

of the system have an intelligent function and interest in addition to the State Police.

COLONEL KELLY: I understand that.

We have then this NCIC information that you are fully cognizant of, and we have word from Washington that no other agency or no non-operational law enforcement agency will be permitted in the system. If they are in the system, they will be phased out. This, of course, has to be under the control of the system, the State Police, that we do have now.

Uniform crime reporting. Again, I am pointing these things out that could come up, and it is right now in the Division of Policy and Planning. Whether it may ever be created or not, I don't know, but the option is that it may be created. I am pointing out to you that conceivably it could be another division and cause another division head, and now how do we operate? And I point these things out to you. Again this is a legislative concern.

The laboratories, I spoke to you about, and I think that we have moved quite well on that and you said that we can expect to get some help on laboratory assistants.

MR. LUMBARD: Colonel, I can't appropriate money. I'm just sitting here in a chair. I have nothing to do with passing bills or - I hope you get it but -

COLONEL KELLY: Well, primarily I'm speaking to four, and three of them are members of the legislative body and I would assume whatever action they take would be appropriate.

One of the things that maybe should be given some consideration in the organizational chart that you have is

the Division of Motor Vehicles. Administratively they have a function, but within that Division there is a fatal accident investigation and we do many and much business with them in automobile look-ups and identification. Right now we are within one department and it can be controlled by one head, but some of the investigative functions that are in the Motor Vehicle Department would have to be considered - who would control? how would we get look-ups? and this type of thing, and I think we had better have some consideration and thought given to this.

SENATOR KELLY: Colonel, I don't know whether this is pertinent to this, but it's a question I've had in my mind for quite some time, when you mentioned the Motor Vehicle Department. It has always seemed to me over the years that one of the things that brought down the high regard and respect that was had for a police officer is when they gave him the summons book and now all of a sudden he has given the neighbor from whom he has just borrowed the lawnmower a ticket for going through a stop light or something, which maybe he deserved - don't misunderstand me. But there has been a question in my mind whether this should be relegated to the Motor Vehicle and let them do all the traffic ticketing and enforcement and let the police do police work. I don't know whether that would be a practical solution but certainly in my mind I think one of the things that tore down the admiration and respect for the police was when they gave him a summons book.

COLONEL KELLY: Well, we have thoughts on this and when we are talking about fragmentation or consolidation, we have to talk about the whole picture and the whole spectrum. Motor vehicle inspectors do have law enforcement authority, full police powers, and the thought was at one time that maybe there should be some consideration given for the consolidation. We have investigated many larcenies of autos and we must deal with the administrative section of the Motor Vehicle Department. I am wondering how this would tie into what is an interdepartmental agency. And this is what I'm bringing out. The resolving of this, of course, must be a consideration of the whole problem. And this is why I am saying you shouldn't fragment police obligations - and this is a police obligation. There are thousands and thousands of larcenies of automobiles in the course of a day - an identification type thing. And that has to be considered as well as this other planning thing.

I am not giving you an answer or solution to the problem. I am saying it must be considered if you are going to do any reorganization at all.

Three years ago I took over the State Police. At that time I formed an Intelligence Unit, Criminal Intelligence Unit, and an organized crime task force. I must say I did not receive, nor did I ask permission or authority to do this. No one has ever stopped me from doing these things; no one has ever questioned me. So I want to go on record as saying that these units were formed and I have full authority to do whatever I so desire. We are operating in the towns, we are operating in the municipalities as best we can with the people we have.

The intelligence units that we do have have gathered information that is amazing and most important and we do have quite a volume of information that we never did have before. In the task force we need many more additional men. We fill in the blanks between the municipal police departments and the state and the counties. We are assisting the municipal police departments. We enjoy a fine rapport with the municipal police departments and they need help in this area. They need help and support, be it moral, moneywise, or anything that we can give them.

We go further. We train the police officers. One of the things that must be taken into consideration is the training end of it. We provide probably 90 per cent of the training for police officers in the State, and we have a resident course. Even in the county schools, we provide a good number of the hours of instruction. This is a function that we have. Now where you are going to get all these structures to do all this training is beyond me.

We are now running supervision courses and we are extending ourselves because it's necessary.

I think that some consideration has to be given to the consolidation, and I agree that you do have the option of the Division of Planning and Policy.

Now we talk about local police services. I think someone better take a look at this and see what is being done in terms of local police services. If you are asking me for a recommendation, which you haven't, but I will give

it anyway, I would say that if you have this type of consolidation in mind and you are considering what you think is necessary for better and more effective law enforcement, I would suggest that this option of the Planning and Research Division now become a reality and that it be in the Division of State Police, as well as the local police services. I think you now have the consolidation of police services and enforcement and consolidation of all of the things that are necessary for enforcement. This is my opinion.

MR. LUMBARD: You would put the Division of Local Police under the State Police?

COLONEL KELLY: Yes. And I don't think there would be any objection to this, with the services that we render to the police. This doesn't mean that we have any power or authority to supervise or supersede any local police department. We don't now and we have no intention to. But we do say, maybe with the assistance, and we do have police officers who are finding training and guidance along police lines - obviously I am police oriented. I heard this term used about fifty times before. I am police oriented.

MR. LUMBARD: One of the problems that you heard is that the bill is attacked on the ground that it is just a police bill. I am sure if you were hear today you heard that from a number of people. Perhaps the department is strengthened against that attack by having some of its staff services service everybody in the department, rather than just



police. Or to put it another way, by concentrating all the staff services in just the police, then you make the rehabilitation people more unhappy. I don't know.

COLONEL KELLY: I am not speaking for anyone else - the prosecutor, the rehabilitation - As I prefaced my remarks, I am not qualified to speak for them. I am speaking for the police, all police. And I can assure you that they do need help and they do need assistance. We are willing to do this and we have been willing to do this and they realize this, and I think that maybe this type of assistance in terms of consolidation as opposed to fragmentation may be the answer.

MR. LUMBARD: Do you agree that the kinds of police services that are set forth in Article 3 of the Division of Local Police Services are services that the local police need and could benefit from, whether rendered out of such a new division or out of a division which would be yours and also including local police. Are these the right services?

COLONEL KELLY: If I may qualify it, I am not looking for any more work.

MR. LUMBARD: I'm asking you if these four State services, as spelled out in the bill, are valid as functions -

COLONEL KELLY: The training programs are absolutely necessary. Police standards have to be satisfied and set. The general management and consulting services - this can be done. I am not saying that we as State Police are the over-all authority outside of assistance and help in terms of consultants and specialists in this field. It would have to be

brought in. We realize this.

One of the things - "administer federal and state grants-in-aid." As you know, SLEPA will administer all state aid because it comes through the federal grant and that's -

MR. LUMBARD: If this bill were passed, it would be done through this new department.

COLONEL KELLY: I am not involved in the legal end of it but I think that the Federal statute states that a state planning agency will determine the funds, and that has been established by Federal law. I am not going to question that.

MR. LUMBARD: I think it's a little different from that.

COLONEL KELLY: I am talking about the Safe Streets Act only.

MR. LUMBARD: I know you are.

COLONEL KELLY: But anyway that would be a legal determination and not mine.

MR. LUMBARD: If this department were established, I feel quite confident that it would be the grant agent.

COLONEL KELLY: If that be the law, that's it. But I am only pointing out to you that this agency or this committee was appointed only two weeks ago because federal regulations demanded that we have a state planning agency.

MR. LUMBARD: For a temporary period, necessarily. It could be made permanent or it could be kept temporary, but I'm really not sure that's involved in what we're doing here today.

COLONEL KELLY: I'm not concerned. I point it out in passing, but I am a member of this Committee and I thought I would comment on it - but I could do without being a member of the Committee, to be honest with you.

That's about all I have to say in terms of my opinion of the bill. My point is that I am concerned with the police, and I hope the police will be considered and I hope that there will not be fragmentation of police effort and that there will be concentration in the areas where police are concerned. I am concerned with the Division of Policy and Planning that may be created and may do these things that the police are doing now.

SENATOR WOODCOCK: Do you have any questions, Senator Italiano? Senator Kelly? (No questions.)

Well, thank you very much, Colonel, for coming in again. We really appreciate it and I am sure we are going to benefit from the views that you have expressed.

We will now adjourn until tomorrow morning at ten o'clock.

[ A D J O U R N E D ]

