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STATE OF NEW JERSEY

PUBLIC HEARING

THE SPECIAL JOINT LEGISLATIVE COMMITTEE TO STUDY CRIME AND THE SYSTEM OF CRIMINAL JUSTICE IN NEW JERSEY, AS CREATED BY SENATE CONCURRENT RESOLUTION NUMBER 44

HELD:

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Trenton, New Jersey

Before

THE SPECIAL JOINT LEGISLATIVE COMMITTEE TO STUDY CRIME AND THE SYSTEM OF CRIMINAL JUSTICE IN NEW JERSEY

Members of the Committee:

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SENATOR W. DUMONT, JR.

SENATOR W. F. KELLY, JR.

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VOLUME III

I N D E X

THE CHAIRMAN: We will call this hearing to order. As our first witness this morning we have Mr. Sanford Bates, the former Commissioner of the Department of Institutions and Agencies.

Would you identify yourself for the record, Mr. Bates?

MR. BATES: Well--

THE CHAIRMAN: Your name and address.

MR. BATES: Sanford Bates. I live in Pennington. I have been concerned with crime and especially with the correction side of it for about fifty years.

THE CHAIRMAN: Now, as is our practice in these hearings, we would like to swear you in as a witness officially.

S A N F O R D B A T E S, sworn.

THE CHAIRMAN: Now, Mr. Bates, please give us a statement at the outset and we will reserve to the Committee the privilege of questioning you as we proceed, because we do have a very tight schedule.

MR. BATES: Well, without knowing exactly

what other witnesses had covered, I had made a little list which I handed to the Chairman, matters which seem to fall under the head of corrections and which would seem to have some current interest to the matters that this Committee are interested in.

MR. LUMBARD: Mr. Bates, I understand that you had notified the Committee that you were especially interested in talking to us about the county jails. Is that correct?

MR. BATES: Yes, sir. That's one of the more important items in this memorandum.

THE CHAIRMAN: Perhaps you could briefly discuss that subject, Mr. Bates. I think we have tried through our other witnesses to get into other areas, but I don't think this is one that we do have scheduled and we would appreciate your thoughts on the county jail problem.

MR. BATES: Well, the county jail problem is not unique in New Jersey. It's an inheritance from an old penal system which originally divided crime into big crimes and little crimes.

The result was that the smaller crimes fell under local supervision and, in most instances, the person in charge of developing a county institution was oftentimes an elected individual.

In New Jersey we have twenty-one counties. There are what we like to call short term institutions and detention headquarters in most counties. Some of the counties have a workhouse defined by statute or a penitentiary defined by statute--not all of them. There are workhouses in Atlantic, Camden, Mercer, Middlesex, Essex, Monmouth. There are penitentiaries in one or two, Essex County particularly.

Now, historically or at least at present the jail is under the supervision of the sheriff in the county. Those other two county institutions, the workhouses and the penitentiary, are more generally under the supervision of the Board of Freeholders who appoint a--in some cases he is called the warden. Usually, the local institutions have a superior officer

called a warden. The State responsibility for the local institution--and here again I use the term local institution because under present auspices the conception of a jail is pretty well tied up in the public mind with prison. Jail, at least in our history, is a place where we keep men waiting disposition of their crime and inevitably they are not guilty of a crime if they have been arrested and kept in lieu of bail in an institution.

On the other hand, the courts still have somewhat of an option, too, after they find a man guilty to commit him to a state institution, or for a briefer period to one of these limited number of county institutions. The State has little, almost no direct authority over the operation of the county institution. They do maintain an inspector who visits all of the county institutions, makes a report, and oftentimes that report may be critical or may be commendatory. The only direct authority which the State has is under certain sections of Title 30 which permit the State to apply to a court to obtain

an order either closing the county institution or ordering certain changes made.

Now, during my nine years as Commissioner that power was very rarely used. I remember only one instance and that was in one of the southern counties where there was complaint from the outside as to the food and the people in charge were reminded that if they didn't improve the situation some court action would ensue.

MR. LUMBARD: During what years were you Commissioner, Mr. Bates?

MR. BATES: From 1945 until 1954.

MR. LUMBARD: Do you think conditions have changed since you were Commissioner?

MR. BATES: Fundamentally, so far as the jails are concerned, they have not. There are the same administrative defects and the administrative defects are that we have twenty-one separate governments and many of them cramped for money. The result is that so far as the treatment angle of the short term prisoner goes--and I say this knowing that I am being recorded--it is almost non-existent.

There are some sheriffs, and I know many and I know some of the wardens, who are imbued with a spirit of service and do what they can, but the modern view of correction is that--this has been reinforced recently by the various commissions that worked on it--the fundamental objective in incarceration is to try and turn a man out better than when he went in. I'm afraid that many of them, not on account of negligence of the warden or the sheriff, but I am afraid a good many inmates urn out no better and oftentimes worse than when they went in.

MR. LUMBARD: Could you spell that out in a little more detail so that your general conclusions based on your experience are a little sharper or clearer to the Committee?

MR. BATES: Well, some of the things that I have to say would have to be based on my long experience and present observations because one of the points I make, one of the points I am making in that memorandum, I handed you is that there is no reliable, adequate, consistent form of

statistics with reference to the 40,000 people that get involved in the local institutions every year.

Recently with an organizationthat I have gotten interested in received a grant of $170,000 a year and a half ago to work specifically with county jail prisoners, to train them inside the prison, to discover any employment possibilities, to arrange for employment when they were out, and to carry a certain amount of supervision. When / had the effort to move from one county to the other it was almost impossible to find out in the various counties of the State what their age population was, how many of them were waiting trial, and how many were there serving sentences. I'm afraid that in some of these smaller counties the basic separation between persons waiting trial and persons found guilty is not strictly maintained. It should be.

MR. LUMBARD: That is to say those who have not yet been convicted of crime and might

still be on their first offense, let's say, and never previously been convicted of crime are, in fact, mixed with the general population?

MR. BATES: They are in the same institution and while I think many sheriffs may try to separate them, the overall administration is the same. They eat the same food. And the basic inefficiency of the county system begins to appear when they come out. I think our whole revulsion of feeling with reference to prisoners started about fifteen or twenty years ago when the Attorney General of the United States delivered an address and the name of his title was, "They all come out." That is the basic principle, you either have to die inside or you have to come out, and it is important how they act when they do come out.

Now, we have tried to get what is known as the recidivism rate in this State. Again, the Morrow Association, which is the private agency that I've been referring to, was unable to get officially a recidivism rate. We know, everybody knows, in fact the jailers

themselves know, who their regular customers are, know that they come back two or three or four times, and if you should want to know how many and why the comeback there is no accurate data today/-for example, when the Alexander Commission, which is one of the commissions that you may have heard about, some eight or ten years ago in a report stated there are 40,000 people affected by the jail system in New Jersey, I, for one, couldn't believe it so I had somebody --I think Bob Jamison helped out on this--call up personally the twenty-one institutions and we found that including both the jail cases and the detention cases there were 39,800 people who had been touched. Now, compare that with the several thousand that go through the well-conducted State institutions and you begin to ask yourself what's been asked of people in the country for a hundred years: Why do they treat the convicted men better than they do those that have not yet been convicted?

One of the figures given to me that I still can't believe was by a very excellent warden, Colonel Hartleroad, who runs the

workhouse up the river here. His estimate of recidivism was 95 per cent. Now, gentlemen, I doubt if you can run onto a greater need for action than that--what kind of a system, what kind of a remedy are we proposing that fails to that extent I think he was exaggerating his 95 per cent, but 65 per cent is a pretty conservative estimate.

The answer to it all is counties are oftentimes unable to provide for what is generally regarded as welfare work or psychological work and as long as there are twenty-one of them doing business they will never be able to command in each of these places the kind of service that, to a considerable extent, is being rendered in well managed prisons.

Now, again, there isn't any parole for county prisoners. In this State a murderer, a robber, or a rapist, is eligible for parole but you can't parole a gambler or a non-supporter or a petty thief.

The parole system, I think, for State Institutions in New Jersey is well handled. At least, it works

closely with the Department of Institutions and Agencies. Although I don't know the parole board members personally, they have had dedicated members and I think, as I see parole systems over the fifty states of this country, that it is also fairly free of some of the complaints and scandals that have attached to parole in someplaces in the past. If a man and his wife have an argument and he won't support her, that she can complain and take him to court. She gets him put on probation. He violates the probation. He says that he never will support her now, no matter how long he stays. So he gets a year, maybe--they call it 364 days now--in jail. There he is. There is no recognized parole or court measure to get him out. There are certain what they call allowances or commutations. I think he can get five days a month off for good behavior. But his wife can come to the Sheriff after a month and say I can't write down just what she would say about him, but it would be derogatory. She would say, "Well, he's where he belongs, but let's give him another chance. He's promised this time he will

get work and take care of me."

A parole bill was passed by this legislature two years ago and was vetoed by the Governor. I'm not contending that that type of parole bill that the Governor vetoed was the best that could be devised. All I'm saying is/that we do prefer and support the parole program for the big criminals, but not for the little ones.

it is a bit anachronistic

Now, there are two other matters that directly affect the jail situation and they're on my list. One of them is the possibility of passing a statute authorizing work release in the county jails. That's number one. That's Senate 582, gentlemen, introduced by Senator Stout with three or four other co-sponsors.

Another bill which the Morrow / Association, I'm sure, is interested in makes it possible for the Board of Freeholders to advance a small amount of money to a discharged prisoner. The bill limits it to $25 and says it needn't all be paid at one time because, perhaps, if they

give it to him a small amount at a time it will be better than giving it to him all at one time. But that bill is also in the works and is numbered 601, Senate 601.

Now, gentlemen, under the statute we can and do give allowance on discharge to the serious criminal. We realize that if he goes out without a job, without a home, without any resources, that chances are pretty good he'll be back. The law permits the State Prison to pay $25 in what we now call gate money. But the county jail prisoners, unless some sympathetic deputy sheriff or deputy jailer slips the fundless prisoner a dollar or two he may go out without a cent.

Gentlemen, it was that situation that the Morrow Association brought to the attention of the poverty people and resulted in an OEO grant a year and a half ago of $170,000. They had to kick in $20,000 more to get it. And in two of the twenty-one counties staff has been hired. Welfare workers and employment supervisors and superiors have been put to work and while I know that the Morrow Association can't give you authoritative

figures in the two counties that they have worked under this grant, one in Middlesex and one in Mercer, as near as we can find out the recidivism rates have been reduced to ten and 12 per cent as against 65 to 90. Now, Is that saving money or isn't it? Now, the point there is we don't claim anything. I am sure we would be foolish to claim there is any quick cure for recidivism. We managed to make the OEO people admit that the most dire situation of poverty that the government is resolved to prevent is a man who leaves jail after six months with no home, with no friends, with no job and no place to go.

Now, I am referring only in passing to these two bills: one/which will allow the a carefully worded bill Freeholders to at least give him money/enough or service to get to where he wants to go, which is Senate 601; the other one which permits the jail or workhouse to keep men in their jobs. Senate 582

Who is paying for this jail business now? Well, the taxpayers are paying for it and welfare is paying for it. The punishment

to a man, let's say for petty theft or non-support or something that's worth six months or ten months, who suffers? It's his wife and children and the taxpayers that suffer. He may get food enough to keep alive, but the welfare people here have to pay something. Now, this work-release scheme is a modern method to bring to the attention of the prisoner himself his own responsibility for his dependents, to help him find a job, and to induce the employer to give him a job, to not only pay--this is what work release can do--not only pay the county for his jail keep, but it will relieve the welfare department of their caring for him and it will send him out with a few dollars in his pocket that he has earned and that he doesn't have to beg for.

Right across the river, in Bucks County, Major Case has been operating work release in his Bucks County Prison for several years. Case tells me that he last year turned over to the Freeholders $15,000 as against the cost of running the jail, which his men had earned.

Now, I happen to have seen work release operate in the Federal institutions. I was, as you may know, the first Director of Federal Prisons. That goes back in the ages, but I occasionally get a job from the present Bureau of Prisons and they send me around the four places where work release was operating.

MR. LUMBARD: Did one of them include Danbury, Connecticut?

MR. BATES: Danbury was the first one I went to. The second was Milan, which is just outside of Detroit. The third one was just adjacent to Dallas and the fourth one was down in Tallahassee.

I took a week in each of those places. I talked to the men that did go out on work release and I talked with the employers. I talked in Danbury with the Chief of Police and the Mayor and the newspapers and the school people. I saw these men going out of the prison in the morning working as union members, if you can believe it, coming back at night having earned money which they can turn over, and I saw in them a long-

delayed realization that incarceration could have meant something not to perpetuate idleness but to keep them cognizant of the obligations they had toward their families.

MR. LUMBARD: Is it your understanding that in the Danbury area the officials of the United States Bureau of Prisons have persuaded the local union leaders to let the men come out of the prisons, work even in semi-union status for the rest of their stay?

MR. BATES: Yes, sir. I talked with the mayor himself. I talked with the chief of police. I said to the chief, "Do these folks make any trouble?" He said, "Not one."

I went into the plants. I talked with the union officers. I remember I talked with one nice old gray-haired lady who was at the end of a row and I said, "How are these prisoners getting along?"

She said, "What prisoners?"

"Well," I said, "you know some of these prisoners come down here every day and work."

She said, "They don't bother me any."

I said, "There's a boy right up the end of this row."

She said, "Yes. He has been one of the most polite and best-behaved boys in the whole plant."

I talked with several of these employment managers, especially in Danbury, [redacted], --in fact, I talked to union officers. You know, I've been in the business long enough to remember that the last thing you could ever hope to have was to have an ex-prisoner permitted to join the union or to go into a great many kinds of employment. But up in Danbury today they told me--and sometimes I think of this when I think of what the whole prison employment situation used to be, they told me that in the country today there are 40,000 new more machinists necessary. And I said, "Well, what are you willing to do with these men when their parole comes and they have to go out?

He said, "We only ask one question, can he do the work." And he said, "Furthermore,

every one of these men joins the union and pays his dues and the way we operate this plant, we couldn't fire the men because the union wouldn't let us."

Now, I don't blame you for not wanting to believe that because I hardly believe it myself, but I saw it happen and I saw these men go out at night in a group to a trade school run by the city in Danbury where they learned a trade and came back at midnight and reported in.

So I hope there's a good chance that we can get this bill passed this year.

In 1966 the Senate passed a work-release bill by a two to one vote. Senator Ozzard had it in charge. It failed in the Assembly, not that I think organized labor opposed it, but some of the men were afraid that organized labor might oppose it.

In the Federal system, which now has over 2500 men out on work release, the labor unions appeared in Congress to urge the passage of the bill and there is written into Senate

582 the same provision which suited the labor people in the Federal bill, that no man should be sent out on work release if in so doing he would cause the removal of a free citizen in that job. Right now there is a good labor market and this is the time to take advantage of it.

I understand that there is a bill in the Assembly. I think it's A-4 and I'm told --rather, I know officially that the Governor is seriously thinking of putting in a work-release bill for state institutions.

Now, S- 582 covers only the people that need it most. The President's report in --I guess you have seen it. Probably Mr. Lumbard has seen it. This particular one, the Challenge of Crime in a Free Society specifically refers to the work release as one of the modern devices of correction.

MR. LUMBARD: Mr. Bates, the Chairman has reminded me that we have something of a schedule problem. Let me assure you, however, that I am familiar with the Danbury plan. I

visited there several times and there is, of course, extensive literature in the United States Congress, hearings which led to the United States Congress passing the bill that set up that program. So I think we are familiar, to a certain extent, with that.

May I ask you one question, please? You mention in your list of suggestions, number eight to be specific, the need for a State statistical agency to compile and publish data with reference to the nearly 40,000 in the county jails. Isn't it obvious that the need for such statistical information would embrace anyone within the whole reach of the criminal justice system? Isn't that correct?

MR. BATES: Well, I don't go outside of the institutions. It may be that if you have a bureau something like New York or even Massachusetts it would cover the field of crime registration. But my thought there is, assuming that we do think this jail evil has been with us long enough and something ought to be done about it, the situation would

develop exactly as it did in Massachusetts when most people said, "Well, before we do anything radical let's find out who they are."

I tell you, gentlemen, even you would be surprised at the variety of personalities and the variety of reasons that bring men into the short term institutions.

Now, my suggestion there is that the whole business of probation, which has some excellent spots in New Jersey, perhaps one of the finest probation systems in the world--it was turned on by my old friend Joe Murphy in Essex County. On the other hand, some of the other systems in the smaller counties are nothing more than just reporting agencies. There again the need for an authoritative state oversight is just as necessary here as it was in Massachusetts. Massachusetts has a committee of judges that meet very conscientiously and even pass upon appointments of various county probation officers.

There is a good deal of study being made in Mr. McConnell's office with the help

of / Justice Weintraub/ and by Dr. Bixbey These two men were my old friends and associates. They have done a great deal in the last few years to systematize and dignify probation, but supposing a man comes in here obviously drunk and disabled or poor? If you want to be sure you had better call up twenty-one different jails to find out if he's ever been in court before. It seems to me that it is not too much to expect that we can not only set up a system that will tell us about these records, but will estimate results. What is the result of probation? How oftentimes has it failed and how oftentimes has it worked?

THE CHAIRMAN: Mr. Bates, I'm terribly sorry that we haven't been able to provide much more time for many more witnesses. I think you have brought to us a subject that at least I personally had not been aware of that should really have great significance in our studies here as a major part of this whole system of criminal justice. I think it's a very important one and I assure you that your information, the information that you have given us, will

be a part of it.

If the members of the Committee have a question, we would like to move to that.

SENATOR DUMONT: Just one question, Commissioner, because you mentioned Senate 601. It's not even listed in the very recently introduced bills. Is that the number of it, 601?

MR. BATES: Mr. Kelly of Camden, Mr. Miller, and another co-sponsor were on that bill.

SENATOR DUMONT: Thank you.

MR. BATES: Now, I think you will remember, Senator, that that very bill, that 601, is an exact copy of Senate 284. So it passed the Senate unanimously. That same identical bill passed the Senate in '66 by 21 to nothing. There again, as sometimes happens, I didn't know enough or somebody didn't know enough to get the right people to move it in the assembly and so it fell. But there's nothing compulsory about that 601. That's a permissive bill. It authorizes the

Freeholders to do exactly what the Department of Institutions and Agencies is doing now, if they can have enough confidence in the prisoner going out.

I happen to have seen fellows coming out of these jails and I heard one of them turned up at a Morrow Association office a little while ago. "Where are you going to-night?"

"I don't know."

"Where are you going to sleep?"

"Well, a fellow says that you can cut into one of these public garages and they'll let you sleep in one of the cars over there."

THE CHAIRMAN: Fantastic.

MR. BATES: Well, it's not impossible, Senator.

THE CHAIRMAN: I thoroughly agree.

MR. BATES: This jail business is rife with politics. It always has been. If I only had the time I would--I have a quote here from two Frenchmen that came to America in 1832 and condemned the whole system of

imprisoning people who had not yet been found guilty of a crime and treating them worse than the criminal. That was a hundred thirty years ago and we are still working on it.

THE CHAIRMAN: Senator Woodcock?

SENATOR WOODCOCK: I have no questions.

THE CHAIRMAN: Assemblyman Smith?

ASSEMBLYMAN SMITH: Commissioner, don't you agree that since you went out of office in 1954 that the rehabilitation of prisoners in county jails has not progressed in that period?

MR. BATES: I don't know enough to say that it progressed at all, Senator, but I've heard many of the jailers and the sheriffs deplore the fact that they can't get any money.

Could I say just one more thing and that's this matter of cost. I read in the paper the other day that somebody is going to ask for another hundred million dollars. I am not a particular follower of one of our recent Governors, but I was present at the

opening of a big institution in South Jersey, the Ancora Hospital, which cost a pretty sum, and I heard the Governor say he hoped that this would be the last time that he would ever have to be called in to dedicate a brick and mortar institution, in the belief that there were so many other ways. This was an insane hospital. They were expecting great things of medicines and drugs and so forth.

Now, all I'm going to say is I know what brick and mortar costs. I know that if we had been able to build a State Prison in 1952 it would probably cost us about one-half what the same thing would cost today. We have the lot paid for, we have the plans paid for. My only point is that it seems to me that when we start again, because we have got to start some time to do something about an institution that we started in 1836, that it be done in a way which will insure completion of the project and not having it changed from one location to another as has been the case here.

If you will look at these three or four things that I suggested, you will see that they are not only going to cost money but they are going to save money. It costs about one-fifth to keep a man on probation than it would to keep him in an institution. If we can release some of these men under county parole--well, a great many of them would deplete the jail population.

Under this work release--the work release business is not going to cost the State anything. It's going to bring income to the institutions.

THE CHAIRMAN: In fact, they are going topay their own room and board.

MR. BATES: Yes. The only one is what we call the gate money bill. I have talked to Freeholders about that. "Well, we don't have any money."

I said, "Well, what does every jail prisoner cost you?"

Well, they might say six dollars, but six dollars would be the minimum.

I said, "Under this bill you would only have to keep a man in jail five days and it would cost you more than if you gave him this $25 and got him the job."

THE CHAIRMAN: Thank you, Mr. Bates. Again, I'm very sorry that our time problem--

MR. BATES: You can't let me off quite that quick. I have one more way that you can save money.

If you could combine these 21 county institutions into four or five, as is proposed under State jurisdiction and control in Connecticut, you can get better service for less money. You would save money and not spend it. You might have to agree to do it in certain counties. But psychologists and welfare specialists and other people cost money and you can't expect, as long as you have 21 different systems, that they're going to be able to pay for rehabilitation services as easily as they do in the State. But if those 21 could be combined into four or five you would save the cost of several institutions and you would get better service for less

money.

THE CHAIRMAN: Thank you again.

MR. BATES: I have a couple of hours more.

THE CHAIRMAN: And I am sure every bit is worth while, but I am afraid we will have to excuse you now. We appreciate your coming.

(Witness excused.)

THE CHAIRMAN: Our next witness is one of our fellow legislators. Would you identify yourself, Mr. Dennis?

ASSEMBLYMAN DENNIS: John Dennis, Assemblyman from Essex County, District 11E.

J O H N D E N N I S, sworn.

THE CHAIRMAN: Again, we have pressures of time. If you could brief this statement we would be glad to make it part of the record. If you feel you must read it, that's all right, too.

ASSEMBLYMAN DENNIS: Well, a lot of effort did go into it and I would like to read

it, for the benefit of my staff and my wife who was up at six o'clock this morning, and I was at work early this morning. We drove at break neck speed. I would like to read it for the record. I know you are pressed for time so I will read it rather rapidly.

"During the past five months, my concern and attention has been directed toward the problem of narcotic and drug abuse in the State of New Jersey. I have read the reports issued by the Drug Study Commission; I followed the series of articles written by Gunter David in the Newark Evening News; which concerned the drug program as it is run in New Jersey; and I followed the recent series about this problem that has run in the Newark Star Ledger.

My legislative aides and I have read the Uniform Narcotic Laws and studied them. We have read reports and statements made by experts both in the field of law enforcement and in the field of rehabilitation. We have interviewed addicts, the parents of addicts,

and rehabilitated addicts.

With my aides and others actively involved, we have toured through rehabilitation centers both in New Jersey and New York. Throughout this time, my concern has been for the youngsters of our state, for their tormented parents, and for the dedicated people who work, frequently without financial recompense, with thisproblem and all its frustrations.

At this time, I should like to present to the Commission and its special consultant, Mr. Lumbard, some of my findings, and some of the steps that I have taken and propose to take in the future towards the solution of this problem.

We talk of the war on poverty, the war on discrimination, and the war on crime. But the time has come to talk about a common enemy who strikes against rich and poor, black and white, and adds continually to the growing crime rate. It is time to talk of the war on narcotics.

The apathetic attitude of too many of

the citizens of this state stems from the belief that this is someone else's problem. That is no longer true. Narcotic and drug abuse cuts across all lines. It attacks youngsters of all nationalities, all religions, and attacks despite political, cultural, and educational backgrounds.

The known number of addicts in this state is listed at 10,000; however, all the experts I have talked with agree that the real number stands between 30,000 and 40,000, or three to four times the known number of addicts. There are reasons for this discrepancy. Many families do not report addicts in the family and seek outside, private help. Many are sent out of state. Many have not been caught and have not been charged with a crime. There is also a failure to correlate statistics in this area, so that any figures arrived at have an element of guesswork. 30 to 40 thousand addicts in the state of New Jersey and the count is growing.

There are many reasons for this increase. And one of the most important ones is the fact

we live in a drug oriented world, with pills to put us to sleep, pills to wake us up, and pills to keep us going. Drugs are an accepted part of our lives. We use them, we advertise them, but we have to accept the responsibility of educating our childrenabout them. Possibly many adults are in a state of confusion themselves. We are constantlyexposed to those who advocate the use of drugs. We listen to pleas to legalize the use of marijuana. We listen and our children listen.

One of the major problems facing our state at the present time is the increase in crime. Muchof this increase can be traced back to the addict who is desperately trying to support his expensive,demanding habit. Dominick A. Spina, Director of the Newark Police, estimates that 50 per cent of the crime rate in his area can be traced to addicts.

Generally, these crimes fall into the areas of petty theft, burglary, petty larceny, shoplifting, and prostitution. Some of them involve property destruction. In order to

maintain a balance, insurance rates must go up to cover expenses involved due to crimes such as shoplifting. In order to survive, the small businessman must up his prices to compensate, and it is the consumer who picks up the bill. Yet, this is only part of the damage. I have been told over and over again that for every addict at least twenty people suffer directly, whether it be family, friends, or victims of crimes to support the terrifying task master of addiction.

Manyaddicts and users of non-narcotic drugs become pushers. They are not looking for profit, but are merely seeking some manner by which to keep themselves supplied. Almost all of the addicts I have spoken to in the past five months have admitted pushing drugs at one time or another during their time on the streets. Laws did not faze them. In their driving need to keep "high," they had no room for other fears. They had no interest other than to get high and stay high.

If we are to stop this menacing

growth of drug abuse, we must literally declare war. At the moment we are still using the weapons and approach of the eighteenth century. We must use new weapons. And we must fight with strategic, pre-determined campaigns plotted out. At the moment we are disorganized and out of touch. We offer to these tortured, mentally disoriented young people, who are trapped by addiction, whether it is physiological or psychological, only the choice between a lifetime of continued addiction or a lifetime of jail.

So we have a vicious circle of drug experimentation, addiction, crime, drug pushing, and more and more youngsters get hooked. At the moment Essex County alone accounts for 69.82% of the addicts in this state. But as more and more communities find themselves being affected, the numbers will increase all over. Those rural communities as yet not too affected will find they are not immune. Something must be done.

There is no realistic program in New Jersey at the moment. We have a lack of direction because of piecemeal approaches tothe prob-

lem. At the moment, licensing, distribution, and counterfeiting of drugs is handled by the Department of Health. Criminal violations and some rehabilitation work is handled by the Department of Institutions and Agencies. Federal funds to aid the state are handled through O.E.O. under the Department of Community Affairs. Some rehabilitation and job placement of ex-addicts is handled by the Department of Labor.

We lack a comprehensive program. We have no state based help for the non-criminal addict. There is no center for recommended speakers or literature. There are no certification regulations for privately sponsored groups such as Drug Addiction Rehabilitation Enterprises and The New Well in Newark. Nor is there any state aid available to help organizations of this type as there is in New York to help Daytop. There is a lack of enforcement of teaching about drug abuse in all schools, and there is no direction for teachers engaged in teaching in this area. Though

recently, some help is forthcoming with this problem, thanks to Senator Frank X. McDermott.

I have sponsored two bills in the Assembly, which I consider merely the first two steps toward finding a solution to our problems. These are A405, which calls for the establishment of a new department of cabinet rank to be known as the Department of Narcotic and Drug Abuse. This department would incorporate the functions of other departments now handling the narcotic problem, and give direction and impetus that is lacking now.

The second, known as A403, calls for mandatory civil commitment of addicts. This will not only open the doors for those seeking help before they become criminals, but will get the addicts off the streets and expose them to rehabilitation and treatment. It holds out to the user and his parents some measure of hope of saving a life and the worth of that life for the community, and for the state.

Statistics indicate that most of those addicts released from prison immediately return to the use of drugs. Drug users are people running from problems that they cannot solve. The problems differ, but mere jailing does not solve these problems. The use of drugs and narcotics is a disease. Any mind under the influence of continual drug use cannot be considered to be normal. Punitive measures have never been effective on those suffering from any form of emotional and mental unbalance.

Just as the philosophies toward the insane, the alcoholic, even toward capital punishment have been re-evaluated, so must we now re-evaluate our attitudes toward drug addiction. We must make up our minds whether to spend our money to merely get addicts off the streets and locked away in jail, at the taxpayers' expense, or whether we want to spend that money on a comprehensive program aimed at turning a useless, helpless human being into a productive, responsible, mature member of society.

Hopefully, my two bills will succeed and lay the groundwork for the revamping of attitudes and for the beginning of a program that will turn the eyes of every other state in the Union upon the progressive state of New Jersey.

In conclusion, I wish to thank the members of the Commission for their kind attention. I should also like to call to their attention the attached sheet at the end of my statement containing some of my ideas and suggestions for a comprehensive program for the handling of the narcotic and drug abuse problem here."

Thank you very much, gentlemen.

THE CHAIRMAN: Assemblyman, I would suggest that you also read into the record the last sheet.

ASSEMBLYMAN DENNIS: "Suggestions for a Comprehensive Program.

1. Re-education of the general public through mass media.

2. Teachers training program.

3. Close cooperation between new department and all other departments of the state.

4. County officers of the new department available to cooperate with the local police and special narcotic bureaus.

5. Center for information and listing of recognized speakers.

6. Use of ex-addicts in program under direction of the department.

7. Centralized facilities for treatment, including medical aid, group and reality therapy.

8. Vocational and education training courses as part of rehabilitation program.

9. Job counseling and placement bureau for addicts.

10. Halfway houses to help during re-adjustment to society.

11. Intensive aftercare supervision.

12. Open two-way street, so that those passed too quickly or unable to adjust can return to original facility for more help.

13. Open cooperation between state and private facilities.

14. Use of college seniors and graduate students in sociology and psychology, and medical students, in all facilities. Arrangement with college for credits through practical experience. This provides qualified help, trains students, and creates no extra burden of expense to the state."

THE CHAIRMAN: I want to compliment you on what was apparently a very real research job, not only in your statement but in all that is in back of it.

MR. LUMBARD: I gather that much of what you suggest bears a strong relationship to the new program in New York State. Is that correct?

ASSEMBLYMAN DENNIS: Yes, sir, it does.

MR. LUMBARD: In what respects does it differ?

ASSEMBLYMAN DENNIS: Well, I think in our mandatory civil commitment, from what--I have to confer with my lawyers--I think we put in a little more differentiation as far as protecting the individual rights. That is

civil commitment.

MR. LUMBARD: I would like to have you spell that out.

ASSEMBLYMAN DENNIS: I am not familiar enough with the New York laws, but I use that as a basis, to some degree, and this was a bill introduced a few years ago in the State of New Jersey. The basic difference is in New York anybody can sign the mandatory civil commitment petition, but in New Jersey we have it so it has to be done by a member of the Narcotics Bureau, a registered doctor and, of course, the family, a member of the family, an immediate member of the family.

MR. LUMBARD: I am not sure that in New York--not that this is a major point--that anybody can sign the petition. Of course, I would say to you that I think it vital that the family have a major opportunity.

ASSEMBLYMAN DENNIS: That is provided for. We have talked to several doctors in the State of New Jersey and, of course, under the present situation anybody who uses a drug is

a criminal and these families don't know what to do with their sons and this would definitely help to eliminate this problem where they would not be afraid of a criminal record.

MR. LUMBARD: Is there any other major difference with the New York law?

ASSEMBLYMAN DENNIS: No, sir.

THE CHAIRMAN: Senator Dumont?

SENATOR DUMONT: Assemblyman Dennis, in the course of your investigation have you been to this Robert Bruce Halfway House in Newark? It was described to us yesterday by one of the witnesses.

ASSEMBLYMAN DENNIS: I have not been to the Robert Bruce. I have been to The Well, formerly, and now The New Well and I have been in Newark DARE, which is an abbreviation for Drug Addiction--I forget--Rehabilitation.

SENATOR DUMONT: Do you find the program working pretty well, the halfway house?

ASSEMBLYMAN DENNIS: Yes and no.

MR. LUMBARD: Senator, I think the Bruce House is not a narcotic facility as such.

The Bruce House is for people coming out of penal institutions

THE CHAIRMAN: Any other questions? Senator Woodcock?

SENATOR WOODCOCK: Yes. Assemblyman, in reading over the program that you have set up the main thrust of it seems at the rehabilitation of the addict. Is that so?

ASSEMBLYMAN DENNIS: Well, I think it is one of the big points. I don't think we can single out one thing in particular. I think it is only a very important part, but rehabilitation definitely is one of the keys and preventive education, I think, probably would be also.

SENATOR WOODCOCK: Well, my understanding is that at the present time the percentage of the rehabilitation of addicts is very, very small.

ASSEMBLYMAN DENNIS: That is correct. That's because we have no program in our state.

SENATOR WOODCOCK: I think that this would be so even in those states that have a program.

ASSEMBLYMAN DENNIS: Well, I know and I am sure Mr. Lumbard can testify about Daytop, which we visited. I think about 75 per cent, when they get out, don't go back in. And St. Dismas in Paterson, Dr. Gubar says it's about 75, 80 per cent.

SENATOR WOODCOCK: With respect to St. Dismas, I am familiar with that program. As I understand it, it is in the nature of a voluntary commitment.

ASSEMBLYMAN DENNIS: Yes, yes.

SENATOR WOODCOCK: So that when they say 60 or 75 per cent success--

ASSEMBLYMAN DENNIS: It's one of those things you either go to jail or go there.

SENATOR WOODCOCK: What I am saying to you, though, is this 60 or 70 per cent success are those they send out as cured, so to speak.

ASSEMBLYMAN DENNIS: Right.

SENATOR WOODCOCK: So that, actually, of their successes out of the door--

MR. LUMBARD: Could I interrupt here for a minute? Senator, I don't think anybody frankly knows what the success rate of these new programs are because you can't measure success, say, for a six-month period. You have to let a period of four or five years go from the time these programs start before you reall know what the success rate is.

SENATOR WOODCOCK: I agree with that. The point is I am trying to find out what the statistics that the Assemblyman is using mean because this is not 60 or 75 per cent of the people who are committed. The figure is 60 or 75 per cent of those released as cured.

ASSEMBLYMAN DENNIS: No. That's not cured. This is too new right now, this whole therapy, and the records--like Daytop is recently established and there is really no record yet. We are still working on the record so we'll know in, say, another few

years how really successful it is. Now, like they say in alcoholism, five years without a drink is cured. This is not a public record. This is Daytop. This is just what they think at the present time and, as I mentioned, it's not determined yet because it's too new to really come up with the true facts and figures.

SENATOR WOODCOCK: Don't you think--this is not to discard the rehabilitation and so forth as being a desirable end--but don't you think that the main thrust of a state program should be in the area of prevention?

ASSEMBLYMAN DENNIS: I think it should be a combination, Senator, of preventive and rehabilitation.

SENATOR WOODCOCK: Realizing that the state is pretty tight for money--

ASSEMBLYMAN DENNIS: Well, I do have a plan, but I am not at liberty to discuss it at the present time. I have to present my two bills before the Assembly and I don't want to disclose my hand prior to that time. But I do have a plan worked out and at that time I will go into

how the State can afford it. In the long run it will save the State money.

SENATOR WOODCOCK: Thank you.

THE CHAIRMAN: Senator Waldor?

SENATOR WALDOR: Assemblyman Dennis, Senator Woodcock just asked you whether preventive measures shouldn't be taken and you answered rehabilitative and preventive, that you believe in a combination. Isn't it a fact in your judgment--and I know that you and your staff spend many, many hours in studying this and I think you are to be complimented and all of the citizens of the State should thank you and your aides for the time spent in this. I mean that very sincerely. But isn't it a fact that rehabilitation in and of itself serves as a preventive measure for future addicts? The question isn't redundant because if you rehabilitate an addict then, in effect, you are serving to prevent him from returning to his previous status as an addict so rehabilitation, basically, is the greatest preventive measure

that can be used in the treatment of basic addiction of any kind.

ASSEMBLYMAN DENNIS: Yes, sir, definitely.

SENATOR WALDOR: One other question. Do you have an opinion insofar as mandatory sentencing of addicts is concerned?

ASSEMBLYMAN DENNIS: Well, I am a sponsor of a--another assemblyman in the Assembly has a bill similar to those introduced in the Senate. However, we have one key difference. Mandatory commitment or mandatory penalty, we said this would not apply to a pusher who is an addict for a first offense because, as you will read in my statement, we don't feel the first time --many pushers who are addicts are just doing it to make money to get their new drugs.

SENATOR WALDOR: Thank you. That's all.

THE CHAIRMAN: Any further questions?

(No response.)

THE CHAIRMAN: Again, I thank you.

ASSEMBLYMAN DENNIS: Thank you very much.

(Witness excused.)

THE CHAIRMAN: We will take our recess, fifteen minutes.

(At this point there is a short recess.)

THE CHAIRMAN: Our next witnesses are here. Would you, for the record, identify yourselves?

MR. WALDRON: Yes. My name is T. Howard Waldron and I am Vice-Chairman of the State Commission on the Causes and Prevention of Crime in New Jersey.

T. H O W A R D W A L D R O N, and

J A M E S F I N C K E N A U E R, sworn.

MR. LUMBARD: To whom shall I address the questions primarily, to Mr. Waldron who will be assisted by Mr. Finckenauer?

MR. WALDRON: That would be fine with me.

MR. LUMBARD: Is there any reason why

the Chairman of the Commission, Mr. George, could not appear?

MR. WALDRON: He called me yesterday and he said, sir, that he had a commitment that was unbreakable. He apologized. My appearance here is rather precipitious, but he said he couldn't, absolutely couldn't get out.

MR. LUMBARD: Could this Committee assume that you speak for the George Commission?

MR. WALDRON: Yes, sir.

MR. LUMBARD: Do you have a statement, first of all, of any kind?

MR. WALDRON: No, sir, I do not.

MR. FINCKENAUER: No, sir.

MR. LUMBARD: You have recently released what is a final report, have you not?

MR. WALDRON: Yes, sir.

MR. LUMBARD: That consisted of two parts: the first is a green volume entitled Staff Report and a second summary volume called A Survey, which I gather contains your ultimate

finding or recommendations. Is that a fair statement?

MR. WALDRON: This is correct, sir.

MR. LUMBARD: Page 3 of the blue report, the final summary report with which we will be primarily concerned, is headed Finding and Recommendations. I would like to read several brief passages, if I may, as preliminary to our inquiry.

MR. WALDRON: Certainly.

MR. LUMBARD: "In a democratic society justice must be swift, impartial, rational, and yet tempered with mercy and understanding. Our law enforcement, criminal justice and correctional operations require the fullest support and confidence of all citizens. Inadequacies in the structure and performance of these operations diminish public confidence in them and threaten to disable our society as a whole.

"In the course of its inquiry into these operations in the State of New Jersey, particularly and the County and local level, the Commission has found evidence that our

institutions of criminal justice have not kept pace with contemporary scientific and technicological advancements."

May I pause there and ask you to give to the Committee your finding in that regard or the evidence on which you base that statement and then we'll go down sentence by sentence through your finding.

MR. WALDRON: Mr. Lumbard may I have Mr. Finckenauer answer that? He is more familiar with that than I am.

MR. FINCKENAUER: This is, first of all, a very general statement which deals, as it says, with criminal justice, with corrections, and with law enforcement operations.

To give you an example of the type of thing we are talking about, the municipal court operation in the State of New Jersey which we feel developed in a period in which it was oriented toward a rural type of environment. As you gentlemen know, the type of environment in New Jersey now is moving more toward an urban type of environment.

Where this court system might have been practical at that time, in this type of environment which is operating now it is less efficient and less useful as it is presently constructed.

MR. LUMBARD: Mr. Waldron, I know you have a later series on the court, but is that sentence primarily addressed to the court aspects of your finding and recommendations?

MR. WALDRON: No sir. It deals with all aspects of the criminal justice system .

MR. LUMBARD: I am a little bit puzzled. I want to read it again.

"The Commission has found evidence that our institutions of criminal justice have not kept pace with contemporary scientific and technological advancements."

Would you spell out what the defects are that have not kept pace with contemporary scientific and technological advancements?

MR. FINCKENAUER: Science and technology I would refer to the use of computers in the municipal court operation in terms of maintaining dockets, in terms of keeping track

of records, keeping track of your cases, et cetera, et cetera. This would be an example of the science and technological approach in the municipal court.

I would also add that this could be applied to our law enforcement system, also. Many of our local police departments do not have access, for one reason or another, to scientific processes in terms of how they maintain their records and how they coordinate with other police departments, both local police departments and State police.

MR. LUMBARD: While we are on the subject of the municipal court, Mr. Waldron, is it a fair statement that you and your commission recommend that the municipal courts in New Jersey be abolished?

MR. WALDRON: No, sir. We recommended that they be absorbed into the existing court system.

MR. LUMBARD: Well, all right. I meant the same thing. I mean, they wouldn't exist any more if they were absorbed into the county

court system.

MR. WALDRON: In essence what you are saying is correct, that they be put under the supervision of the New Jersey court structure and appointment of magistrates be done by the Governor with the advice and consent of the Senate.

MR. LUMBARD: Page 10 of your report dealing with that one subject reads: "The Commission, therefore, recommends municipal courts should be integrated within the existing court system with judges to be appointed by the Governor with the advice and consent of the Senate. Each court should be provided with a full time court clerk, attendant stenographic services, and probation staff with access to modern criminal identification files and case background data. There should be a permanent court record of all hearings. The County Prosecutor or municipal attorney, as the case may be, should prosecute all cases and handle all appeals."

What are the facts upon which your Commission based that recommendation?

MR. WALDRON: May I ask Mr. Finckenauer to answer that? I didn't handle the hearing on that particular phase of the operation.

MR. LUMBARD: Well, do you join in the judgment?

MR. WALDRON: Oh, yes, indeed. May I say this, for the Board. Each individual member of the Commission was sent a copy of both of these reports and they reviewed them and they sent in any corrections that they deemed necessary and then they signed the report. So that every one has approved the data that is in this report.

MR. LUMBARD: Is it fair to say, then, that every recommendation in the report was unanimous with the Commission?

MR. WALDRON: Yes, sir, as far as I know.

MR. LUMBARD: All right. Please give us the facts with respect to the municipal court.

MR. FINCKENAUER: First of all, your first question was whether or not we were

recommending the abolition of the municipal court. We are not recommending the abolition of the municipal court. We are recommending that the municipal court be integrated into the existing court system for this reason or for these reasons: Number one, the magistrates, the municipal court judges as they are now called, would be appointed by the Governor with the advice and consent of the legislature; number two, that the court will be provided with stenographic services to make it a court of record; number three, that they would have full time staff in terms of court clerks, in terms of prosecutors, in terms of probation services, and in terms of having access to case background data which they do not now have. These courts would still be there in the community, but they would not be autonomous, independent courts. They would operate a part of the existing court system.

THE CHAIRMAN: I don't know the accurate number, but we are certainly approaching 500 municipal courts now.

MR. FINCKENAUER: 567.

THE CHAIRMAN: Most of which are meeting on a part time basis. Are you recommending that there be 567 integrated courts?

MR. FINCKENAUER: No. There has been a recommendation before that the courts be given the opportunity, where they felt this could be done, to combine with other courts. However, this was something that was to be decided on the local level. I am not saying that we need 567 courts. What I am saying is that the courts could decide for themselves, in terms of their case loads, do they need one court in that one area or can one court service several of these areas?

THE CHAIRMAN: You may not then be recommending abolishment of all municipal courts, but a substantial number.

MR. FINCKENAUER: Let me reiterate. We are not recommending any abolition of any of these courts. This is something that they will determine. We are recommending that this system be put into effect and they will

determine do they need a court or not.

MR. LUMBARD: May I come back, then, to whatever the specifics were. Why did you make this recommendation? What were the problems that you saw that led you to make this municipal court recommendation?

MR. FINCKENAUER: In our studies in Monmouth County, which was where we concentrated a great deal of our time and effort, a great deal of the time in Monmouth County was spent in two of the municipal courts, in Asbury Park and in Middletown Township. We there became acquainted with the conditions which operate in the municipal court. For example, we were not able to get records of --we could not trace a case from arrest through to disposition or we could not trace many cases through because of incomplete record keeping. We found, for example, that the courts were sentencing without knowledge of previous criminal history many defendants because the court was sentencing within a period of 24 to 48 hours and it takes approximately five days

to get a fingerprint record and to find out the previous criminal background on a defendant.

We also, in our private hearings, had people who work in the municipal court as well as State level people who are involved with municipal courts that repeated the things we had found, substantiated them, and made basically the same recommendation.

SENATOR WALDOR: Mr. Finckenauer, in the reasons that you set forth before for integrating the municipal courts into the county district courts--this is the way you stated it --one of the reasons you said was so that it would then become a court of record. You are aware, I am sure, that county district courts are not courts of record.

MR. FINCKENAUER: No, I am not.

SENATOR WALDOR: Well, they are not and there is no stenographic service that is given or no reporting service that is given in the county district court, in any of the county district courts. I don't know whether you were

aware of that. If that be true, the same situation prevails in the county district courts insofar as reporting services are concerned as presently exists in the municipal courts insofar as reporting services are concerned. If an attorney who is involved in the trial of a matter in the municipal court as it presently exists--and the same is true of the county district courts--he employes the services of a reporter or a stenographer and brings them in and that is the only record that is kept. When you speak of courtsof record, the district courts are no more courts of record than are the municipal courts. I think if that is one of the bases for your recommendation it must fall just by virtue of what you said about it being a court of record. I'm not saying I disagree with your recommendation, but I think your reasoning is fallacious, based upon what our court system presently is, in any event.

Now, let me ask you another question. You say your observations were made upon your

study of Asbury Park and--

MR. FINCKENAUER: Middletown Township.

SENATOR WALDOR: Don't you think that the defects that you may have observed insofar as the tracing of the case from, let us say, the investigation stage to the arrest stage to the hearing in the municipal court to the sentencing--which is the ultimate disposition of a case--that the defects that you observed could be typical of the courts specifically that you observed as contrasted to being defects in the system? I'm not here to defend any municipal court, but I have in my past law practice--I don't presently--appeared frequently in the municipal courts throughout the State of New Jersey and I have found that the contrary is generally true.

--I am familiar primarily with Essex County or Newark. I can trace a case in Newark. That has a record service. I can trace a case from the date it was made, to whom it was assigned, and so forth, as you could in a county court or

in the Superior Court that might be assigned to trying criminal matters.

What I am getting at is if the recommendation is a good one and yet it's based on two courts out of 568 courts, it doesn't seem to me that that represents a typical situation that might exist in the other 565 or 566 courts. Does it?

MR. FINCKENAUER: I would agree with your first premise that these courts could have unique characteristics which would not necessarily be true of all municipal courts. However, I also added that the basis for the recommendation came from people, for example, who work in municipal courts in Newark.

SENATOR WALDOR: In those municipal courts?

MR. FINCKENAUER: People working in municipal courts in Newark at our private hearings, people who are involved at the State level, the present court operations. And I would also say that what you find in Essex County, particularly in Newark, are probably

in the better municipal courts. This would be my opinion. These are the better of the municipal courts in the State and I also would not use them as an example of your municipal court operation.

SENATOR WALDOR: Fine. Just a couple of other comments.

You indicated further--you see, I have no opinion at this moment as to whether I would favor or look with disfavor upon a recommendation to integrate the municipal courts but very frankly, based on the reasons that you have given and with the experience I have in the field, you haven't given a reason that will stand up. For example, you talk about courts of record, the county district courts as courts of record. Not so. You further talk about if they were integrated into the county district system there would be prosecutors assigned to them and so forth. I venture to say, and I could not now specifically tell, but knowing the courts in Essex County I would say that every single municipal

court in Essex County at the present time--and I would imagine if it's true in Essex County it's probably true in most of the other counties and municipalities--has assigned to them a member of the staff of either the town attorney or the county prosecutor's office to represent the State in matters that would come within the purview of the jurisdiction of the municipal court. So in effect, from an economic standpoint as well as from the standpoint of efficiency, it would seem to me that this phase of your recommendation is also without foundation or without basis because if you have this representation of the municipality or of the State in their criminal matters in a municipal court what are you going to gain by integrating with the county district court where you will have to assign and put on more men in the prosecutor's office to serve that purpose? In effect, the same number of men are serving the same function at this very moment.

Something else. Is it or is it not a

fact, in your judgment and based upon your studies--and this is perhaps the most important ormost significant observation I can make --do you not realize that the average person has his first contact with a court of any kind, generally, on the municipal court level? I think we can make a generalization and say that that is probably true. Do you or do you not think--and I am asking your opinion now-- that when a person appears in a municipal court in their particular community as contrasted, for example, to a person from Middletown Township going to whatever the county seat might be, to the county court, if your suggestion were adopted, that there can be and should be a better impression given them with their first contact with the court being in their home town as contrasted to going to a county court or something of that nature. Don't you think that more personalized attention is given them in the respective municipality than would be given them, perhaps, in a county court? That may be an argument for

integration. I don't know. In any event, that is the feeling that I have.

MR. FINCKENAUER: Again, we are not recommending the abolition of the courts.

SENATOR WALDOR: I understood completely what you said.

MR. FINCKENAUER: In other words, this court once it has been integrated, could still be there in Middletown Township.

SENATOR WALDOR: Then what purpose would be served?

MR. FINCKENAUER: The purpose would be to have these other facilities and other services.

SENATOR WALDOR: What?

MR. FINCKENAUER: You asked about the prosecutor or the presence of a prosecutor. It is true in Newark they have a full time prosecutor.

SENATOR WALDOR: Not only Newark. Every municipality in Essex County.

MR. FINCKENAUER: The major cities.

SENATOR WALDOR: That's not so. You

go to Roseland, Essex Fells, Glen Ridge. And the same is true in Bergen County, as a matter of fact.

I am not familiar with all of the municipalities, but wouldn't you say that is true?

SENATOR WOODCOCK: In many.

SENATOR WALDOR: In most of the municipalities where I have appeared in past years there are representatives of either the municipal governing body, the town attorney, the township attorney's office, let's say, who serve as prosecutor--to which you have no objection--or, in the alternative, a representative from the county prosecutor's office. In Paramus, for example, where I appeared a couple of years ago, the prosecutor of Bergen County assigned one of his assistants to serve there.

What I am getting at from an economic standpoint is that there would be a tremendous increase of the staff of the prosecutor's office of the respective counties which would, obviously,

entail a greater expenditure on the part of the counties to add to their staffs when, at the present time, the same function is being served without increasing the budget of the prosecutor's office by reason of the fact that the municipal attorney in the respective municipality that you're talking about generally assigns one of his men to appear for the State of New Jersey in that particular court, which involves no additional expenditure on the people of the municipality or the people of the county. In the alternative, in several municipalities members of the prosecutor's staff

are assigned to the municipal court, which also does not involve any additional expenditure to the people of the county.

MR. FINCKENAUER: But if you go into the other vast areas of the State you will find this function in the municipal court being handled by, number one, either the magistrate or by a policeman.

SENATOR WALDOR: I object to that and

I do not agree with that thought.

MR. FINCKENAUER: This is the practice in the rural areas of the State and once you get away from the northeastern corner of the State and away from your urban areas this is what you will find in the municipal courts.

SENATOR WALDOR: It might be easier to adapt the rural areas to what we have in our urban areas.

ASSEMBLYMAN SMITH: Being a former municipal court clerk in a small town, we had our own counsel come in and prosecute cases.

SENATOR WALDOR: Yes. That's what I said.

ASSEMBLYMAN SMITH: And as far as not happening in the suburban areas in the smaller populated counties, it doesn't happen that way. We bring our own city attorneys in to prosecute a case and they do an excellent job. So I think it happens in other counties as well as it does in the northern counties.

THE CHAIRMAN: Can we bring this back to Mr. Lumbard?

MR. LUMBARD: If you had a State centralized record system operating with a quick computer-based facility and then you had what you are called fascimile machines by which you could transmit fingerprints to the central facility, have a quick search, and then send the criminal sheets, the rap sheets back, you wouldn't have the problem of sentencing without the background history. This system has been developed in New York State. It is now operating. It takes about fifteen minutes to send the fingerprints to Albany from any part of the State. They are searched within an hour or two. The history comes back, again, in about ten minutes. In emergency cases, even on an hourly basis. On the average in about five or six hours you can get the material back there. I am not saying this pro or con, one way or the other, because I agree with you that sentencing should be on a more individual and intelligent basis. But this is a way that you could adopt a central record system.

MR. FINCKENAUER: We were given this

information. We discussed this with representatives of the New Jersey State Police and I understood that they had talked to people in New York and an effort was being made to see if this system couldn't be adopted in New Jersey. And I would be in favor of it.

MR. LUMBARD: Well, insofar as I am aware,there has been no legislation or any budget request put to the legislature to carry that forward. Do you know of any?

MR. FINCKENAUER: No.

MR. LUMBARD: There may be other reasons. Perhaps the one on the municipal court might be more subjective; namely, the overall quality of justice. I don't know.

Now, to go back to your finding on page three again. The next sentence after where I read before is as follows: "The rate of development of our criminal justice system lags behind the progress which characterizes other agencies of government, community organization and social growth."

What did you mean by that? That's a pretty sweeping sentence.

MR. WALDRON: May I suggest that the answer to this is probably on page 11 where it sets forth the inequities of justice and it deals with the assignment of defense counsel as point number one. It deals also with the aforementioned integration of municipal courts, court administrators, sentencing disparity, probation and science and technology.

MR. LUMBARD: Mr. Waldron, why don't you respond because all of the members of the Committee don't have your report in front of them. I happen to have one. Why don't you respond as to what you think that sentence means or what the Commission means by it?

MR. WALDRON: Yes, sir. In my opinion the main answer to your question, Mr. Lumbard, which deals with the rate of development of the criminal justice system lagging behind the progress characterizing other agencies of government is set forth on page 11 under the inequities of justice. This says, in essence, that under present law the provision of defense counsel at public expense for legally indigent persons is mandatory only in cases of indictable

offenses. Therefore, individuals charged as disorderly persons or with lesser offenses who lack the financial means to acquire legal counsel may be denied representation.

There is insufficient use of the summons procedure in place of formal arrest and of release on own recognizance in place of bail, particularly concerning residents of the jurisdiction. It says that as a result legal indigents are often incarcerated to await trial on minor charges because they cannot afford bail.

So among the recommendations of the Commission are defense counsel should be made available by law to all legal indigents charged with lesser offenses punishable with jail sentences as well as to those charged with indictable offenses as at present. This service should be provided by the State Public Defender and his staff and sufficient money should be made available to enlarge the office of the Public Defender to enable it to perform this function.

Secondly, there should be further use of the summons procedure in lieu of arrest and pre-trial incarceration in cases involving lesser offenses where the defendant is a resident of the area where he is charged.

In addition, there should be more extensive use of release on own recognizance instead of upon bail under the same conditions.

A workable standardized system of installment payment of fines by sentenced persons should be developed subject to probation supervision during the period of payment.

A committee should be apointed by the Supreme Court to conduct a review and analysis of criminal penalties and reform instituted so that no discrimination is brought to bear on the less economically fortunate.

That, in essence, is the answer, as I see it, sir.

MR. LUMBARD: All right.

The next sentence reads: "The functions and procedures of our criminal justice

system are, by their very nature, at least partially isolated from the direct view of thepublic and, therefore, the relative effectiveness or ineffectiveness of this system has not received adequate public attention."

MR. WALDRON: Yes, sir.

MR. LUMBARD: What particularly in your report would you wish to draw to the attention of the Committee with respect to that comment?

MR. WALDRON: There is a recommendation on page 12 of the report dealing with the operations of the county prosecutors.

MR. LUMBARD: Would you tell the Committee about that?

MR. WALDRON: All right, sir. The report says, in substance, that at the County level convictions in the majority of cases are obtained by negotiated pleas of guilty rather than in trial in open court. Negotiation of pleas is a process which results in an agreement between the county prosecutor

and the defendant and defense counsel for a downgrading of the charge against the defendant in return for a plea of guilty. This can be a practical and just procedure, but the fact that negotiations are conducted in secret and there is no open court statement from the terms of agreement permits the possibility of serious abuses of justice. Dangerous offenders may manipulate the system to obtain unjustifiably lenient terms and others may be pressured into pleas of guilty by threats of severer sentences.

The Commission, therefore, recommends plea negotiation should be publicly recognized as an acceptable and normal aspect of our judicial process and negotiation procedures should be normalized in concurrence with the recommendation of the President's Commission on Law Enforcement and Administration of Justice. County prosecutors should be required to state fully in open court the terms of agreement leading to pleas of guilty and in serious cases to submit such statements in

writing unless a demonstration is made to the Court in chambers that the interests of justice are best served by non-disclosure.

THE CHAIRMAN: Senator Dumont?

SENATOR DUMONT: Mr. Finckenauer, you talked about the fact that the Governor should name these judges. Are you aware of the fact that for the last twenty years--because the judicial act of the Constitution of 1947 constitutionally took effect September 15, 1948 so it's barely twenty years old--are you aware of the fact that where a single municipality wants to join with another municipality to have a joint municipal court that the Governor makes the nomination with the advice and consent of the Senate?

MR. FINCKENAUER: Yes, sir.

SENATOR DUMONT: So to a large degree what you are recommending is already being done.

MR. FINCKENAUER: It is being done by those counties who wish to become involved in this, but it's not a mandatory condition

involving all municipal courts.

SENATOR DUMONT: The point is that not every municipality has a lot of money and some of them do need to join together and they do it in order to save expense to the respective municipalities. That's why they do it.

MR. FINCKENAUER: Right.

SENATOR DUMONT: In that particular situation the Governor must make the nomination of the magistrate with the advice and consent on the Senate.

MR. FINCKENAUER: But how about all the courts who do not choose to join?

SENATOR WALDOR:

What Senator Dumont is suggesting to you is true in rural counties and not urban counties.

MR. FINCKENAUER: But there are 567 municipal courts in operation.

SENATOR DUMONT: Just last week I got

through naming a man in a rural court, Sussex County, for a joint court nominated by the Governor.

MR. FINCKENAUER: This is true. It is done in the rural courts. However, there are many in rural courts who are not coordinated or consolidated.

SENATOR DUMONT: You made a statement that the municipal court system was made up primarily to satisfy the rural situation. There were in New Jersey between four million and five million when the constitution was adopted. It's seven million now. It grew.

That was done was to get rid of the old justice of the peace system, which nobody thought was the greatest one around, and substitute for it a proper municipal court system and attach some dignity and, as Senator Waldor pointed out, to give a defendant who may be up for the first time an opportunity to be confronted in his own home town or somewhere near it with local people and be adjudged on a local basis.

MR. FINCKENAUER: Well, again I have to talk from experience particularly in Monmouth County. Monmouth County within that period of twenty years has turned from a primarily rural area to a suburban and urbanized area. This is why it may have peculiar problems. However, the reason that we selected Monmouth County was that we felt it would be representative of many other counties similar in New Jersey which have gone through this period of being formerly rural areas and are now moving into suburban and urbanized areas.

We found in the court system, in the municipal court system in Monmouth County, that the fact that a defendant was a local resident didn't help him too much. These people were given advice as to their rights which it seemed to me they didn't really understand. This was gone through quickly. The average handling time of a case was about twenty minutes, which didn't leave time to find out anything about this man's background or to make a disposition which might have

been the best suitable disposition in terms of his background and his offense. They were sentenced on the instant offense.

SENATOR DUMONT: I am not suggesting the municipal court system was set up just to help defendants. The point is what you are recommending here is really integration of the whole court system into a State court system.

MR. FINCKENAUER: Exactly.

SENATOR DUMONT: If you are talking about combining with county district courts and, in effect, doing away, not by abolishing them necessarily, but by doing away at least with the local aura that now pertains to the court system in the municipality.

MR. LUMBARD: Is that what you are recommending additionally?

MR. FINCKENAUER: Right. Exactly.

MR. LUMBARD: Why do you think that can be handled better by the State of New Jersey than it can be on a municipal court level?

MR. FINCKENAUER: I think if you have --here again you have a central concept versus your local concept. Local concepts are fine if high standards can be maintained. Where you have good standards, and the Senator has pointed out, in some of your municipal courts, in other municipal courts you have very poor standards. I think this makes it very unfortunate if the individual happens to live in one of these areas where there is a poor municipal court and he has to go to court. He may wish he lived in Newark.

THE CHAIRMAN: Senator Woodcock?

SENATOR WOODCOCK: As I understand it, you were talking before about the problem of sentencing without the benefit of records and you said that in some instances the sentence would follow within 24 hours or 48 hours of the charge being leveled. Do you have any idea of the kind of cases that applied to?

MR. FINCKENAUER: This existed in all cases with the exception of indictable offenses

where a person was held for grand jury and would go on to the county court.

SENATOR WOODCOCK: Are you familiar, sir, with the basic jurisdiction of the municipal courts?

MR. FINCKENAUER: Yes, I am.

SENATOR WOODCOCK: Isn't it so that the basic jurisdiction of the municipal court deals with motor vehicle violations, disorderly persons, and violations of local ordinances? Isn't that basically 95 per cent of their work?

MR. FINCKENAUER: This was true to an extent in Middletown. If I can quote you some statistics on the breakdown of cases who appeared in the municipal court, it was not true in Asbury Park.

SENATOR WOODCOCK: What was true in Asbury Park? I mean, there is a different jurisdiction in Asbury Park than in Middletown.

MR. FINCKENAUER: Right, a different municipal court. Two separate municipal

courts.

SENATOR WOODCOCK: They don't have different jurisdictions. They may handle basically a different type of case.

MR. FINCKENAUER: I don't quite understand.

SENATOR WOODCOCK: In other words, what I am saying is that--well, you read the statistics that you are relying on and maybe we can find out something.

MR. FINCKENAUER: The offense pattern --this is Asbury.

MR. LUMBARD: What page is that, sir?

MR. FINCKENAUER: This is page 152 of the staff report.

In Asbury Park 21.9 per cent of the cases were indictable offenses, either high misdemeanors or misdemeanors; 78.3 per cent of the cases were non-indictable offenses. Of the non-indictable offenses only 11.4 per cent were these ordinance violations. The majority, 33.5 per cent, were what they defined as offenses against public policy, which

would be drunkeness disorders, narcotics, this type of offense.

SENATOR WOODCOCK: All under the Disorderly Persons Act?

MR. FINCKENAUER: If you are looking at the report all of the offenses which I saw listed, one, two, three, were disorderly persons offenses; 22.5 per cent were assaults, offenses against the person. This is merely a quarter of the cases.

SENATOR WOODCOCK: Right. Now, basically, what we are talking about with reference to the jurisdiction of that court are the minor offenses. May I ask you, sir, what benefit would the court have in having this man's record with respect to simple assault?

MR. FINCKENAUER: I can say this to you: We went into the Monmouth County Jail and interviewed--went through the records, number one and, number two, interviewed a representative portion of the jail population. We found sentenced offenders in the county jail who had been sentenced for disorderly persons offenses.

Some of these men had a history of seven previous felony convictions and here they were serving a 30-day sentence for an assault where they had previously had a felony conviction for assault. The court was not aware of the previous felony conviction.

SENATOR WOODCOCK: Except that the limit upon which they can be sentenced on a disorderly persons charge is already prescribed by statute. So that in any event you couldn't sentence a man because he was convicted of a disorderly persons charge and had a series of felony convictions. You couldn't sentence him to two years in jail in any event.

MR. FINCKENAUER: No you can sentence him to one year, a thousand dollars fine, or both.

SENATOR WOODCOCK: Up ~~that~~ to amount or term?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: The point is that you have here a simple assault. An aggravated assault is an indictable offense. What I am trying to find out, really, is why this creates

problems with respect to the sentencing.

Let me ask you this: How many of the cases were handled within 24 hours or 48 hours?

MR. FINCKENAUER: About 50 per cent were handled within--there is a difference here. The Asbury Park Municipal Court meets daily. Middletown Township meets once a week. In Asbury Park where we had a daily court about 50 per cent of your cases had been sentenced within 48 hours.

SENATOR WOODCOCK: That's in motor vehicle violations?

MR. FINCKENAUER: This was all cases except your indictable offenses.

SENATOR WOODCOCK: In other words, what you are talking about is under the Disorderly Persons Act or under local ordinances?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: Having nothing to do with motor vehicle violations?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: So that your stat-

istics do not take into account motor vehicle violations. Is that correct?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: Now, just with respect to the integration of the municipal courts, are you suggesting that the State of New Jersey employ more district courts just to assume the jurisdiction of the municipal courts?

MR. FINCKNAUER: No. This, again, would involve abolishing the municipal courts as they now exist. We are in favor of integration of the municipal court system into the existing court structure. Now, obviously--

SENATOR WOODCOCK: Wait. If I may just interrupt you for a moment so I can understand what you are talking about.

Are you talking about having a full time municipal court on a countywide basis?

MR. FINCKENAUER: It would be a countywide basis, but the court would not be a central court in terms of geographic location. It would be in the community, but it would be a

full time court.

SENATOR WOODCOCK: Let me see if I can find this out. This court, this new court, that would exercise the functions of the municipal court would exercise no other function. Is that correct?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: In other words, it would not also handle district court matters?

MR. FINCKENAUER: No.

SENATOR WOODCOCK: Non-jury and jury?

MR. FINCKENAUER: Non-jury.

SENATOR WOODCOCK: So if I understand you correctly what we are talking about, in effect, is a consolidation of municipal courts into newer municipal courts?

MR. FINCKENAUER: Right. We call it integration.

SENATOR WOODCOCK: That is, in effect, what it would be. It would be a reduction in the number of municipal courts on a full time basis?

MR. FINCKENAUER: Right.

SENATOR WOODCOCK: When would this court meet?

MR. FINCKENAUER: We have a recommendation in terms of the municipal court meeting, that there be an opportunity for the court to meet in the evenings, for example, or on weekends, because this is a great problem for many people now appearing in the municipal courts. They have to leave their jobs because they're either defendants or witnesses or whatever the case may be. It's an inconvenience to them. Therefore, we feel that the system could be made a little more--I don't like to use the word convenient, but this is what it would be. If there would be evening meetings or weekend meetings it would be more convenient for the people.

SENATOR WOODCOCK: Do you know what a wash line case is?

MR. FINCKENAUER: No, I do not.

SENATOR WOODCOCK: Well, if by definition I can give it to you, it usually involves two neighbors who are arguing over a wash line

or a tree or a boundary or something of a minor nature. Do you think that this type of court with the volume of business that they do is better equipped to handle a wash line case than the average municipal court judge now?

MR. FINCKENAUER: We have an additional recommendation that cases of this type that you're discussing, as well as many of the ordinance violations, be not handled in the criminal court at all but be handled through civil administrative authority. I wouldn't want to define exactly how that would work, but this is what our recommendation is. In other words, these types of things would be taken out of the criminal. I don't think they belong there in the first place. This is not a criminal offense. Many of these ordinance violations are minor things and they're not really criminal cases. Some of them are, but many of them are not.

MR. LUMBARD: Continuing again from page three. "The deficiencies in our criminal

justice system as a whole are not obvious even to those most directly involved in and responsible for its operation for various phases of the criminal justice process function virtually independently in compartmentalized and fragmented sections which have only peripheral contact with each other and with other agencies of government and the general public."

Then you go on: "It is, therefore, the major recommendation of this Commission that the State of New Jersey must move without delay toward the modernization of systems of law enforcement and the administration of justice, taking advantage of the latest discoveries and technological advances of the physical and social sciences in this highly urban and specialized state. Failure to provide the effort and the financial support necessary for such change can only result in serious damage to and eventual destruction of the very foundations of our complex society."

If you had to single out any single

recommendation or aspect of your subsequent report which lies behind those statements, would you please inform the committee what it is? If you feel it is unfair to ask for just one, then tell us whether you think it should be more and then tell us what they are.

MR. WALDRON: It is my understanding, Mr. Lumbard and gentlemen, that the answer to the question that you have asked is on page 9. It deals with the interdepartmental coordination, consolidation, of police agencies.

MR. LUMBARD: Would you spell that out, please?

MR. WALDRON: Yes. I shall, indeed.

The report states on page 9 that the fragmentation of police administration among the 567 municipalities in New Jersey contributes significantly to the high cost of law enforcement. Each separate municipality must provide for the capital cost of buildings devoted to law enforcement, criminal justice and correctional functions as well as expendi-

tures for salaries of various levels of personnel and purchase and maintenance of specialized technical equipment. Therefore, in a given geographic area serving several municipalities where law enforcement equipment, operations, and specialized personnel are duplicated in each municipality the cost per capita of law enforcement could be greatly reduced through a pooling or consolidation of skilled manpower and particularly technical equipment.

In addition, the financial resources available for law enforcement operations in any given municipality cannot possibly be adequate to provide as high a quality of service as could be made available through such sharing or consolidation.

At present there is no standardized system for formal communication among the various municipal police departments and their personnel. What communications do exist have been developed on an informal and individual basis and is inadequate to deal

effectively with criminal activities which so often cross municipal boundary lines.

The Commission, therefore, recommends the New Jersey Police Training Commission should be directed to review the existing structure and administrative costs of police service in New Jersey in order to develop a plan for the sharing or consolidation of police activities, personnel, and equipment, particularly in the field of communications, in areas of this state where such actions are desired and will provide more efficient and more economical law enforcement. Special attention should be paid in the review to the results of experiments undertaken by certain municipalities in the pooling of their police resources and services.

Secondly, a standardized network of direct formal communications and cooperative arrangements should be developed and implemented for use by and among all police departments. Thirdly, the New Jersey Police Training Commission should be empowered to

establish and implement a program of systems analysis of police administrations and establish informal standards of police operations. Sufficient funds should be appropriated to the Commission to enable them to carry out these responsibilities, these new responsibilities.

MR. LUMBARD: Mr. Waldron, much of what you say, I think, would make sense. But I do not understand why you recommend that these matters as you have summarized them in these three items should be done by the Police Training Commission. As I interpret what you said these are matters that go to management, administration and operations of the police departments, three areas which have not been given to the Police Training Commission. As I read the Police Training Commission jurisdiction as spelled out in the statute, it is confined to police training.

MR. WALDRON: This is absolutely correct.

MR. LUMBARD: Are you, therefore,

implicitly recommending an amendment to the Police Training Commission statute?

MR. WALDRON: This would be so, sir.

MR. LUMBARD: You don't spell it out here?

MR. WALDRON: No, sir. It is not spelled out here.

MR. LUMBARD: But you would so recommend?

MR. WALDRON: Yes, sir. This matter was one of the last topics that we had a general discussion on, of the entire Commission. You have in existence already a police training commission. Its jurisdiction, as you say, is limited. But no one goes into police departments and centralizes or helps them to establish records and rather than set up a new agency it seemed to us that with an already existing program--they are training the police departments--that with some additional technical help you'd have an agency that could handle the problem that we have outlined here.

MR. LUMBARD: Are you aware that the

members of the Police Training Commission are not paid, that they are persons who are otherwise engaged and do not meet as a body very often?

MR. WALDRON: This is a general word. We didn't mean the Police Training Commission. We meant Leo A. Culloo and his staff.

MR. LUMBARD: I am trying to establish the organization and functions of the Commission because if you are going to give a major new task to the organization then it has to be one that can cope with it.

MR. WALDRON: You are perfectly correct. We are saying the Commission. It would be under the jurisdiction of the Commission, but handled by their executive secretary and his staff.

MR. LUMBARD: Would you change the complexion of the Commission as well? These persons have been selected solely to do a police training task rather than the vastly different management, operations, communications task.

MR. WALDRON: Well, we had not discussed

any changes. Of course, this is up to the Governor, the identity of the persons appointed to the Commission. They come, as I understand it, from a rather broad spectrum. You have representatives of law enforcement. You have people from the college level, etc.

MR. LUMBARD: Without pursuing that any further, I gather that the main point of what you are saying, however you would house it in New Jersey, is that the State should for the first time become interested in what goes on in municipal police departments?

MR. WALDRON: Yes, sir.

MR. LUMBARD: Is that the main point?

MR. WALDRON: Yes, sir.

MR. LUMBARD: You have not, however, thought much about how organizationally that general conclusion should be translated into practice?

MR. WALDRON: No, because this would be, in my estimate, rather presumptuous on

our part, to tell a legislative body who would have to act on this, any procedure. We're making the suggestion, the recommendation.

MR. LUMBARD: But you are clear that that is the point?

MR. WALDRON: Yes, sir.

MR. LUMBARD: All right.

THE CHAIRMAN: Senator Waldor?

SENATOR WALDOR: Two questions. Mr. Waldron and Mr. Finckenauer, I am a little confused and I am not going to go into specifics. When was your Commission appointed?

MR. WALDRON: Back in 1966, I believe.

SENATOR WALDOR: 1966?

MR. WALDRON: Yes, sir.

SENATOR WALDOR: The purposesof your Commission are set forth in the booklet, which I haven't read in toto yet, except to hear your testimony. Your budget, as I understand it, is somewhere around $90,000?

MR. WALDRON: No, sir. $25,000 from the New Jersey Legislature and $25,000 from

the federal government.

SENATOR WALDOR: $50,000 in 1966 and then $40,000 in 1967. Is that incorrect?

MR. WALDRON: I think so. We didn't come into existence until--was it '67?

MR. FINCKENAUER: The actual expenditure of funds began on December 1, 1966.

SENATOR WALDOR: I want this perfectly clear for the record. Your Commission was born in December of '66. Is that correct?

MR. FINCKENAUER: It wasn't created, but it actually went into operation December 1, 1966.

SENATOR WALDOR: All right. The appointments as set forth were made by the Governor and whoever was the President of the Senate at that particular time and the Speaker of the House at that particular time.

MR. WALDRON: That is correct.

SENATOR WALDOR: And that's in 1966?

MR. WALDRON: Yes, sir.

SENATOR WALDOR: There was an appropriation of $25,000 from the State and $25,000

from the federal government, which was $50,000 for your 1967 appointments?

MR. WALDRON: That's correct.

SENATOR WALDOR: And you're '67 budget of $40,000 consisted of a State appropriation of $25,000 and a $15,000-appropriation from the Federal government, I take it. Is that right? That would be the round figure of $90,000 since the life of the commission or since the Commission was born. Is that right?

MR. FINCKENAUER: To this date. The total expended by the Commission up to now was about $49,000. The unexpended balance was returned to the State of New Jersey.

SENATOR WALDOR: I want to ask one question and I am not passing on your integrity or your ability or anything like that. Do you honestly think, Mr. Waldron and Mr. Finckenauer, that your Commission has, by the methods you used, arrived at recommendations that can cover a Statewide problem when you have indicated by virtue of your testimony that the area of your study was confined to such a small and narrow area that it isn't even typical of what exists in the State of New Jersey?

MR. WALDRON: May I say this to you, Mr. Waldor. We were restricted by the legislative--the ordinance, the law, that was passed by the legislature. Our scope was restricted. Not to two municipal courts, for example, but to arrive at a generality for 565. We had public hearings conducted with representatives from other parts of the State. This was a basic field study that was done and there were additional field studies planned. The program was curtailed.

SENATOR WALDOR: I don't want to interrupt you, Mr. Waldron, but I am saying to you and suggesting to you now--and again I am not reflecting on any of the individuals and I don't want you to get that idea. I am reflecting, very frankly, on the creation of this Commission and the service or lack of it that it provides, in my humble opinion. I am saying to you now, sir, that based upon your testimony and based upon what I have read in your report there are glaring inaccuracies that are supposedly based upon research and

studies and many of which you have testified to today. For example, you have used generalizations that are applicable only to a narrow area of the State and are not applicable, generally speaking, to what the municipal court system is in other parts of the State.

Time doesn't permit me to go into what these inaccuracies are and I don't intend to pursue it further. Frankly, I may communicate with you and indicate to you what I regard as being completely inaccurate and completely untypical of what exists in the State as far as certain areas of criminal justice are concerned.

I think there are areas where I agree with some of your recommendations, but I don't think this type of commission and the studies you made represent a fair approach to the problem that presently exists and I don't think, very frankly, that the Commission to Study the Causes and Prevention of Crime in New Jersey which was organized in December of

1966 by a previous legislature and by the Governor serve the purpose of what it set out to serve and I would like to make that statement for the record.

THE CHAIRMAN: I think at this point we will recess. We very much appreciate your attendance here, Mr. Waldron and Mr. Fincke-nauer. Thank you.

MR. WALDRON: Thank you, sir.

(Witness excused.)

THE CHAIRMAN: We will recess for lunch and immediately after lunch the Chief Justice is scheduled to be here with the Administrative Director of the Courts, Mr. McConnell.

(Luncheon recess.)

A F T E R N O O N S E S S I O N

THE CHAIRMAN: Gentlemen, it is time to reconvene the session and we will do so. We are very pleased to have with us at this juncture, as scheduled, the Chief Justice of the Supreme Court of the State of New Jersey,

Justice Weintraub, and the Administrative Director of the Courts, Honorable Edward B. McConnell.

If you would, gentlemen, just for the record identify yourselves and then you may go ahead and proceed.

CHIEF JUSTICE WEINTRAUB: All right. Thank you.

"Mr. Chairman, Members of the Commission, the responsibility for law enforcement rests with the State. The State judiciary of course shares in that responsibility, but I should note at once that there is a phase of that responsibility which is no longer in the hands of the State judiciary. I refer to the determination of the constitutional limits within which law enforcement is to be achieved. In recent years the United States Supreme Court has substantially pre-empted the field. More than that, the Supreme Court has found constitutional moment in sundry issues which have been thought to be beyond the constitutional scheme of things. That process of expansion

will undoubtedly continue, yielding single immutable solutions to issues upon which State judges and Legislators have been free to disagree.

Although now and then a decision of the Supreme Court suggests there remains with the State the opportunity to devise alternative answers, I confess I have been unable to find elbow-room. The responsibility for the result has been divorced from the power to devise rules to obtain it. The State courts can do no more than interpret the will of the Supreme Court and try to anticipate where it will go; and it is not irrelevant to add that the process of case-by-case development of constitutional law, useful in other settings notwithstanding the inherent ambiguities and uncertainties of that process, is inappropriate and inadequate when applied to an area of intense daily activity involving the security of 190,000,000 people.

No survey of law enforcement can be complete if it fails at least to note the

question whether effective law enforcement can be achieved within the framework of the new constitutional doctrines. It should be stressed that the question is not whether any provision of the Constitution as it is written should be amended. In this area there is not a single constitutional decision of moment that has turned upon either a reading of the Constitution or an appeal to its hisory. Nor should it be thought that the contest is between the rights of the individual and the rights of Government. Government has no rights; it has only duties, and powers with which to fulfill them. What is here involved is wholly a clash between competing rights of the individual.

Little noted in the grand debate, and yet pre-eminent in the galaxy of the rights of the individual, is his right to live free from criminal attack, in his home, his work, and the streets. Government is established to that end, as the Preamble to the Constitution of the United States reveals and our State Constitution, Article I, Paragraph II, expressly says. We

expect the citizen to forego arms on the strength of that assurance. It is this primary right of the individual to be free from attack which competes with the rights the Constitution accords the individual suspected or accused of crime. The task of the judiciary is to find a reconciliation when those rights clash in their demands.

Let me say that no one objects to the full observance of those constitutional rights which are intended to protect the individual from a false verdict. Rather the controversy revolves about decisions which find that the Constitution suppresses the truth even though the inescapable result is that the guilty will go undetected, or if detected, will be set free.

Unless we can assume that offenders thus shielded by suppression of patent proof of their guilt will not continue a criminal course, we must recognize that the pain of the suppression will be felt, not by some abstraction called "the police" or "society," but by tomorrow's victims, by the innocent who more

likely than not will be the poor, the most exposed and the least protected among us. We must realize, too, that the protection of the guilty works against public morality, because the suppression of the truth must tend to breed contempt for the long arm of the law. And finally, we should keep in mind that thus to protect the guilty will not uniformly advance even their own selfish interests, for there must be an unknowable number of young men, and now juveniles too, who could have been saved from a career of crime if they had been detected and brought to account before their lawlessness became a way of life.

As I have said, the Constitution does not dictate the reconciliation among the sundry individual values it establishes. The task falls to the judiciary. I am sure that few, if any, judges are unmindful of the primary right of the individual to live free from attack. The difficulty is that the judges, both State and federal, have no reliable data with respect to what law enforcement officials

must have to achieve that end. This being so, judges are remitted to their own limited exposure to the problems of law enforcement in search of a balance between the competing rights of the individual.

It should be evident that the balance cannot be struck after a mere abstract reflection upon the words of the Constitution. The answer must be found in the hurly-burly of the streets. We need a study in depth as to what public officials must have to cope with the criminal element. It is not enough to hope that somehow the police will be able to rise above our mistaken assumptions.

I know of no study designed to gather this essential information. Perhaps such an effort will fail to yield decisive information. If that should be the case, if judges must continue to create constitutional doctrine with no more to go upon than their individual experiences, then the wisdom of the divorcement that I mentioned earlier between responsibility for the result and the power to

lay down the controlling rules, will be the more debatable.

I appreciate that this Commission is not equipped to make the study in depth to which I have referred. But as I have said, it seems to me that no discussion of law enforcement can be complete if it fails at least to note this unresolved problem.

There is still another situation with which this Commission cannot deal, but which should be mentioned because again no review of the total area can ignore it. I refer to the roles of the State and the federal judiciaries with respect to the trial of State criminal charges.

Under existing federal doctrine, which seems to have both constitutional and statutory roots, the federal courts conceive that they have an obligation to review constitutional issues asserted by the State court defendant. Accordingly, after a State conviction has been fully reviewed on direct appeal and even after application for further

review has been denied by the United States Supreme Court, the defendant remains free to move to the lower federal courts and in substance to rerun the case.

In that post-conviction litigation, the federal courts will not accord the State court judgment the finality which the federal courts apparently accord their own judgments in federal prosecutions. The federal courts will hear again issues that have been fully tried in the State courts, and in fact will entertain issues which could and should have been tendered at the original trial. Not only will the federal courts entertain such new issues, but out of deference to the primary responsibility of the State judiciary, the federal courts will send the defendant back to the State courts to "exhaust" his State remedies before the federal courts will undertake to hear and decide the new issue. As a result, State criminal cases are pingponged between the State and federal courts, and the litigation continues for years and years after

the judgment of conviction. In addition, the practice is growing of running to the federal courts even before trial in the State courts to relitigate interlocutory matters, thus delaying the trial of the case itself. The federal judiciary has yet to feel the full crushing impact this situation will inevitably bring upon it.

The litigation of the same issue in both the State and federal systems at times leads to unfortunate conflicts between them. Sometimes the conflict concerns constitutional doctrine, the State judiciary and the lower federal courts disagreeing as to what the Supreme Court has said or will say. Sometimes the federal judge disagrees with the State court's judgment, not because of doctrinal differences, but merely because of differeing evaluations of a factual complex, a routine kind of disagreement which is of no true constitutional moment and which may merely reflect a difference in experience and perception in the area of crimes against the State.

> Plainly it disserves the public interest to have both the State and the federal judiciaries decide the same case. Conflicts between judiciaries sitting in the same territory over doctrine or over factual evaluations do not advance the image of the judicial process. Moreover this practice has made a myth of the constitutional guaranty of a speedy trial, if by a speedy trial we mean a speedy conclusion of a criminal charge. The endless litigation and relitigation of a case must tend to breed contempt among the lawless for the ability of Government to deal effectively with them.
>
> It is important too that this practice is unnecessarily exhausting both the State and the federal judiciaries. It is unduly burdening as well the county prosecutors and the law enforcement officers who are thereby hampered in their efforts to maintain a current calendar.
>
> If the public understood what we are doing, it would regard the scene as incredible.

May I stress that this is not a matter of State's rights, or of the power of plumage of the State judiciary. For myself, I would be delighted if somehow the federal courts assumed the burden of the trial of all State criminal cases. At least if that were done, we would re-unite the responsibility for the result with the power to lay down the rules, a union which would serve the public interest. I realize, of course, that the burden of the trial of State offenses will remain with the States. I deplore the practice to which I have referred because it seems to me to redound against the public interest and to serve no worthwhile end.

I appreciate that historically the concept of a federal post-conviction review of State court proceedings was intended to assure justice to those citizens who by virtue of local prejudice might not be able to obtain fair treatment in a State court. That objective is worthy and I support it, but the practice which I have described does

not turn upon a doubt as to the ability or willingness of the State judiciary to decide cases on their merits alone. It seems to me that it would make much more sense to approach the problem of discrimination by providing for the removal of the indictment to the federal courts for original trial there, upon a showing even of a mere doubt that a particular defendant may expect even-handed justice in the State court.

I do not expect this Commission to deal with this subject, but I repeat that any survey of the area of law enforcement cannot overlook this significant aspect of the total problem."

Gentlemen, as I am sure you are aware, developments in the area of law enforcement have greatly increased the time and demands upon the judiciary. It is a matter of adequate manpower on the bench, enough courtrooms, and enough prosecutors. We have, as a matter of policy, ordered priority for the criminal case, which at times has been very

much to the disadvantage of the civil litigant. A few years ago in Essex County, out of the twelve judges that had theretofore been handling criminal and what we call law cases on the civil side, we had ten sitting on criminal work leaving only two to deal with the other massive civil litigation, much to the discomfort, economic and other, of the bar which has to depend upon the trying of civil cases for a livelihood.

I think we have been more fortunate, probably, than other metropolitan areas in getting more judges. We will never have enough. All you give us we'll use. But I would say, statistically, we have done a lot better than, let us say, metropolitan New York. But I want you to know that they are fully employed and I am sure, with the developments in this area, that demands will always be somewhat ahead of our manpower.

It is important that the prosecutors have enough men to man the courtrooms. There have been times when we could have had another

court available if only the prosecutor could have had an assistant able to go in there and try cases.

We have some figures here which may give some light on the impact of new constitutional doctrines upon the time demands on the judicial system. Statistics are always a little difficult to handle, but I think that they will indicate that the individual case is now taking more time. I can assure you I need no statistics to tell you that is so. When you introduced, for example as Mapp against Ohio did, the idea that evidence illegally seized may not be used it means that rather routinely motions are made to suppress evidence. It is time consuming. It means issues on appeal. With the expanding concept of what makes a confession acceptable in evidence and with the practical need for trying that issue before trial, it means that the same issue sometimes consumes days. It must be tried twice, once before the judge alone and then redone before the jury. Criminal appeals

have increased in number, and understandably so, since these new doctrines are obscure in their ultimate reaches and since counsel is provided for the indigent--and in the metropolitan area most of the defendants are indigent--appeals follow pretty much as of course. I am not criticizing that in any way. I am simply indicating to you that that is a fact.

May I turn for a moment to the problem of uniformity of sentencing, which is a matter of legitimate concern. We have been troubled for many years, as I suppose most judges have been, with this problem of disparity, not only in terms of fairness to the individuals but also in terms of the problem that the keeper of a jail must have when he is dealing with men who apparently have been dealt with unequally. We have had a small committee visit other states which have attempted to deal with the problem by having a special court review of sentences with authority to increase the sentences as well as

to reduce or affirm. And I must say that the reports that we received were not too encouraging. I think it is pretty clear today that our appellate courts will review a sentence with respect to severity. I must add that it is not likely that too much uniformity can be achieved in that way because so much depends upon the feel that the judge on the firing line has with respect to that man. It is not only a matter of looking at the probation report--which we, too, can call for and would if such an issue were before us --but sometimes the very attitude of a man, his demeanor during the trial, can give some meaning to a judge that we can't see. Then there are local differences, I suppose, on the significance of types of crime. I imagine in an area where the economy depends pretty much upon the raising of chickens, the theft of the chicken would be more significant than, perhaps in Essex County where it would go, I imagine, unnoticed. So there may be some local differences that would bear upon what the

sentencing judge would do that we would not know about. In a given situation the local judge may know that there is a rash of crime of a certain character and he may decide, very validly, that in the public interest the sentence should be a little tougher to achieve a deterrent effect that he knows to be needed. Again, a little hard for us on appeal to know about it.

I want to emphasize that we are aware of the problem. I don't know that we have found the solution. We're willing to look at it on appeal and see where we will go.

In fact, in one area in which we attempted to achieve uniformity we have invited a lot of criticism. I am referring to the subject of syndicated crime, gambling. There, taking into account what we believe to be the economic realities, we have decided that all of the sentencing with respect to crimes of that character in each county shall be handled by one judge. Experience had indicated that if you had all of the judges dealing with the

problem the judge who took, shall we say, the middle road approach to the social significance of that offense would inevitably control the actions of the others. If one judge imposing nothing more than a fine, it's a little hard to be the tough guy that sends the fellow away. I should add to that it is the kind of an area in which there are not great individual differences with respect to the defendant who stands before you for sentencing. They are the paid employees of a very lucrative interest. While we have not indicated what the sentencing judge shall pursue as a matter of policy, at least we have one man doing it so that something like uniformity is achieved within the county. I might say that even that effort for uniformity, which is so much hallowed in other areas, evoked a four-to-three split in my court. That's part of the problem of achieving uniformity.

A word about probation. It is an extremely important aspect of law enforcement.

I think it ought to be just as extensively used as it can. If there is any hope of salvage of an individual it is in that area rather than by incarceration. We have assumed responsibility for the probation system throughout the State. We have tried to lift the standard of pay. We have recommended the number of probation officers that should be engaged. And I must say, generally, the Freeholders throughout the State have cooperated quite well in reaching what we believe to be the necessary minimum, keeping in mind that the tax dollar burden has to be dealt with by the Freeholders.

I think it rather clear that probation has not achieved all that we have expected from it. There are some doubts that a probation officer is able to maintain really productive contact with the individual who is consigned to him for guidance. I'm not in position to give you any estimate. I simply indicate that it is an area that requires a lot of exploration and thought, full consid-

eration, probably a lot more money than we have poured into it thus far.

The parole end is something that is beyond our responsibility. That, of course, comes into play only on release from the place of incarceration. That is handled on the executive end. I won't undertake to express any opinion as to whether all is being done there that might be done. I know that historically no real effort was made to train the prisoner, to train him for work upon his release from jail. I appreciate there that we are dealing with economic dropouts who left the active scene, perhaps as youngsters, who during much of their life probably were not trainable either because they could not or would not be directed into an occupation which would sustain them. But I have a feeling that with time a lot of these psychopaths, if that's the correct label for them, may well be adjustable if given a hand.

I know, too, that historically both labor and industry stood in the way, each

terribly concerned about the competition of so-called prison labor. I don't think that is a contribution at all to the public interest. We serve no interest if we consign them to vegetate in State's prison. I don't know how many of you have been there to take a look at what it's like. I've been there. It's a rather pathetic thing. I hate to believe that nothing can be done with it. I am sure it can. But I think some effort ought to be made to see if these men cannot be made productive, not only while there but also when they leave. I speak with no present information since I have not been very close to the scene, but from what little I have heard I suspect that not much has been accomplished.

May I say a word about another topic, something that threatens to become the fashion of the day. I refer to a tendency to attribute conduct which offends the public interest to some state or condition called an illness. I think the effort in this area to distinguish between the sick and the bad is futile. In

that same sense, all who offend can accurately be said to be sick, but nothing constructive is contributed by saying so.

To talk in terms of illness will not relieve the State of the burden of detection and proof. No man may be deprived of his liberty except upon a trial and finding of a basis for that deprivation. Obviously we cannot avoid the constitutional problems of a criminal prosecution by giving it a civil-sounding label.

The subject of illness is relevant only in another regard. It bears rationally upon the post-conviction disposition of the offender. It is after the individual has been adjudged to have committed the anti-social act that the question of redemption and rehabilitation arises, and in that regard we of course should employ all available medical aid which can enable an individual to return to society. Even here, there should be a caveat to protect the individual. The period of incarceration should not depend upon the individual's response

to treatment without regard to the nature of the wrong. Otherwise the individual offender might be held for years, and even for life, notwithstanding that his affront to society would make such incarceration unduly oppressive. And so, too, there should be a caveat to protect members of the public from a repetition of the offense. Usually the most that the psychiatrist can say is that the individual no longer reveals signs of commitable illness. He cannot certify that the individual will not repeat his misdeeds when again subjected to the pressures of freedom. Hence a medical disposition may well require a continuing hold upon the individual with parole supervision.

In any event, if there is a disposition to deal with any kind of public misconduct upon a wholly medical approach, it would be well to find out first whether the medical profession can cure an offender who is unwilling or unable to cooperate in a cure, before placing the misconduct beyond the reach of the criminal process.

I think this tendency to solve problems by calling something a sickness is illusionary. You just can't tear down what you have got unless you know, first, that the medical profession can really deal with the problem. I suggest to you that if you inquire you'll find that they cannot and do not want that responsibility. They are perfectly willing to help do what they can to redeem and cure, but unfortunately they want the legislature or the judge to worry about the problem of protecting the public in that area.

I don't know whether I am taking too much time with this presentation of rather miscellaneous ideas. May I turn now to the problem of the municipal courts. As you know, we have some 500 of them throughout the State. The judges are part time. They are appointed locally. Their term is three years. They are directly dependent upon local political fortune for their fate. Supporting personnel is part time and there is a tremendous turnover. In short, we have some very important

work turned over to the officers of 500 courts widely separated and fairly uncoordinated.

Although the Supreme Court has the administrative responsibility, I must say to you frankly it's awfully hard for us to find out what goes on in the municipal courts. We have all of two investigators who are consigned to that kind of work. From time to time we ask the Legislature for more manpower so we can get around more frequently to find out what goes on. We have not fared very well.

Nonetheless, I want to say to you that the fate of a municipal court is a very important matter in the area of crime. For example, take the problem of releasing a prisoner on his own recognizance. I think we all agree that a man who ought not to be held pending trial ought to get out. It's just a matter of plain economics. He has a family to support and if he doesn't, the taxpayer will pick up that tab. It may cost the man his job. That means, also, prisons and somebody to take care of and feed him. Hence, if

the fellow represents a good risk, by all means let him out. Now, we have been urging the municipal courts to follow that approach but the response has been, "We don't have the manpower. Who here is going to do the checking on the prisoner to determine whether he is a safe prospect for release?"

In the metropolitan area it will require substantial services. Take, for example, a county like Essex where the number of people who are unable to provide bail is substantial and yet the problem of getting out into the field to find out who the man is, whether you could really release him upon his unsecured promise to return, is a rather difficult thing to explore without manpower. As long as we have 500 courts wrestling with that problem, we are going to have great difficulties in getting it under way and making it effective. If we had, as we have been urging for some time, a single court with full time judges appointed by the Governor, supported by full time personnel, with a limited number of

clerks, officers, so that we could maintain contact with them, we could deal with that problem. And so also could the Public Defender who has really been at his wit's end to try and stay in touch with what is going on in 500 courts.

I think, too, that we ought to have public prosecutors in those courts. The very number of courts makes that almost impossible. We could easily achieve that end if we had the kind of judiciary we are talking about.

We have the problem of assignment of counsel. No one yet knows the true demand in that area. As a matter of policy we have told the magistrates that any man who wants a lawyer and cannot afford it should be given one, no matter what the offense is. And a lawyer should be assigned when it appears to the magistrate that he ought to have one. I have no way of knowing whether that policy is being implemented. I know that it is extremely difficult to run that kind of a show in 500 different places and I know if the Public

Defender is to get into that arena, and I hope he will, it will be almost impossible for him to cover so many scenes. He could, however, deal effectively in the kind of full time concentrated courtroom that I have been talking about.

Again, there is legitimate complaint that the proceedings are not somehow recorded. And I would like to know what goes on, too. Yet to ask 500 courts, some of them very small with a small caseload, to provide for a sound recorder with a man to report it is, perhaps, a little bit more than they can carry. At the moment, I don't know that we have the power to compel it. There are some pressure points we can use, but again if we had the kind of court we ought to have there would be no problem at all in having a record of everything that happens, as it should be.

I might say that another problem that inures in the present system is the excessive sentence. I don't want to get this out of balance. It is, though, notable that from

time to time our attention is called to sentences that are just utterly severe as against what a full time county court judge would do. Why it is that you get that kind of result, I don't know. This is not an everyday occurrence, but when it does happen it's enough to really give you concern. You can get more balance, again, if you have a fewer number of full time judges handling this kind of thing.

I would therefore urge, gentlemen--and hope that you, too, would lend your strength in support of the recommendation--that the municipal courts be abolished. Not today. It would probably take us three years just to work out the transition. I want to state that I fear that New Jersey, which has led in the area of judicial reform, may prove to be the last to make this much needed change. Other states are doing it and I think it is regrettable that this State, with its fantastic reputation earned, I hope, for its model procedural structure, its flexibility in its courtrooms and at the courthouse,

is unable to match what is going on in other states in an area of maximum public exposure. There is no court in the state that touches the lives of so many people. The only notion they have of justice is what they see in that courtroom. I would hope, gentlemen, that you would conclude that despite the fact that our judges overall have done a good job there, that they are inevitably limited by the deficiencies of the structure itself and that the public interest would be served by their abolition and replacement by full time courts.

Finally, may I talk about two subjects. One, the juvenile court. We do not know as of yet the ultimate impact of the Gault decision which, as you know, seems to introduce into the juvenile process all of the constitutional guarantees that apply to the trial of a charge of crime. I say "all." We do not know whether trial by jury, for example, will be required. It is already apparent that the compulsory assignment of counsel, the introduction of the privilege of self-incrimination

so that the child may say, "Prove it," has greatly delayed the trial and disposition of juvenile cases. We can see a remarkable increase in backlog and I have no doubt that with time the demands upon the juvenile courts will tend to mount. It means we are going to have to have more manpower there. It means, too, that we are going to need a set of prosecutors to handle the State's end of the proceeding. It is one thing to have a judge completely impartial, the jurist when he handles both the prosecution and the defense, but once you have counsel on the other side I am inclined to think that at least to avoid the appearance of unfairness, if not to avoid a rather schizophrenic reaction on the part of the judge, we are going to need prosecutors in that courtroom.

Finally, with reference to the Public Defender, I think the statute should be amended to at least authorize him to assume the responsibility of defense in all areas in which counsel may be requested by the

Court. By that I mean this: At the moment he is concerned with indictable crimes. We have the problem of the disorderly persons offense and we have the juvenile proceedings insofar as counsel is furnished and, as I indicated to you before, it is our policy that counsel be furnished when requested because of indigency or whenever the court feels counsel should be provided. I would hope the Public Defender would be authorized to step in and handle those mattersand as well be given the financial equipment that he is going to need to meet that extra burden.

I indicated that we have some material here which will give you some statistical insight to the story of the demands of the criminal prosecution upon the courts. There is no point in my attempting to deal with it unless you want to explore it and if that should be Mr. McConnell is much better handling these papers than I am and he is here at my left.

I hope, gentlemen, that what I have said

somehow will be of assistance. If there is anything else I can offer you I will be happy to do it.

THE CHAIRMAN: Mr. Justice, we appreciate it a lot.

MR. LUMBARD: Mr. Justice, you started out with two federal discussions. The first, I gathered from your statement, was that there has been a movement of power essentially from the State courts to the United States Supreme Court in Washington. The second was that the rising amount of federal law, federal involvement with post-conviction review,has led to a lot of second guessing and other involvements. You started out with those two things. Is it fair for us to assume that you regard those two matters as the most significant among the many items you have brought to the attention of the Committee today?

CHIEF JUSTICE WEINTRAUB: I do. I do for this reason: I think both areas have been unexplored. There seems to be a lot of hesitancy about even talking about them and yet I

think that until we get into that subject and get the facts to find out what we're doing, we cannot deal with the problem that at the moment I think is extremely disconcerting to law enforcement.

Please don't misunderstand me. I am not criticizing the United States Supreme Court. They have a very heavy responsibility. I am raising the question of whether the judicial process has succeeded in developing a technique for getting the facts necessary for lawmaking. Historically, the problem has been that judges either did not realize or refused to recognize that they make law. I hope by today all of them know they do. But along the way no consideration was given to the problem of how do you get the facts upon which to make the policy decisions involved in law making. And it makes no difference whether you are talking about constitutional law or non-constitutional law. These cases don't go off on a reading of the Constitution. They go off on facts, factual assumptions the

judges must make if they have nothing to deal with, some factual assumptions outside the record of the individual case. In other words, it's an area in which you can't turn, let's say, to the Brandeis-type brief. That brief consisted of an assembly of known facts, economic or other, that are documented elsewhere. They are brought together and given to the Court.

MR. LUMBARD: Economic and social statistics that have a high degree of acceptance?

CHIEF JUSTICE WEINTRAUB: That's right. Exactly so. Here we have no such thing.

Let me illustrate. The Gault decision held that the constitutional guarantees or most must apply to the juvenile and it was held, for the first time I think, that the juvenile could plead the privilege of self-incrimination. This can be an extremely important holding. You can search the opinion for any factual support for the very vital conclusions that the juvenile process is failing to the point where that particular value should be

introduced.

Now, you will find a reference to a study made by two gentlemen, I suppose psychologists, who concluded that if you get little Johnny to tell you that he did something wrong and then discipline him he is going to come around to hate everyone. Now, I think nothing is further from the truth as I believe it. I think the most important moral value for the youngster is to teach him to come clean, to face the music. I think that's how you make men out of errant boys. I think that's how you make men out of adults who have failed.

It isn't important whether my notion of human behavior is correct or the one referred to in the footnote in Gault. What is important is that, to some extent, constitutional law has been made on a choice between two rather sophisticated estimates of human behavior. I am sorry to see the Constitution choose between any two such concepts. That kind of a thing allows for free play so that

one who lives one way can try that and another who has a different way can go in another direction.

But the point is that, to some extent, the kind of thinking I have referred to played a role sufficient to be mentioned and yet there is no real factual statistically-reliable data to support that one reference.

MR. LUMBARD: Did either party to the Court argue any of these theories?

CHIEF JUSTICE WEINTRAUB: I wouldn't know. I haven't seen the briefs. I don't know.

MR. LUMBARD: Would you say the same approach was taken by the Court in the Miranda decision?

CHIEF JUSTICE WEINTRAUB: Well, Miranda--there was nothing in the Constitution that said a party suspected of crime shall have a lawyer at the time of interrogation. The Constitution says no more than this: At the trial is where the rights of counsel exist. Actually, it's a right to hire

a lawyer, not a right to have one furnished. If I recall correctly, the right to counsel at trial was found not to be in the Sixth Amendment, but in the concept of equal treatment. The poor ought to get what the rich can buy. I think that's basically so.

Now, Miranda raises the question whether you should have a lawyer before the trial. There is not a word in the Constitution that gives you the slightest clue to that answer. It's got to be a true judgment made by the judiciary based upon an estimate of what is involved, what is needed, what is fair. Now, how you go to that will depend very much on what you think the policeneed to deal with crime. If you take the view that interrogation is not important you may be very quick to either abolish interrogation or limit it very severely. If, on the other hand, you believe the police need that, not only to convict the guilty but to acquit those who are innocent, you are less apt to run to that kind of a solution. You might want to first

get more information on how many cases turn on it. You might want to have a study of the kind I talked about before where somebody really rides with the police to find out what it takes to deal with it. After you do that you may have some feel, some basis, for deciding whether to say a lawyer should be there or should not be there.

So I say to you that the judge who got into Miranda had to resolve a question which ultimately would depend upon a lot of data that I am sure he didn't have. You can see, for example, in Miranda, how the judge writing the opinion wasn't quite sure of its ultimate impact because the opinion several times paints a picture of a lawyer sitting there while his client is being interrogated just to see that it's a fair interrogation. Well, of course, the important question is: Would a lawyer let his client answer at all? Now, it is one thing when you talk about Miranda if you are going to assume that this lawyer will say, "Yes. Go ahead," and let

him answer. I am for that. I really would like to see a lawyer present when a man is interrogated. I, too, want to know what happened in that little room. I would go as far as anyone to make a record of what happens so that there is no question about it. But the picture of a lawyer saying to answer the man--is it right? In fact, one very important question not yet resolved is the ethical attitude of the lawyer. Does he say, "Keep your mouth shut."

Now, Mr. Justice Jackson many years ago writing for himself alone said, "Any lawyer worth his salt will tell his client not to talk."

Well, I ask you: Is that his ethical duty? Is the prisoner who is advised by his attorney to go ahead and answer the man given incompetent advice? Can a lawyer who is assigned say to the prisoner, "I'm not the keeper of your soul. Follow your conscience. I will advise you on the law. Here's the law. Do you want to give me the facts? I'll tell

you whether you can be convicted. The answer is yes. Should you talk? That's your conscience, not mine."

Is that lawyer doing his job? These are the questions that Miranda does not deal with. It would seem to me that before I would get too far afield in that area I would want to resolve those first questions because they make an awful lot of difference as to what Miranda means and what the effect of Miranda will be.

Put it this way. If, as some people I think believe, a lawyer worthy of his name will say, "Keep your big mouth shut," then I suppose Miranda should be read to mean that when a man is warned about his right not to answer he should be told that if he had a lawyer that's what he would tell him to do, not answer. Of course, no one has said Miranda means that.

I repeat that kind of decision basically involves a lot of estimates of human behavioral gauges which I think are yet unex-

plored and yet which should play a part in deciding whether a lawyer should be required at that stage.

MR. LUMBARD: Do you have any suggestion to the Committee about the next step that might be necessary to begin to cope with these important federal problems that you have discussed? You said several times that you recognized that as the Committee is now constituted, of course, it could not do that; yet you held these two problems to be the most significant of all the testimony that you brought to the attention of the Committee. What would be your thought as to the next step that should be taken to try to do something specific about resolving some of these important matters?

CHIEF JUSTICE WEINTRAUB: To begin with, I would hope that some foundation with enough money would be willing to sponsor a real investigation at the police level, a real objective observation or a ride with the policeman to find out what really is needed.

MR. LUMBARD: What is needed in the

sense of what facts to solve the typical average case?

CHIEF JUSTICE WEINTRAUB: That's right. What powers the police must have if they are going to protect the most important right of the individual, the right to be free from attack. To me, that is the most important value which, unfortunately, is too little mentioned. We all, I think, have to give that priority. If government does not succeed in protecting the individual the alternative is that the individual will protect himself. The last thing we would want is an armed society. So it seems to me that government can't fail in that area. If government fails in that area because of any construction of the Constitution, which is unfortunate, that Constitutional construction is going to give way. It will give way at the judgment of the Court who recognizes the error. It will give way by way of an amendment. There happens to be today some very responsible opinion to the effect that the Fifth Amendment must go; that

is to say that part that deals with privilege against self-incrimination and that we are going to have to turn to the continental system under which a man must answer, under suitable protection. It will be by a public interrogation, I assume, with counsel present. Now, if the Constitution is construed as it is presently construed I am afraid that may be the answer. I don't think that's the ultimate solution because I imagine even on the continent there has to be some preliminary interrogation before you reach that point of public interrogation.

MR. LUMBAR: Mr. Justice, if the first step in working at these federal problems is a study, however financed, of what the police need, what else would you suggest as a specific approach to getting at what you regard as the problem?

CHIEF JUSTICE WEINTRAUB: I think that's the first step. I think the next step is whether consideration might not be given by the Supreme Court to another approach

in exercising its responsibility; that is to say, to deal more by way of rule making, perhaps, than by case-by-case decision.

MR. LUMBARD: Such as a judge's rules to enlarge?

CHIEF JUSTICE WEINTRAUB: Yes, or the rules that we adopt here in New Jersey for practice and procedure. Chief Judge Lumbard has suggested something like that, if I recall correctly, for the federal area alone. He proposes that innovations be made by rule of court so that there may be some body of experience before the innovation is made applicable to the States as a matter of constitutional requirement. My thought is that since the United States Supreme Court is the final authority in the area it may very well be appropriate for them to deal with these problems by way of rules that are promulgated in advance of the event. You see, what goes on now is that you have got police departments in just about every hamlet handling vital matters, uncertain in many areas as to what they may or may not do, and facing the prospect that when they get into the courtroom with the evidence they have

it will not be admitted.

I get the impression that police departments don't know what to do in terms of legal rules. They are uncertain about what Miranda means. They are uncertain about whether they can search without a warrant. That's the kind of problem.

MR. LUMBARD: In other words, they don't have adequate guidance or direction from the courts?

CHIEF JUSTICE WEINTRAUB: That is correct, and they don't know what to do.

For example, recently the Court decided that the Constitution required that an attorney be present at a lineup, at least after indictment, I gather. I am not too sure the indictment is critical or not. It's one of the ambiguities that I'm talking about.

MR. LUMBARD: In other words, of the three lineup cases Wade is the most important?

CHIEF JUSTICE WEINTRAUB: I wasn't sure whether in the last of the three cases where the result was sustained indictment was

a factor or not.

At any rate, you can see the impact upon law enforcement if a rule such as that is announced and if it should be applied with reference to lineups. If there is any uncertainty as to what is required in a lineup, what will the policeman do who has a suspect, he thinks? The only way he can go at it would be to take a Rogue's Gallery picture and say, "Is this the man?" Well, is that going to be bad? If he somehow gets the man in and has a lineup what will the lawyer do at that lineup? Can he say, "I object to it." If he's there to be a witness, that's another problem. What do we do with him in the courtroom? We don't want lawyers to be both lawyers and witnesses. If he is going to have to testify we want him to get out of the case. Now, what is contemplated by that lineup situation? Will the lawyer take the stand, remain in the case? He will have to if the police department on their own tell us a story that the lawyer doesn't back up. These are problems which, I

think, should be well thought out before we get into this holding.

MR. LUMBARD: Aside from the procedural problem, perhaps, there is another side to the lineup case; that is, the lineup is most used in eye witness identification cases. Eye witness identification cases, perhaps you and I could agree, are the most troublesome to the courts because, really, it seems to me there are other kinds of proof and the only way to make an eye witness identification is for someone to look at somebody.

I would like to come back, if I may, to the key Federal-State issue that you focused on. Would it be fair to say that the practical thrust of this problem, as you presented it, is that swiftness and certainty are beginning to be lost in the court system and those are highly significant to the proper administration of justice?

CHIEF JUSTICE WEINTRAUB: Oh, I couldn't agree more. Swiftness certainly has been lost and certainly--

MR. LUMBARD: They have been lost?

CHIEF JUSTICE WEINTRAUB: Oh, I think so. There is no doubt the very procedures we have been talking about have greatly delayed bringing a defendant to trial and concluding the question of his guilt or innocence.

MR. LUMBARD: Do you have any figures that show how swiftness and certainty have been affected in the courts of New Jersey over the past six or seven years by these decisions?

CHIEF JUSTICE WEINTRAUB: Well, I can tell you this much. You have to keep in mind that by putting more manpower on the criminal end you may stay what looks fairly current. It may not indicate a change in figures, but the whole figure story may be less than what you would want.

In Essex County, for example, I think median time interval is something like eleven months between indictment and trial. That's a lot more than it ought to be and that is with a really heavy allocation of manpower.

MR. LUMBARD: And if you add to that

the prior interval between arrest and indictment you get a number of weeks?

CHIEF JUSTICE WEINTRAUB: You get more. It depends. A lot of these statistics depend so much on whether the prosecutor presents the matter to the grand jury quickly or waits. If you wait your statistics look a little better if you are going from the date of the indictment to the date of trial.

The median time in Essex County--the last one I have represents cases heard in April of '67--nine months is the median time. The range is one month to thirty-five months. You can see from that one month that the average you get may not be too revealing because it takes into account a lot of cases. I don't know what kind of cases came up that quickly, but you can see the spread.

MR. LUMBARD: In terms of trends going back, say, ten years, what would the difference be?

MR. MC CONNELL: We don't have the

figures going back that far in terms of these time intervals. We would have the figures that would deal with the age of the average criminal case that was awaiting trial. I don't have those here going back. There would have been a substantial increase in the age of the criminal cases that are awaiting trial.

MR. LUMBARD: Could you give us an estimate of what you mean by substantial? I gather you would agree that criminal cases do not benefit from aging like wine.

MR. MC CONNELL: It depends on what your interest is. If you are the attorney for the defendant or the defendant I assume they do benefit by age because the chances, probably, are less that you would be convicted.

Out of 5,388 pending indictments at the end of February, only 3,227 of those are under six months old, which means that the balance of approximately 2,000 indictments have been around for more than six months.

As the Chief Justice mentioned, the amount of judges' time that is spent on the

criminal end and other variables like that affect the age as much as the Supreme Court decisions. So we can't say how much effect they have on the present status of the calendar.

CHIEF JUSTICE WEINTRAUB: I would suggest this: Looking at the figures that we have, while the number of indictments seems to be relatively constant over a period of at least, say, ten or twelve years, the time demands in terms of hours on the bench in criminal work has gone up tremendously.

Let me just take the years 1952 to 1953 and 1953 to 1954. According to these records the number of criminal cases disposed of in 1952 to 1953 and 1953 to 1954 were 10,000 plus. In 1965-1966 the number of criminal cases disposed of, 12,008; 1966-1967, 10,007.

Let me give you the number of judges' hours devoted to criminal work. 1952-1953, 10,000; 1953-1954, 10,007; 1965-1966, 31,000;

1967, 33,000;

MR. LUMBARD: Are there differences in the types of crimes?

CHIEF JUSTICE WEINTRAUB: Oh, yes. It's a little hard to find out, with the increasing demands on the criminal resources of the State, whether types of crimes that once were tried are now necessarily kind of overlooked because more serious things are happening. I don't know. All I know is that on the face of these figures, while the number of indictments disposed of there seems to be fairly constant, hours are tremendously different.

MR. LUMBARD: Earlier I recall you saying in your testimony that you do not have a statistical way to measure the changes brought about by the post-conviction remedy, but that you had no doubt, from your own knowledge, that it has risen.

CHIEF JUSTICE WEINTRAUB: Yes.

MR. LUMBARD: I gather you know it from talking to members of the courts in the

State and other ways of learning, even though not statistically?

CHIEF JUSTICE WEINTRAUB: Well, we know it from the mere fact that motions to suppress, which we never had before, take time. We see records on appeal. We have motions for appeal before trial. Some are granted, appeals heard. We know that the trial of the admissibility of a confession is now a much longer affair since we have felt compelled to have this issue tried first outside the presence of the jury. Maybe this is an extreme case, but it is one in which I happen to have written the opinion. Five days were spent in trying it in the absence of the jury and then again in the presence of the jury.

MR. LUMBARD: Most of the federal problems, perhaps, could be said to have arisen from certain Supreme Court decisions and are a trend in the last few years, as you testified. The Committee, however, is faced with a number of practical problems concerning the administration of criminal justice, which I

believe it fair to say do not arise from the United States Supreme Court, whatever the impact that may have on the judicial system and certain aspects of law enforcement. Do you have any comments about these areas that you wish to sort of conclude with before I turn it over to the Committee for questioning, insofar as New Jersey today, and which you have not mentioned in your testimony such as where you mentioned the municipal courts.

CHIEF JUSTICE WEINTRAUB: No. I think I have covered all I had anticipated placing before you.

I would be happy to open myself up to any inquiries the members of the Commission may have.

THE CHAIRMAN: Mr. Chief Justice, in view of the fact that Mr. Lumbard said we are ready to turn this over to the Committee, it might now be appropriate to take a break.

(At this point there is a short recess.)

THE CHAIRMAN: Gentlemen, shall we call this hearing back to order.

Do you have anything further at the moment?

MR. LUMBARD: No, sir.

THE CHAIRMAN: Do the members of the Committee have any matters they would like to discuss?

SENATOR WOODCOCK: Mr. Justice, with respect to the concept that you were describing before having to do with the accused pleading an illness I believe you said that we shouldn't treat him, basically realizing his criminal act, any differently with respect to the penalty but then treat him on post-conviction, after his conviction treat him for the illness. Do I understand that correctly?

CHIEF JUSTICE WEINTRAUB: Actually, that is not the particular topic I had in mind, although you have correctly stated my view on this subject. I will take just a second on that.

You are dealing now with a question of whether insanity should be deemed to be

a defense to crime. That was a great topic of interest when we had the old McNaughton rule. Then someone came along with a different rule in the District of Columbia and another one in the Third Circuit. It happens to be my view that, logically, insanity has nothing to do with the adjudicatory process. It shouldn't be thought of as a defense to what is obviously a voluntary hostile act against society, but rather insanity should come into play only on post-conviction disposition. That happens to be my view. You are quite right.

What I was talking about here today was a little different problem; that is the question of whether a certain type of behavior--alcoholism, narcotics. Now it's got to be a bit of the fashion of the day to say that an alcoholic is sick. Of course, he is sick as, in my opinion, is every fellow in State's Prison. They're all sick. I think we accomplish nothing when we say that because you still have to do something about taking his liberty away.

Now, I am perfectly willing after having adjudged that he has been drunk in public and thus offended people--and I guess we all recognize a drunk in public represents a hazard of several kinds--or after a man has been adjudged guilty of using a narcotic drug, after that is done, I am perfectly willing to call upon any medical aid that will help straighten that fellow out. But what I say will be unfortunate is to say that when you are dealing with alcoholism or drug addiction you are dealing with a sickness and hence you repeal all the laws that make it a public offense to be drunk in public or to use drugs and somehow trust that the doctors will take over and be able to cure this man. That, to me, is just foolish. But I say if you are minded to that, please don't forget to ask the doctor whether he can deal with that alcoholic, whether he can dry him out, whether he can cure the addict.

I can recall some years ago a young psychiatrist buttonholing me at a dance, much

to the consternation of my wife, and he was outraged on this problem of addicts. He said, "He's sick."

I said, "Of course he is. Can you cure him?"

He said, "I think I can."

"How long will it take you?"

"Give me a year."

"How many can you handle?"

"Fifteen."

"Will you divide fifteen into the number of addicts we have in this State? How many psychiatrists do you need? How many are there in the country? How many beds do you need, what supporting personnel? Work that up and send it to the Governor."

It was not Governor Hughes at the time.

I said, "He will be delighted to get it."

I am sure Governor Hughes would be, too.

What I am getting at is you don't solve things simply by saying that we will

treat him. While that psychiatrist thought he could cure, I think you will find that 99 out of a hundred will say, "I will make you no promises. First, I can't deal with any deep-seated problem of that kind unless the fellow wants to be helped. That's number one. He's got to want to be helped and he's got to be able to respond. Then maybe I can do something."

Now, again, I am not an expert in this area but I think if you check with the results of Lexington where you have narcotic addicts who enter voluntarily--I understand they can--I believe the experience has been very poor. But all I'm saying is please don't call something an illness and think you have solved it. You haven't. You are just starting to get into trouble when you say that.

SENATOR WOODCOCK: Recently we have had some legislation in the Senate dealing with the addict-pusher.

CHIEF JUSTICE WEINTRAUB: Yes.

SENATOR WOODCOCK: If I understand

you correctly, Justice, you would say that we should treat him, let's say, as a criminal for being a pusher and then when we get him in there to treat him for his illness, which is his addiction?

CHIEF JUSTICE WEINTRAUB: That's right. When he's in as a pusher-addict, a combination, obviously he has a medical problem. I have no objection to the word medical. I don't fear it. After you have adjudged that he is or has used the drug or has sold it to support his habit and thus established your right to take away his freedom--that's got to be done first--then by all means give whatever help you can to straighten this fellow out. That's just a matter of being humane and being economically sound. If you redeem these fellows you have made a net gain for society. But it's at the point of redemption or rehabilitation that the question of medical treatment becomes relevant. That's my point. I think you are going to be terribly disappointed when you get to the expert and inquire of him as to

how much of an approximation he can make to you that he can cure.

SENATOR WOODCOCK: Just one other question, Justice. With respect to the abolition of the municipal courts, do you have any idea how many courts we would need to take care of the case loads that the current municipal courts are handling?

CHIEF JUSTICE WEINTRAUB: We haven't made any study. At one time I think we estimated about 65 judges, probably, could do it. That's a matter that would have to be resolved in the light of the current scene and it would depend, I suppose, somewhat with actual experience. It would depend on the number of different courtrooms we would have to maintain. I think that under that program you could have most of your cases, and perhaps all, in the county handling that one courthouse scene. But it may be that problems of convenience would require maintaining several in the county. The experience might, therefore, dictate a need a little bit greater than what

you would anticipate just as a matter of mathematics.

SENATOR WOODCOCK: The jurisdiction would be exclusively that of the municipal courts?

CHIEF JUSTICE WEINTRAUB: Yes. And keep in mind the importance of that jurisdiction. Remember, it's not just traffic tickets. It's the whole range of the disorderly persons offenses, which carry by statute a maximum of one year and a thousand dollars. In most states they are called misdemeanors, a little matter of terminology that can be confusing. In most states a charge that can carry up to one year is called a misdemeanor. In our state we call it a disorderly persons offense. There are tremendous numbers of acts that are embraced by the Disorderly Persons Act and it's a very, very important area. Those courts have that jurisdiction. I don't want to leave the impression that this jurisdiction is petty. It is not. It is extremely significant.

SENATOR WOODCOCK: Would we be getting into some sort of system similar to the municipal courts in New York City?

CHIEF JUSTICE WEINTRAUB: I don't know what they have there and I couldn't make the comparison. I don't know whether New York City has full time judges. I think they do in the City, don't they?

MR. LUMBARD: The municipal courts in New York City used to be civil courts. That's now abolished. They have a general criminal court which handles, roughly, the kind of jurisdiction that Mr. Justice is talking about.

CHIEF JUSTICE WEINTRAUB: They are now full time?

MR. LUMBARD: Oh, yes, all judges in the City.

CHIEF JUSTICE WEINTRAUB: Appointed by whom?

MR. LUMBARD: By the Mayor.

CHIEF JUSTICE WEINTRAUB: I am not reflecting at all upon your very excellent Mayor, but I want the appointing authority

in this State higher up, at the Governor's level with confirmation by the Senate.

MR. LUMBARD: It's rather difficult to do with a population of eight million.

CHIEF JUSTICE WEINTRAUB: Actually, in New York you have got two states in one. New York is itself a state. It's unique.

MR. LUMBARD: If I didn't know you had been connected with the Waterfront Commission, I would take offense at that.

CHIEF JUSTICE WEINTRAUB: Nothing to do with the present strike.

THE CHAIRMAN: Assemblyman Rinaldi?

ASSEMBLYMAN RINALDI: I would like to follow up some of the thoughts that Senator Woodcock has just mentioned. Would you give the addict-pusher--all things being equal, Mr. Justice, would you mete out the same sentence to the addict-pusher as to the non-addict pusher?

CHIEF JUSTICE WEINTRAUB: I don't want to get into what happens at the moment to be a controversy, I take it, of some sort in the

public scene about what is good policy.

Let me put it this way: Any judge sentencing would regard selling as being an offense above and beyond using. Now, if the user and the seller is a seller to support his habit you probably would not take as stern a view of him as you would take of a pusher who isn't a user. I think most judges would take that latter man and send him away as far and as long as he would. Now, that's a matter ofjudgment. I am not trying to give a rule for all cases. I am simply saying that I think judges would regard those two situations as different and, again, a lot would depend upon what drug you're talking about.

ASSEMBLYMAN RINALDI: Mr. Chief Justice, the addict-pusher is the man who is sick. He must push to feed the habit of which he is sick.

CHIEF JUSTICE WEINTRAUB: That's right.

ASSEMBLYMAN RINALDI: Now, you have just said that the medical aspects of an individual, his medical condition, should in no way

be a concern to the judicial process up to the point of conviction.

CHIEF JUSTICE WEINTRAUB: That's right.

ASSEMBLYMAN RINALDI: After conviction it should then be a concern?

CHIEF JUSTICE WEINTRAUB: That's right.

ASSEMBLYMAN RINALDI: This is of concern to us in the legislature because there are some bills pending with respect to mandatory sentencing dealing with narcotic pushers and we are concerned about the narcotic pusher who is addicted and as to whether he should be subjected to a mandatory sentence. In light of what you have said it seems to me that you would subscribe to the proposition that they should both receive the same sentence, all other things being equal, but that after the addicted pusher has been convicted then he should be given the proper medical treatment.

CHIEF JUSTICE WEINTRAUB: No.

ASSEMBLYMAN RINALDI: Have I misconstrued what you said?

CHIEF JUSTICE WEINTRAUB: I did not mean to suggest that the pusher who is not an addict should not be regarded as no more of an offender than the pusher-addict. I intended no such suggestion. All I meant was that after you have convicted the fellow who is selling if it appears he is an addict and you think medically he can be helped to be restored, by all means give him that medical care. That's all I mean but I would regard that factor as bearing upon what I do with the fellow after conviction rather than just having a repeal of all laws providing for the punishment of addiction hoping that the medical profession somehow will be able to deal with the problem. That's the point I am trying to make.

Thus, I have skirted your question as to whether it should be mandatory.

ASSEMBLYMAN RINALDI: I have another area but perhaps somebody on the Commission has other questions in the same area so I will defer to any questions along the same line, Mr. Chairman.

THE CHAIRMAN: Assemblyman Owens?

ASSEMBLYMAN OWENS: In the area of mandatory sentences we do have quite a bit of pending legislation increasing penalties and making them mandatory. I wonder what your general reaction is to these measures, particularly as they relate to--well, their aim being to reduce the incidence of crime. Do you think they are likely to achieve that result?

CHIEF JUSTICE WEINTRAUB: Well, gentlemen, I have said I don't want to get into what is a matter of political dispute within your own party. I would be glad to answer it provided no one would think I am trying to get involved in your fight. I don't want to get involved. I happen to have a feeling on it, of course.

ASSEMBLYMAN OWENS: I think we're really looking for that.

CHIEF JUSTICE WEINTRAUB: Let me say this: I think just about any judge you can talk with is inherently opposed to any manda-

tory sentences. Judges believe in discretion. They believe in it because they always find some cases that come along as to which the mandatory would be horrible. That used to happen in certain areas of mandatory sentences, for example when we had the four-time loser, a judge faced with sentencing a man away for life on that fourth offense, looking over what the first three offenses were, said, "My God, I can't put this man away for life. It adds up to four and according to the book that's where he ought to go."

Whereupon, the judge and the prosecutor kind of agree to downgrade the fourth charge so that the man won't have to go away for life. I don't like that kind of thing. Judges don't. They would rather have the discretion.

Now, please don't misunderstand me. Judges may be wrong and I don't want to get mixed up with your internal squabble about what it should be, but if you want to know how judges feel I think what I have said reflects

what most judges would say.

SENATOR MC DERMOTT: Would you apply that to drunk driving, too?

CHIEF JUSTICE WEINTRAUB: Yes. I think the only virtue that it has there is that it is not the heaviest penalty in the world, although it's not minor. It relieves a judge of a lot of pressure if he has some qualms about sending away what looks like a high-type man or a high-type woman whose one failing happens to be the bottle. When you have a woman who is coming up before you and she's a mother and so on and you have to send her away because that's what the statute says, you may think in that case that very little is being accomplished and it hurts. Now, I can only put it in those terms.

SENATOR MC DERMOTT: Yesterday this Commission visited State Prison and we were taken into the death house, the new death house. They now have 23 and they can't keep them in the old death house. I learned--and maybe others knew it beforehand--that some

of these men have been there since 1957.

SENATOR MC DERMOTT: That's well over ten years. Some of this is due to post-conviction status and all sorts of maneuvering. The last execution, I believe, was in 1963.

Somehow or other I went away yesterday feeling that this was rather inhumane treatment, just keeping them hanging there. Is there any practical solution to this problem?

CHIEF JUSTICE WEINTRAUB: Well, of course, the delay in getting a final determination in those cases is part of what I was talking about earlier; that is, this post-conviction review and the Federal Court. By our standards everything that may properly be considered was adjudged and determined a long time ago. As I indicated, you try a case. You have to present all of the contentions that you have. They are adjudged. You

may, on post-conviction, bring in new matters that you knew nothing of or any other ensuing inequity. But, as I indicated, the Federal Court feels that they have got to revisit the scene and what happens here is--and I am not referring to any particular case--every time they run that gamut, first to the Federal Court, they are told they'd better bring that back to the State Court because they didn't exhaust their remedies. It comes to the State Court, goes all the way up this ladder again. And we say, "There's nothing to it. Now you can go back, if you want to."

So back they go to the Federal Court, run the gamut up there, and when it's over this man raises still another question and this goes on and on.

So when you ask me if I can stop it, it's not within our power to stop it. We can't.

ASSEMBLYMAN OWENS: Mr. Chief Justice, I presume that is a practice in every criminal case where there is a heavy sentence. The

abolition of capital punishment wouldn't solve the particular problem that I pointed out to you?

CHIEF JUSTICE WEINTRAUB: A lot of this law that developed in the area would never have come into being but for capital punishment. It was the death sentence that prompted a lot of expansion of constitutional concepts that are now of so much concern, but the expansions have been made. I quite agree with you that it is not limited to capital cases.

ASSEMBLYMAN OWENS: I don't want to ask a question unfairly, but it is in the political arena. Do you have any particular feelings on capital punishment?

CHIEF JUSTICE WEINTRAUB: I have to answer your question--

ASSEMBLYMAN OWENS: All right. Let's let it ride at that, your Honor.

One question on county prosecutors. In your opinion and that of the majority of the bench as you may know it, do you think

that they should be full time and have full time staffs?

CHIEF JUSTICE WEINTRAUB: I think the public interests would certainly be served but, realistically, if you are going to do that you are going to have to introduce some concepts of security and tenure and pay that are going to make it attractive. You have got to face the fact that for the first time in my lifetime lawyers have become very, very valuable. When I came to the bar, if you could get $25 a week you were lucky. They are starting now at ten, twelve, fourteen thousand. I am very happy to have the bar do so well and I don't mean they're being overpaid at all, but a fact of life is that thereis a great demand. They can do very well in private practice. If you want them in public life you are going to have to make it sufficiently attractive, not equally attractive--in dollars it can't be--but sufficient that a man would be willing to devote his life to it.

MR. LUMBARD: I made the trip yesterday

as well. I don't know if I am trespassing, but I was struck with another aspect of the death house; namely, that the Department of Correction here in New Jersey interprets the statutory requirement that someone sentenced to death is held in solitary to mean that the prisoners can never even leave their cells and they cannot even go out into the exercise yard, for example, because that would mean that they are, "not in solitary." Some of these men, therefore, have been in those cells for, as he says, seven, eight, nine and more years. In New Jersey does your court have any kind of jurisdiction over such conditions of what happens to prisoners who are still under sentence and thus in the domain of the court?

CHIEF JUSTICE WEINTRAUB: We have no jurisdiction directly to dictate how prisoners shall be handled. The courts, however, do always review, at the request of a prisoner, any question of violation of a statute or improper handling. Now, that doesn't mean that

we will undertake to run the prisons. We won't. But we would have to deal with anything we found to be arbitrary.

The point that I ought to make is that in New Jersey, probably more than in any state in the union, there has been traditionally a review of matters of any kind that are public. The courts have always held the obligation to be theirs, to deal with arbitrariness. Now, I underscore that word. I mean that word. We will not, however, undertake to run an executive department. That's not our business.

ASSEMBLYMAN DICKEY: Mr. Chief Justice, I noticed in your introductory remarks you called attention to the fact that when public sentiment runs strong even a constitutional concept may have to give way, such as the amendment to the constitution dealing with the Fifth Amendment. You also said that the court--I assume you mean the United States Supreme Court--may have to give way as to its constitutional interpretations. Do you think

it is something that we can expect, that the United States Supreme Court might give way?

CHIEF JUSTICE WEINTRAUB: I wouldn't want to read that crystal ball. Put it simply this way, as I said before, judges make law. I don't see how any judge can avoid realizing that he makes law and when a judge discovers that the facts of life are different from what he thought they were, so that the rule that he initiated even last year was wrong, he'll change it. Now, we know the history of constitutional law is precisely that. Doctrines are overturned by the United States Supreme Court, and should be. There is nothing wrong with what they do. They have got to make law. There is no other way of handling their job. When a case comes before you you have to decide it. Whether you say yes or no, you are making law. It's that simple.

I have no doubt that if the members of that court believe that a doctrine which they initiated last year was wrong, they will change it. That's been the history of that,

sir.

I am not saying they will be convinced that they were wrong. That's a different matter.

ASSEMBLYMAN DICKEY: Thank you, Chief Justice.

I have one other question I would like to present to you. Do you care to comment on the current fair trial, free press discussion?

CHIEF JUSTICE WEINTRAUB: Well, not beyond this, actually. We have commented in the form of opinions. The Van Dyne case--I think I have the right name, in which we said what we thought had to be the basis of composing the right of the public to know or the right of a defendant for a fair trial. A very tough subject. We have a committee of the court which works with a committee of the press. They are considering some aspects of it right now. We may have, at the next judicial conference, the Reardon Report on that topic and have a public discussion of it.

I repeat that what we think pretty much has

already been put in the form of an opinion. I think, actually, one of the first opinions in the country and, I think, came to conclusions not too different from the Reardon Report. I must say, frankly, I have not studied the Reardon Report in detail.

ASSEMBLYMAN DICKEY: Thank you, Chief Justice.

THE CHAIRMAN: Senator Dumont?

SENATOR DUMONT: Mr. Chief Justice, I would like to go back to what Senator McDermott asked you about in relation to the people in the death house. They apparently had them removed from one portion of the State Prison to another when the maximum of eighteen, which was the capacity in the old portion of the death house, increased to nineteen. Now it's up to twenty-three. They are allowed out of their cells only a half hour a week, we were told, primarily to get a bath. In view of the fact that one of these has been there for eleven years and a number of them for six or seven or eight years,

it does seem as though there's some mockery of justice. Perhaps they don't consider it that way because at least they are alive. The stays of execution and court proceedings can last for many years in one respect or another, State or Federal or a combination of the two.

We, of course, recognize the deep division among members of the legislature, you and many of our associates, perhaps, as to whether capital punishment ought to be retained or abolished. This is certainly a way of obviating the retention of capital punishment, the fact that this many years elapses in so many cases before anything happens in the carrying out of the death sentence.

I guess you have indicated in response to other questions that there is nothing you feel you can do about this?

CHIEF JUSTICE WEINTRAUB: There is nothing because we can't control the Federal Courts. It's that simple. Although I think

everyone will agree that to have a man under a death sentence for all these years is a unique form of punishment. It is true that the man asked for it in the sense that the only reason he is still alive is that he is fighting to live.

SENATOR DUMONT: When the subject came up yesterday with the representatives of the Department of Institutions & Agencies they indicated that this is not unusual, that in other states it may run above twelve or fourteen years, in fact. That doesn't mean we ought to follow the practice in New Jersey, just because somebody else is doing it.

CHIEF JUSTICE WEINTRAUB: I don't think any other state is following practice any more than New Jersey is. The difficulty is due solely to the concept that this writ of habeas corpus is never exhausted in the Federal Court. As the new constitutional doctrines have developed the prisoners going back say, "That's my case. Thathappened to me."

Maybe it did, maybe it didn't. But they start a whole new proceeding claiming that, "Yes, I had the same experience."

So you have to then try the question of whether or not it happened as well as the question of whether the new rule of law would be applied retroactively.

SENATOR DUMONT: They indicated yesterday that the Prison Bar Association is a very effective one, as a matter of fact.

CHIEF JUSTICE WEINTRAUB: Actually, some of the best briefs come from the prison. I say best in the sense that they do have a compilation of the latest cases. They really are on top. The cases may not be relevant to their situation, but any brief they file is up to date.

In fact, one fellow is really remarkable. He is in the death house. I received a letter from him on a Tuesday morning saying, "Hold everything. The Supreme Court just decided something that applies to me."

He was referring to a case that came

down the day before. His letter was written on Monday. How he got that intelligencein the death house so quickly I don't know, but he did. They are very abreast of what's going on.

MR. LUMBARD: They have television there.

CHIEF JUSTICE WEINTRAUB: I guess so.

SENATOR DUMONT: I would like to ask you about the Parole Board. I know you indicated you don't want to get into the actual mechanics of the operation of that, but as we understand it the chairman of that board is full time and his associates on the board are part time. They seem to feel they can operate effectively that way, without everybody being on a full time basis. Do you have any opinion in respect to this?

CHIEF JUSTICE WEINTRAUB: Not at all. I have no knowledge of the time demands on the Parole Board nor have I any information as to their treatment of a case. I know nothing about it. It would be unfair to comment.

SENATOR DUMONT: They indicated they were handling about 250 cases a month, that they would have to read some material in respect to that before their meetings. Two of them, of course, are part time individuals because the salaries are not commensurate to full time efforts.

CHIEF JUSTICE WEINTRAUB: I have no information that would justify any comment.

SENATOR DUMONT: In connection with the abolition of the municipal courts, as I understand this suggestion you make here it would be almost like regional courts. It would take the place--that might not be a good word in a large city--but in other parts of the State where you don't have a single core city it would be like a series of regional courts in the sense that it would take the place of 500 municipal courts as they exist today. Do you have any thoughts in respect to the salary range of these judges?

CHIEF JUSTICE WEINTRAUB: It should be high.

SENATOR DUMONT: Well, what do you mean by that?

CHIEF JUSTICE WEINTRAUB: It seems to me that at this level you ought to get the best you can. Remember, they're talking about very, very meaningful decisions in the lives of the litigants and, for all practical purposes, these judges are the courts of last resort. No appeals are taken, or very few. You should have men that would be paid, I think, at the level of our present County District Court and Juvenile Court. At the moment that's $25,000 and we have requested that that go to $30,000.

That will give you an idea of what I think it ought to be.

SENATOR DUMONT: Are you suggesting that all these salaries would be totally paid by the State or would there be any contribution by the municipality and county?

CHIEF JUSTICE WEINTRAUB: Well, that goes into a subject of many facets. The problem is one of taxation and what should

be the source of revenue. It's the same problem you have with courts generally and the relief and what not. Should real estate bear it or not? If real estate should, then it will go back to the locality. Right now municipalities, of course, get certain revenues. Some of them do quite well in this area. They probably would have no objection to contributing something, but really the question of who should foot the bill is a deeper question of who ought to pick up the costs of government generally and that merely means what tax base is going to be called upon: real estate, which is what supports local government, or other sources of revenue which the State receives. I certainly would not want to get into that one.

SENATOR DUMONT: You would want them all named by the Governor with the advice and consent of the Senate?

CHIEF JUSTICE WEINTRAUB: By all means. I think the public feels better about being judged by a judge not appointed by the mayor

of a small locality.

SENATOR DUMONT: The final outcome of this, then, would be total integration of the court system into a state court system, would it not?

CHIEF JUSTICE WEINTRAUB: That's right. Even though we have already said that magistrates are members of our State system--and we don't want to forget that--it would be, shall I say, a firmer integration.

SENATOR DUMONT: Thank you, sir.

MR. LUMBARD: Your Honor, do you have any figures about bail or release on recognizance failures?

CHIEF JUSTICE WEINTRAUB: Well, I don't know. I know I have just asked for the failures in connection with the Newark riots. I was interested, particularly, in the ROR work. There were about 113 bench warrants that were issued, about 800 arrests. 75 of those were ROR and the balance of 38 or so were bailed. Now, that's a failure of about 9 per cent or so, which is very high.

I would hope that the ROR would work a lot better than that. There may be an explanation because of the tumult, the pressure of the moment, with all of these prisoners with virtually no place to keep them so that a lot were released without the check that you would have ordinarily in the ROR program. I can only indicate that that was a very disappointing experience and I would hope that it would not prove to be average.

THE CHAIRMAN: Assemblyman Rinaldi?

ASSEMBLYMAN RINALDI: I would like to address myself for a minute to another question which I asked Mr. Murray yesterday, the Public Defender, concerning the problem that apparently is looming on the horizon; namely, the additional case loads that the Appellate Courts are faced with now as a result of the Office of the Public Defender. Mr. Murray has indicated, as we are all aware, that each defendant is entitled to all the appeals he desires and the Public Defender is capable of giving. I think you recently made a statement

to the effect that this is going to pose an additional and obviously substantial case load upon our courts.

As a practical matter what do you propose to do to address yourself to this problem?

CHIEF JUSTICE WEINTRAUB: Well, to begin with, I don't know to what extent the presence of the Public Defender will increase the total appellate load. The right of appeal without charge for the indigent has been established for a long time, a very long time, and we would hope that every lawyer who is assigned advises the defendant that he has the right to appeal.

I can indicate to you that we have had an increase in our appeals in criminal matters in the last few years. In 1965, other than murder--well, put it this way: In 1965 the number of cases other than murder that came to the Supreme Court would be 21 in number; a hundred twenty-nine went to the Appellate Division. In 1966, again excluding murder cases, 20 to the Supreme Court and 213

to the Appellate Division. In 1967 cases other than murder, 16 to the Supreme Court and 230 to the Appellate Division.

Now, the Appellate Division is the place of primary activity and you can see that in the period from 1965 to 1967 the Appellate load went from 129 to 230. How much of that is attributable to the Public Defender or to a greater awareness of the right to appeal, or some of the new cases that have been coming down laying down new doctrine, I don't know. We can expect an increase.

Fortunately, in our State the size of the Appellate Division is not fixed by the Constitution. We can deploy as many members of the Superior Court as we need to handle that Appellate load. For example, in 1948 we started with an Appellate Division of one part consisting of three men. We now have four parts of three each. If need be we will assign more men to the Appellate Division. That is the court where all appeals, other than in capital

cases, go and that court will be enlarged as the demand upon it dictates.

And if we need more judges we will be right back to you.

ASSEMBLYMAN RINALDI: So this increased load will not appreciably affect the time lag between the indictment and the disposition of the case?

CHIEF JUSTICE WEINTRAUB: Well, it will to the extent that an appeal in any case extends the time of the ultimate disposition of that case.

ASSEMBLYMAN RINALDI: But you will be able to meet the increased work load by creating additional appellate divisions?

CHIEF JUSTICE WEINTRAUB: Yes.

THE CHAIRMAN: Any other questions?

(No response.)

THE CHAIRMAN: I think that in conclusion I would like to go to the municipal court area for just a little bit. We have heard not only from you but several others in this field and we talked of regionaliza-

tion as an answer and I'm not too sure about this when we get into some of the rural areas of the State. Would you contemplate closeness to the people as a very important part of this in that you would have separate places where you would be sitting with these full time judges?

CHIEF JUSTICE WEINTRAUB: Well, I would contemplate that the judges will sit where the case load and the territorial convenience requires it.

But I would add this: I think experience would indicate that you would not need as many seats of trial as one might fear. We have had some experience already with regionalization of courts. At one time our district court, which was a very important court for the local businessman, was scattered throughout the county, all over the place. We finally united them at the courthouse and all of the fears that we heard before we did it just echoed away. No one has any trouble getting around and getting

there. The roads are there. We're all mobile. I think you are going to find that that problem will not be very big. If it is, we will meet it.

Actually, most of your prisons, I think, are in a central seat. I think very few of your rural communities have their own jails. So the prisoners you are dealing with, those in custody, are already some place and you have a county jail, at least, so that you don't have to lug a man back to some local scene. The trial seat is going to be right at the place.

THE CHAIRMAN: Of course, this opens another door in a sense: This whole area particularly at the pre-trial level of the tremendous number of people who are incarcerated pre-trial. Hopefully, this release program will alleviate it. You say they will be at the county seat. Hopefully, we are going to get away from that kind of a problem where you have to go to where they are in jail.

CHIEF JUSTICE WEINTRAUB: Well, I

think most of them are in jail at the county seat. I don't know how many local jails there are, but I think most of your small municipalities do not have them.

THE CHAIRMAN: Not very many.

CHIEF JUSTICE WEINTRAUB: That's part of our problem. You see, they are brought into a local court. That's the point at which the man should be released on his own recognizance, if he is going to be. Once you lock him up, send him to a jail, you've kind of produced the hurt. If he rushes in with a bail bondsman, you have wasted that bondsman's fee. And I have a private dislike for that. I think that's a horrible thing. It's just money down the drain where the man could go off on his own recognizance. What you want to do is get the ROR facilities at the point of initial contact. That's why, if we have this revised court system, you are going to be able as a practical matter to deal with the man when he is brought in to the first spot, the first court. You are going to

have help right there. That's the time to consider whether the man ought to be released.

THE CHAIRMAN: We thank you very much, Justice Weintraub. We appreciate your coming, Mr. McConnell.

The hearings are adjoured for today.

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CERTIFICATE

I HEREBY CERTIFY, that the foregoing is a true and accurate transcript of the proceedings as taken by me stenographically, on the date and place hereinbefore set forth.

Carol D'Addario
CERTIFIED SHORTHAND REPORTER