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APPENDIX

to

PUBLIC HEARINGS

before

SENATE COMMITTEE ON LAW, PUBLIC SAFETY
AND DEFENSE

ON

Senate Bills Nos. 897, 802 and 803
[Eavesdropping and Department of Criminal Justice]

Held:
September 16, 1968
September 17, 1968
September 18, 1968
Assembly Chamber
State House
Trenton, New Jersey

Senator Joseph C, Woodcock,Jr.
[Chairman]

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

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I N D E X

I N D E X - C O N T ' D

STATEMENT OF PROFESSOR G. ROBERT BLAKEY
NEW JERSEY SENATE
COMMITTEE ON LAW, PUBLIC SAFETY, AND DEFENSE
SENATE BILL NO. 897
SENATE CHAMBERS, STATE HOUSE
TRENTON, N. J.
SEPTEMBER 16, 1968

Mr. Chairman, members of the Committee:

My name is G. Robert Blakey. I am a professor of law at the Notre Dame Law School. I have been a consultant in the area of electronic surveillance to the President's Crime Commission, the Judiciary Committee of the United States Senate, and the American Bar Association Project on Minimum Standards for Criminal Justice. I am also a member of the American Civil Liberties Union. My appearance here today, however, is personal. My views are my own. They should not be attributed to any group or organization with which I am now or have been associated in the past.

I deeply appreciate this opportunity to appear before you and discuss the issues presented by Senate Bill No. 897. There can be no question that the problem of electronic surveillance is one of the most vexing that this Body has ever faced. Striking the proper balance between privacy and justice in a free society is always difficult. For all too often controversies in this area tend to degenerate into arid debates between contending ideologies. Too often aspects of the problem are identified as the whole problem. Here, as elsewhere, however, we must view things in context. "For that which taken singly and viewed by itself may appear to be wrong

truth. The real problem here is not radical choice, but careful compromise.

This fallacy also takes another common form. A real social problem is recognized. A valid-partial-solution is proposed. Then all other valid-partial-solutions are rejected on the grounds that the first solution is valid. A false dichotomy is thus set up. All remedies to problems are seen as necessarily mutually exclusive. A classic example is civil vs criminal treatment in the area of narcotic addiction.

(2) The fallacy of the sufficient reason

This fallacy makes the all too common mistake of assuming that any valid objection to any proposal is a sufficient reason to reject it. There are, of course, legitimate objections to all courses of action--including the failure to act itself--which now faces this Body. The recognition that an objection has validity begins the dialogue; it does not end the discussion. We must always explore the alternatives, weigh the balance of inconvenience, and then decide. It is on this second level that rational decision operates. This fallacy prevents us from even getting to that point.

(3) The fallacy of rejection not amendment

This fallacy is closely related to (2) above. It usually takes the form of pointing out some defect in a proposal and then rejecting the whole proposal. Obviously, the honest course would be to suggest an amendment, or if amendment was beyond the wit of man, to say so, and explain why.

techniques will not change the raw information level in law enforcement hands. It will substitute clearly reliable evidence for second hand informant information. Criminal prosecutions need reliable evidence. Blackmail can get along on gossip. Note, too, that blackmail is presently a crime. Enacting an electronic surveillance statute will not change that. Indeed, if police officers are willing to commit blackmail, I see no reason why they would not also be willing to violate a prohibitory electronic surveillance statute. One more crime would not make all that much difference. The effect of such a prohibition, therefore, would be solely to restrict honest police officers from striking at crime while having little discernible effect on the feared abuse. The "abuse" is thus just about as likely to occur under a limited authorizing statute as under a total prohibition statute.

We are also confidently told that it is easy to alter electronic tapes. No matter what would be said, a skilled editor could alter the tape to make it say whatever he wants. Note, though, no one comes forward at this point with a series of examples where this has occurred. We thus deal with a speculative, not demonstrated abuse despite the long use of the techniques in New York and elsewhere. This objection is also hopelessly illogical. It assumes the police would be willing to commit perjury in the use of the tapes. If they were willing to do that, why would they go to the bother of forging a tape, oral testimony would do the trick by itself? And, note, a total abolition of tapes would not prevent perjured oral testimony.

legislation to abolish existing search warrant practice. Second, it assumes that you could not build into a statute some system of pre-search designation which would prevent "forum shopping." Third, it ignores the reality of the adversary hearing on a motion to suppress which will take place before the evidence may be used at trial. When a police officer decides to use electronic equipment, if he is conviction minded, that is, if he wants to make a legitimate use of the information to be obtained--if he does not, we are back in the blackmail situation where all bets are off anyway--he must plan not only to get his warrant, but also to survive the motion to suppress at trial. Thus, while the order is issued ex parte, unless his justification is adequate, he will not be able to use the information at trial. No one suggests that the second motion with suitable appellate review based on the original papers is not all it is supposed to be.

(8) The fallacy of false authority

This fallacy consists of quoting various opinions on the question of the use of electronic surveillance techniques without evaluating the source. Anybody can have an opinion, but not any opinion is worth having.

Acceptance or rejection of opinions in this area should turn on such considerations as their experience with the techniques, the sort of law enforcement problems they have faced, and their success or lack of success with or without the use of these techniques. For

game. It is not really how many but what kinds of criminal behavior is presently going undetected. Quality not quantity is the real issue.

Another difficulty in this area in demanding empirical proof of an asserted proposition is that it assumes such proof is possible. Criminal investigations, on the other hand, deal with virtually unique problems of human behavior and motivation; they cannot be reproduced in a laboratory for purposes of scientific verification. It is, of course, true that a large enough statistical sample of similar criminal investigative situations might somehow be developed from which some valid generalizations might be drawn. The real difficulty comes in finding those sufficiently similar situations and then in holding constant other factors, so that one or more factors may be isolated, varied, and valid conclusions deducted. Even assuming cross comparisons can be scientifically made, the larger the number of situations, the greater the chance that variation in other factors will develop, thus making objective answers to questions of cause and effect extremely difficult to obtain. What I am saying here is that the social sciences will not in the foreseeable future give us "proof" here that will command universal adherence. Law will remain for sometime an art and not a science.

The absence of hard data is a problem faced across the board in the administration of justice. Yet here, as elsewhere, we are faced as the Report of the President's Crime Commission noted, "With too urgent a need for action to stand back for a generation and engage

degree" is easy, that is, they are uncivilized ways of conducting criminal investigations. With this judgment all can and should concur. But, it is because the method is "uncivilized", not because it is "easy", that we ought and do reject it.

The invasion of privacy associated with electronic surveillance techniques under a limited court order system, however, cannot be termed uncivilized. It differs little from that already everywhere upheld in the use of search warrants. When we examine foreign law, moreover, we find that most modern constitutional democracies authorize its use by law enforcement under varying restrictions. (See generally, Wiretapping, Eavesdropping, and Bill of Rights, Hearings before the Subcommittee on Constitutional Rights, Committee on the Judiciary. United States Senate, 85th Cong. 2nd Sess. Appendix to Hearings of May 20, 1958, 137-86 (1958)). The third degree, in short, is in a different category from electronic surveillance.

The real situation, moreover, is that electronic surveillance techniques do not make the law enforcement task easy, but possible. Widespread publicity has been given to the fantastic devices created through microminiaturization. Less widespread publicity has been given to the inherent investigative limitations on the practical use of these devices. It is often difficult, if not impossible, safely to install them where a surreptitious entry is required. Pairs must be located to wiretap. Often one or more additional entries are required to adjust the equipment. Power sources must be found.

II

Putting to one side the fallacies, the question of electronic surveillance ultimately reduces to a question of need. And I know of no better way to discuss the question of need -- both social and law enforcement -- than to discuss with you the use of electronic surveillance techniques in the Patriarca case under Department of Justice authorization - (Black v. United States, No. 1029, Oct. Term 1965, Supplemental Memorandum for the United States at 2-4.) by the Federal Bureau of Investigation.

The body of knowledge built up by the Federal Bureau of Investigation concerning the structure, membership, activities, and purposes of La Cosa Nostra was termed "significant" by the President's Commission on Law Enforcement and Administration of Justice. The Challenge of Crime at 199. Indeed, the Commission recognized that only the Bureau has been able "to document fully the national scope of" the groups engaged in organized crime (Id at 192.) The Director of the Bureau, moreover, has indicated that without electronic surveillance, the Bureau could not have obtained this intelligence. (The Prosecutor 352 (Oct. 1967)). Because this information was not gathered for the purpose of prosecution, however, it has not generally been made public. The law enforcement techniques or the administrative safeguards and procedures involved in obtaining it have also not been made public. Nevertheless, aspects of the Bureau's practice have become public recently in the course of litigation in

Taglianetti was mentioned. The other airtels were kept confidential by the District Court, since they were not relevant to the issues raised in the tax prosecution. What is contained in them thus can only be inferred from those made public. The ten airtels, covering approximately three weeks of surveillance, establish the following:

1. That there is an organization called La Cosa Nostra (10-22-64¶5; 10-29-64¶7);
2. That it is headed by a body called "the Commission" (10-22-64¶26; 10-29-64¶¶3, 7 & 9);
3. That it is broken up into groups called "families" (9-17-63 ¶¶4 & 10; 10-29-64¶6);
4. That families are headed by "bosses" (9-17-63¶10; 10-29-64¶3);
5. That families are staffed by "underbosses". (9-17-63¶10);
6. That families are staffed by "caporegime," i.e., captains (1-28-65¶26);
7. That the Commission can run families in the absence of a boss (9-17-63¶10);
8. That the Commission makes the boss (9-17-63¶¶4 & 7);
9. That the Commission must approve new members (9-17-63¶¶4 & 7);
10. That the Commission settles disputes (10-29-64¶¶3 & 7);
11. That the Commission holds hearings (10-29-64¶7);
12. That the Commission acts by voting (10-29-64¶7);
13. That the boss of a family engages in the following activities;

    A. he intercedes for members in other groups (10-29-64¶6);
    B. he orders members to live up to personal obligations (10-29-64¶11);
    C. he orders members to live up to illegal business obligations (3-12-63¶4);
    D. he grants or withholds permission to operate illegal businesses (1-28-65¶23);
    E. he settles the division of the profits of illegal businesses (1-28-65¶24);
    F. he declares when necessary "martial law" (1-28-65¶42);
    G. he is kept informed of the illegal activities of his associates (3-19-63¶5[kidnapping]; 10-22-64¶1 [murder]);
    H. he arranges bail (4-18-63¶¶ 2 & 3);
    I. he arranges to hold illegal business during incarceration (11-5-63¶8);
    J. he can delay a death order for convenience of others (2-2-65¶7);

D. fraud (2-2-65¶3);
E. bribery (2-2-65¶2; 10-29-64¶10);
F. perjury (1-28-65¶9-10);
G. loan sharking (10-22-64¶28; 2-2-65¶7; 1-28-65¶3);
H. gambling (3-12-63¶4; 11-5-63¶8; 1-28-65¶5); 1-26-65 ¶¶21-24); and

24. That members are involved, inter alia, in the following legal activities:

A. gambling (9-17-63¶2);
B. labor unions (2-2-65¶11; 2-18-65¶¶2-3);
C. race tracks (10-22-64¶7; 10-29-64¶¶12-13; 1-28-65¶3);
D. vending machines (10-22-64¶3; 1-28-65¶¶19-20); and
E. liquor (3-12-66¶2).

Among those with whom Patriarca had direct or indirect dealing are the following:

1. Jerry Angiulo - underboss in the Patriarca family.
2. John Biele - a caporegima in the Vito Genovese family in New York City.
3. Joseph Bonanno - head of a family in New York City.
4. Anthony Corallo - a caporegima in the Thomas Lucchese family in New York City.
5. Eddie Coco - a caporegima in the Thomas Lucchese family in New York City.
6. Thomas Eboli - acting boss in the Vito Genovese family in New York City.
7. Patsy Erra - "enforcer" for Mike Coppola, a caporegima in the Vito Genovese family in New York City.
8. Carlo Gambino - head of family in New York City, successor to Albert Anastasia.
9. Vito Genovese - head of family in New York City, successor to Frank Costello and Charles Luciano.
10. Thomas Lucchese - head of family in New York City.
11. Salvatore Mussachio - underboss in the Joseph Profaci family in New York City.
12. Sam Rizzo - caporegima in Steve Magaddino family, Buffalo, New York.
13. Henry Tamelo - "messenger" in the Patriarca family.

The record of this surveillance, it seems to me, should put to rest any thought that organized crime is a "tiny part" of our crime picture or that electronic surveillance techniques are "neither effective nor highly productive." (Statement of Honorable Ramsey Clark, quoted in N.Y. Times May 19, 1967, at 23, Col. 1.) Anyone who suggests otherwise is simply ill informed.

the numbers runner are the "successful" men because their earnings far outstrip those men who try to climb the economic ladder in honest ways.

Young people in the ghetto are acutely conscious of a system which appears to offer rewards to those who illegally exploit others, and failure to those who struggle under traditional responsibilities. Under these circumstances, many adopt exploitation and the "hustle" as a way of life, disclaiming both work and marriage in favor of casual and temporary liaisons. This pattern reinforces itself from one generation to the next, creating a "culture of poverty" and an ingrained cynicism about society and its institutions."

No civilized society can long permit the operation within it of an underworld organization as powerful and as immune from accountability as La Cosa Nostra. The success story of this group is symbolic of the breakdown of law and order increasingly characteristic of many sectors of our society. To hold the allegiance of the law-abiding, society must show each man that no man is above the law. As part of organized crime, an ambitious young man thus knows that he can rise from body guard and hood to pillar of the community, giving to charities, dispensing political favors, sending his boys to West Point and his girls to debutante balls. The result of all of this was summed up by the President's Commission on Law Enforcement and Administration of Justice (The Challenge of Crime at 209), in these terms:

IV.

The conclusion seems unavoidable to me: There is both a social and a law enforcement need to employment of electronic surveillance techniques in the administration of justice. Indeed, this is precisely what the two most comprehensive, balanced studies of the problem yet conducted concluded: The Report of the English Privy Councillors in 1957, and the recent Report of the President's Crime Commission. Let me outline for you these studies.

(1) The Report of the Privy Councillors

In June of 1957, three Privy Councillors were appointed to inquire into the interception of communications in Great Britain. The Report deals only with wiretapping, but its conclusions are equally applicable to all forms of electronic surveillance. The practice over a twenty year period was examined. After reviewing the historical source of the power as exercised by the police, the Councillors took up the purposes and extent of its use. The Report indicated that the power to intercept was limited to serious crimes and issues of the security of the state. Serious crime was understood to mean a crime for which a long term of imprisonment could be imposed or a crime in which a large number of people were involved. Interception could only be on a warrant issued by the Secretary of State. Three requirements were set out:

1. The offense must be really serious;

The Councillors refrained from making any hard judgments on effectiveness in terms of alternatives, nothing the impossibility of certain conclusions in this area. But based on their examination, they had no question but that its use was necessary in certain kinds of cases. They observed:

"The freedom of the individual is quite valueless if he can be made the victim of the law breaker. Every civilized society must have power to protect itself from wrongdoers. It must have power to arrest, search, and imprison those who break the laws. If these powers are properly and wisely exercised, it may be thought that they are in themselves aids to the maintenance of the true freedom of the individual." (Id. at 48.)

The Councillors concluded that no steps should be taken to deprive the police of the power of interception. They noted:

"But so far from the citizen being injured by the exercise of the power in the circumstances we have set out, we think the citizen benefits therefrom. The adjustment between the right of the individual and the rights of the community must depend upon the needs and conditions which exist at any given moment, and we do not think that there is any real conflict between the rights of the individual citizen and the exercise of this power * * * The issue of warrants * * * will permit the freedom of the individual to be unimpeded, and make his liberty an effective, as distinct from a nominal, liberty." (Id. at 489.)

The citizen must endure this inevitable consequence in order that the main purpose of detecting and preventing crime should be achieved. We cannot think, in any event, that the fact that innocent messages may be intercepted is any ground for depriving the Police of a very powerful weapon in their fight against crime and criminals * * *. To abandon the power now would be a concession to those who are desirous of breaking the law in one form or another, without any advantage to the community whatever." (Id. at 491.)

(2) The report of the President's Commission on Law Enforcement and the Administration of Justice.

When the President called together his Commission on Law Enforcement and the Administration of Justice, he asked it "to determine why organized crime has been expanding despite the Nation's best efforts to prevent it." (The Challenge of Crime 188.) The Commission identified a number of factors. (Id. at 198-200). The major problem, however, related to matters of proof. "From a legal standpoint, organized crime," the Commission concluded, "continues to grow because of defects in the evidence gathering process." (Id. at 200.) The Commission reviewed the difficulties experienced in developing evidence in this area in these terms:

"Usually, when a crime is committed, the public calls the police, but the police have to ferret out even the existence of organized crime. The many Americans who are complaint 'victims' have no incentive to report the illicit operations. The millions of people who gamble illegally are willing customers, who do not wish

The Commission then concluded, simply enough, that under "present procedures, too few witnesses have been produced to prove the link between criminal group members and the illicit activities that they sponsor." (Id. at 200.) It was in this context, therefore, that the Commission examined the testimony of law enforcement officials that electronic surveillance techniques were indispensable to develop adequate strategic intelligence concerning organized crime, to set up specific investigations, to develop witnesses, to corroborate their testimony, and to serve as substitutes for them. The Commission then reviewed the arguments for and against the use of these techniques, examining in particular the New York experience, and concluded:

"All members of the Commission agree on the difficulty of striking the balance between law enforcement benefits from the use of electronic surveillance and the threat to privacy its use may entail * * *

"All members of the Commission believe that if authority to employ these techniques is granted it must be granted only with stringent limitations * * * All private use of electronic surveillance should be placed under rigid control, or it should be outlawed.

"A majority of the members of the Commission believe that legislation should be enacted granting carefully circumscribed authority for electronic surveillance to law enforcement officers to the extent it may be consistent with the decision of the Supreme Court in People v. Berger, and further, that the availability of

"The Voices of Organized Crime"

An Educational Tape
Prepared by

NEW YORK STATE
JOINT LEGISLATIVE COMMITTEE ON CRIME,
ITS CAUSES, CONTROL & EFFECT ON SOCIETY

SENATOR JOHN H. HUGHES, CHAIRMAN

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* * * * * * * * * * * * *

ANNOUNCER:

These are the voices of organized crime.

LARRY:

No. This is ours. This cocksucker. I got to take this cocksucker, this dirty motherfucker...

MIKE:

You know where you got to put him? You know what I told Pete? You got to pick a lamppost. You understand? You got to cut his prick off. You got to put it in his pocket and you got to give him a nice slash and leave him up there. That's what you gotta do. That will serve notice to every fucking rat stool pigeon what's gonna happen when and if he finks.

PETE:

They blew up his car. Nobody knows about it. Another guy they shot up. Nobody knows about it. Other shootings. Nobody knows about it.

MIKE:

I said it two years ago. You got to go deep in the fucking holes and make new tunnels.

SENATOR JOHN H. HUGHES:

I am Senator John H. Hughes, Chairman of the New York State Joint Legislative Committee on Crime. It is the Committee purpose to search out the forces of organized crime in the State of New York, expose them and report on their cause and effect on our society.

The tape you are about to hear is made up of several secretly recorded conversations which took place in New York State during the years 1963 to 1965.

Some of these conversations contributed to the obtaining of indictments and it is important to note that all other methods of investigation open to law enforcement agencies would have been inadequate in bringing about such indictments without the evidence obtained by such surveillence.

Throughout this tape you will hear references to gambling, loan-sharking, murder, grand larceny, fraud, extortion, and attempted homicide. Also, you will

NOTE TO THE READER:

The printed material in this volume accompanies an educational tape which was prepared by this Committee. The Committee obtained the raw material for the tape from the files of various police and prosecutive agencies throughout the State of New York. Without their assistance it would have been impossible for the Committee to have accomplished this task and due thanks is given to those agencies.

The transcript herein provided will be of invaluable assistance to any person who listens to the tape, for the reason that the audio quality of many of the conversations recorded is poor. The reason for this deficiency is obvious when one considers the field conditions under which the recordings were originally made. You will find that by reading the transcript while you listen to the tape that this reinforcement of your audio sense by your visual sense will make the entire tape understandable. Accordingly it is suggested that if the tape is to be fully appreciated by the listener that he read the transcript as he listens to it.

The tape is divided into ten sections consisting of an introduction, eight conversations and a conclusion. The introductory portion consists of snippets of conversation which were "lifted" from the body of the tape to provide the listener with some idea as to what he might expect to hear. The eight conversations are each preceeded by a short explanatory note in the transcript, this note is not on the tape. On the tape you will hear the voice of an announcer preceeding each conversation. By this format it is hoped that the listener will find intelligable and understandable all of the conversations which he will hear.

I wish to stress that the conversations that you will hear are actual voices of members of organized crime syndicates. All of the conversations were recorded by eavesdropping devices. None were recorded from wiretaps.

It is the sincerest hope of this Committee that this tape will serve to educate and assist those interested in the control of the spread of organized crime. It is the further hope of the Committee that those who listen to this tape will fully appreciate its significance and from it recognize not only the dangers to our state and nation which are present in the continued existence of unholy alliances among criminals, but that they will also recognize the importance of carefully supervised electronic surveillance in the control of organized crime.

SENATOR JOHN H. HUGHES
Chairman

ANNOUNCER:

Organized crime is made up of men...men with families....two kinds of families. The first; wives, children, parents, relatives. The second; the criminal "family" to which they belong. These men indulge in family life just as you and I, with weddings, births, illnesses and deaths. But they also have an equally fierce allegience to their criminal family, its life and protection.

MIKE:

They don't want to give no...in other words, they are telling you they don't want to embarrass you. In other words they won't go to the Convent. Well, I would say, right now they are giving you the zing. You want us to go to the Convent? You want us to embarrass you? Well then, see that the right thing is done.

PETE:

Yeah.

MIKE:

Actually what it boils down to, they're looking to use a stick. But now we'll go on midnight raids. We'll do this. We'll do that. We;ll do the other thing. You're a Captain. You belong to Carl's family.

(SOUND: MAN YELLS IN BACKGROUND)

...Hey, Dope, cut it out. ...You belong to the family.

PETE:

Well, previous to that he hands me Carlo's picture. You know him? I said sure I know him. How long you know him? I know him twenty, thirty years.

MIKE:

They didn't expect you to say nothing.

PETE:

Can you tell us anything about him? The

MIKE: (CONTINUING)

But for them to say this, when he told me this, I said, Jimmy, I think he already saw them.

PETE:

Yeah.

MIKE:

I think he already saw them, I said. Now to put the heat on him to go to his daughter, I said, this don't make no sense to me. I said, where the fuck does this come into the picture? Now they don't want to embarrass you.

PETE:

What are they going to embarrass me for? What can they do? Go up there?

MIKE:

Well, God forbid. They can't...they can't throw her out.

PETE:

No.

MIKE:

They couldn't throw Albert's brother out. How they going to throw her out?

PETE:

Nah. They can't throw her out.

MIKE:

Embarrassment, that your daughter is a nun. I mean, Jesus Christ. It's supposed to be

* EXPLANATORY NOTE.

The following conversation takes place in a hotel room where Jack is hiding. Dom through his own sources of intelligence has located this refuge.

Jack had conducted a legitimate air conditioning business and in the conduct of this business found that he needed additional funds. In order to obtain these funds he went to his attorney-accountant and borrowed several thousand dollars. The interest which was charged was usurious and thereby made the loan uncollectible through ordinary judicial process.

When Jack's business met with reversals he could not keep up his repayment schedule with the attorney-accountant. In order to minimize his losses the attorney-accountant placed the collection of the loan in the hands of organized crime. For months additional payments were wrung from Jack by Dom, the muscle man who was assigned by the mob to collect the loan. Finally Jack found it impossible to go on, and determined to run away.

It is at this point that the muscle man, Dom, located Jack and introduced him to the ultimate weapon of the mob -- physical violence.

* The material in this note is not on the tape, and serves only to put the following conversation in context.

DOM:

Son of a bitch.

(SOUND: DOOR CLOSES)

(continuing).....what are you doing here?

JACK:

What am I doing here?

DOM:

What are you doing?

JACK:

Look. Look. One minute.

DOM:

I told you I don't want no part of this activity. I was here earlier. I want to convince you that....I told you, I tried to convince you. (inaudible)....I don't give a shit what you do now. I'll meet you downstairs. (inaudible) .....I'll meet you by your car. (inaudible)....I'll meet you by your car.

JACK:

You won't find one. You won't find one. That's all I got to say.

DOM:

He's doing the right thing by you.

JACK:

What do you mean, he's doing the right thing? He's isn't doing the right thing. He isn't doing the right thing.

DOM:

How much money you got left?

JACK:

I'm not giving no money any more, Domenic. I'm not going to give any money. I can't. I'm going away. I'm taking off. I'm leaving. I'm not giving any more money. I've had it. I need the money. I'm taking off and I'm leaving everything.

DOM:

What do you accomplish? What do you accomplish, Jack?

JACK:

What do I accomplish?

DOM:

Yeah.

JACK:

I get rid of everything. I'm giving money on all sides.

(BOTH TALKING AT ONCE)

DOM:

Did you take this money? Did you take this fucking money?

JACK:

Not from you.

(BOTH TALKING AT ONCE)

(continuing).....I didn't take it. Not from you I didn't take it.

DOM:

Am I shaking you down in other words you're telling me? Am I shaking you down?

JACK:

Well, aren't you? Aren't you?

DOM:

You say I'm shaking you down? I'm shaking you down? I'll bust your fucking mouth. I'm shaking you down? I'm shaking you down?

JACK:

Look, Dom, cut it out now.

DOM:

Cut it out? What you mean, cut it out? You made a fucking patsey out of me.

JACK:

I didn't make no patsey out of nobody.

DOM:

What you mean, you didn't make no patsey out of nobody?

JACK:

What kind of a patsey did I make?

DOM:

(inaudible)....you were trying to fuck me from the beginning. Those were your intentions from the beginning. Those were your intentions from the beginning.

JACK:

I'm leaving. I'm leaving.

DOM:

You can't be good to a cuntlapper like you because you are fucking hard on. You.....for eightteen hundred dollars. I don't give a fuck. You can keep the eightteen hundred and go and blow the fucking thing.

JACK:

I ain't paying no more money to nobody.

DOM:

You're running away from your fucking wife and kids. You are a real cuntlapper.

JACK:

It's not eightteen hundred dollars. It's a lot of money....a lot of money....and I ain't got it and I ain't going to pay anymore. I'm not going to pay any more. I've had it. I've had it. I'm up to my ears in debt from all sides. I'm paying...

DOM:

You ain't paying nobody.

JACK:

I paid you, didn't I?

DOM:

What did you pay me? Seven hundred dollars. At twenty-five dollars a week.

JACK:

Look, Dom, you're not going to accomplish nothing by beating me up. You know that. You're not going to accomplish nothing.

DOM:

The money.

JACK:

There's no money. I don't have it with me. I got it down in my car. I got the money in my car.

DOM:

Well, go downstairs and get the money.

JACK:

I'm not going out of here with you, Domenic. I'm not leaving.

DOM:

I'll carry you out.

JACK:

You're going to have to then. You're going to have to carry me out.

(PAUSE WHILE DOM MAKES PHONE CALL)

DOM:

(inaudible)....4552, please. (inaudible)

(PAUSE)

JACK:

I've got a million things here. They're investigating me every goddam thing. I

JACK: (CONTINUING)

is on my neck everytime I turn around. I'm paying somebody money....(inaudible) ....I'm taking off and I'm running. That's all.

DOM:

Not with my fucking money you ain't. Who do you....who the fuck you think you are?

JACK:

Dom, it isn't your money I'm taking. I'm not taking your money. It's not you took money out of your pocket for me. Did you take the money out of your pocket for me?

DOM:

Hey, stool pigeon.

JACK:

What's that got to do with you?

DOM:

You took plenty of money from me. And you took plenty of money from them.

(BOTH TALKING AT ONCE)

(continuing)...what do you want to do? What do you want to do? What do you want to do? Tell me what you want to do, Jack. I do anything you want to do (inaudible) ....do whatever you want to do. You had eleven hundred, you had eleven hundred dollars that you paid. That's seven hundred plus eleven. I don't even want

(BOTH TALKING AT ONCE)

DOM:

I say you owe me three fucking hundred. Now I want my fucking money.

(SOUND: DOM ASSAULTING JACK)

(Continuing)....or I'll put you down the fucking hill. Give it to me. Give it to me.

JACK:

I don't have it...

(SOUND: DOM ASSAULTING JACK)

(continuing).....Owwwwww.

DOM:

I've been awfully nice to you but you give me my money.

JACK:

Look, I don't have it. I don't have your money.

DOM:

It's downstairs in your fucking car.

JACK:

No. I gave it to the airlines.

DOM:

You didn't spend no seven hundred dollars on a fucking airplane. You ain't going to Europe, you (inaudible). I want to be nice to you. I told you forget about everything. I want nothing. Go back

ANNOUNCER:

The internal security, intelligence level, espionage system and disciplinary methods of a Mob are demonstrated quite well in the following conversation. These are the voices of men who know how to rule only one way.....through fear and violence.

* EXPLANATORY NOTE.

The following conversation between Pete and Mike occurred at a time when members of the Cosa Nostra felt that their ranks had been infiltrated by police informants. They are discussing the means by which their ranks can be cleansed of this internal danger. The method they select is murder. They are suggesting that every current member of their family, even themselves, be interrogated and tested to assure loyalty. They decide that if any shadow of suspicion is cast on the loyalty of any member of the crime family, that that member be eliminated.

The conversation also demonstrates the difficulty with which the law enforcement agencies are confronted in attempting to develop live witnesses in the prosecution of these vicious criminals. Their willingness to kill to prevent exposure is indeed a powerful deterrent to any person who wishes to betray them. It is evident that frequently the only testimony available against these men are their own voices collected and recorded by electronic surveillance devices.

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* The material in this note is not on the tape, and serves only to put the following conversation in context.

MIKE: (CONTINUING)

facing twenty years.

LARRY:

We got a lot of no good cocksuckers there. There's even a fucking guy. One, one friend over there that we think....

MIKE:

I know. I know all about it. This cocksucker. Nice fellow.

LARRY:

This is ours. This cocksucker. I got to take this cocksucker...this dirty motherfucker....

MIKE:

You know where you got to put him? You know what I told Pete? You got to pick a lamppost. He's got to put the....hang him on the lamppost. You understand? You got to cut his prick off. You got to put it in his pocket and you got to give him a nice slash and leave him up there. That's what you got to do. That will serve notice to every fucking rat stool pigeon what's gonna happen when and if he finks.

LARRY:

Mike, we gotta lota garbage.

MIKE: (CONTINUING)

what we got to do now. We have to do what we should have been doing. We had a meeting one time --- who did you bring there? Who was he? Where was he born? How was he born? What is he doing right now? Every fucking friend should be screened. I wouldn't give a fuck. Pete, have you got anything to hide? I got nothing to hide. Whoever was my Godfather? What am I doing? He's got to come and he's got to ask me what I'm doing and how I'm doing and where I'm doing and I got to tell him. Every skipper's got to bring a fucking report on any fucking man that belongs to him and if he feels the least bit of doubt he's got to show it and he's got to screen him and each skipper has got to get two or three guys. Screen out Mike Scandi. Yeah. Screen out Petey Pumps and we got to do that. Like I said, I don't want to be bloodthirsty. Leave a couple of fucking heads hanging on a fucking pole. The stool pigeons that are floating it in our face, they'll think twice. They'll think fucking twice before going over to the Law. Friends or no friends. They seem to say the

ANNOUNCER:

Divide and conquer is an old but very effective technique. What you are about to hear took place in an auto repair shop between a member of organized crime and a dishonest law enforcement officer. The racketeer has evidently obtained two stolen weapons for which he wants the officer to obtain ammunition. Although the officer knows there is intent to "kill Federal stool pigeons", he agrees to deliver the 'dum-dums' on "Friday or the day after.

This conversation led to the arrest of the two people involved. However, the indictment was dismissed when this evidence was suppressed as having been obtained in violation of Constitutional Law. The officer concerned remains suspended but there is still a possibility that he may be ordered by the Courts of this State to be returned to duty as a law enforcement man.

LENNY: (CONTINUING)

This is positive and the one I gave you is special.

MIKE:

If I bring in the two pieces....

LENNY:

Bring them in. I'll look at them.

MIKE:

Will you make dum-dums for me? I haven't got the casings for the other one.

LENNY:

Huh?

MIKE:

I haven't got the casings for the other one.

LENNY:

But this you got to have.

MIKE:

I got the casings for the one but I haven't got the bullets for the other gun. This one...

LENNY:

Yeah.

MIKE:

No bullets for the other one. The casing fits.

LENNY:

But you got not dum-dums. You get square cutters.

MIKE:

I said the cops...

LENNY:

Yeah?

MIKE:

New York policemen.

LENNY:

Yeah?

MIKE:

Like when a Federal stool pigeon is hit.

LENNY:

Nah. What difference does it make? To me it doesn't make any difference.

MIKE:

There's a big difference. I'll tell you why. A New York cop.....

(SOUND: TELEPHONE STARTS RINGING)

(continuing)....detective or police department doesn't like a Federal stool pigeon. (inaudible) ....because he'd stool on anyone...(inaudible)... I never do it. I walk. They listen to me. I know it. I walk. I need a what-you-call-it guy. A phone guy.

LENNY:

You ought to check your phones.

MIKE: (ON TELEPHONE)

Hello. Big S.....he's very busy.....you want him?.....Rich?.....do you want him?.....all right, wait.....I'll go get him.

ANNOUNCER:

Four days later the police officer returned to the auto repair shop.....

MIKE: (CONINTUING)

other. I didn't bring the what-you-call-it. I didn't bring the...the...the...bullets.

LENNY:

Are these hot?

MIKE:

No. What hot? Hot? They're stolen. What are they hot? There's only a number. There's nothing else on it. There's nothing on that. There's only a number on that. You can touch it with your fucking hands.

LENNY:

I'm not worried about that. This looks like a .32. A little difference. That's NP .38 Colt. NP cartridge. .38 Colt NP cartridge. I'll have to check it.

MIKE:

Well, go ahead then. You got to take 'em.

LENNY:

I can't take 'em.

MIKE:

Sure. I want to make sure that you get.... that you make them dum-dums. Or them whereabouts -- whereouts -- where-evers -- whatever you call them. I mean, after all, you can find them. I can't find them. These. Here. You could have picked them up anyplace, right?

* Explanatory Note.

The following conversation is between Mike and Pete, both members of the Cosa Nostra. They are discussing the murder of a suspected federal informant by the name of Alfred San Antonio. The murder of this man was apparently ordered by higher-ups in the organization and these two men are attempting to locate him in order to carry out their murderous assignment.

It is interesting to note that although there were witnesses to this murder their memories faded when it became apparent to them that the execution had been carried out upon the orders of the mob.

The San Antonio murder is still carried on police files as "unsolved".

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* The material in this note is not on the tape, and serves only to put the following conversation in context.

(SOUND: CHAIR SCRAPPING)

MIKE:

You see Frankie the Wop anywhere?

PETE:

Another thing....Frank the Wop? No, I haven't seen him lately. I could send a message to him.

MIKE:

Well, he was with...he wanted a certain name. I got the name. Now I know -- ah -- I don't know if he's going to be on Smith Street. But he said he was going to be passing me by.

PETE:

Passing by here?

MIKE:

Well, you see, Pete, he passes here, or he's going to be there, or I come down to the neighborhood over there, so I don't want to go to the neighborhood. Do you see somebody directly to see him?

PETE:

Well, you give it to me and...(inaudible)

MIKE:

San Antone.

PETE:

I'm going to Smith Street tonight so I'll give it to him.

MIKE:

Well, maybe he didn't want to ask outwardly.

PETE:

He's with Charlie, like this, him and Charlie.

MIKE:

He's going to go over and ask Charlie -- he's going to ask Charlie -- maybe -- maybe he don't want to go around asking people.

PETE:

Oh. Oh. I don't know.

MIKE:

Maybe he wants somebody else to find out his last name cute.

PETE:

I see. Yeah.

MIKE:

Because it seems he wants to find out something -- I don't know.

PETE:

San Antone.

MIKE:

San Antone. That's the name that was in the book.

PETE:

Oh, by the way, I gave -- I didn't see Frank the Wop -- I gave it to Rocky.

MIKE:

All right.

PETE:

So Rocky, he says, is it important? And I says, yeah. Then I'll go look for him.

MIKE:

In your mind did you double check the name? Did you double check the name?

PETE:

Yeah. That's the name.

MIKE:

That's the name Then I was right then.

PETE:

That's the name.

MIKE:

I didn't mean to....

PETE:

I says, you want to write it down? I told Rocky, I says, You want to write it down? He says, no, no. I know all about Texas -- San Antonio, Texas.

(BOTH LAUGH)

MIKE:

All right, Pete.

(SOUND: BACKGROUND NOISE OF MACHINE SHOP)

WILLIE:

Hey, you know who we seen the other night down at the track? You see, I had taken my daughter Saturday night to the Trotters, you know, my daughter and my niece, Patricia, but Dom was coming in later. I got reservations next to, right next to Aneill. They were ahead of us. Nothing. Nothing. The other guy was with his wife. He was with his sweetheart. He didn't look at me.

MIKE:

Does he know you?

WILLIE:

Yeah. He didn't look at me. I'll tell you the reason, Mike. There was a fucking guy there that looked more like the Law than anything else in my, in my, in my life. I would bet on it.

MIKE:

Now, fucking Hugo, right after Kane, he had to remind me of that. I ought to rap him on his fucking head.

WILLIE:

That's right. That had to do with....

(BOTH LAUGH)

WILLIE:

Jams up?

MIKE:

And I told the guys I'm going to come back. I said, don't you dare throw these away. I want them for proof. I said, try them. They jammed up.

WILLIE:

Of course.

MIKE:

You know what they said? When I'm done, throw them away.

WILLIE:

They did? If this was years ago you would see how fucking fast...(inaudible)...you would have to bring them to there. They said have a fucking gunsmith examine them why didn't it go off.

MIKE:

I proved it.

WILLIE:

Well, you proved it. They didn't go off.

MIKE:

Right in the chamber it jammed. It's unheard of. This fucking piece of work was the toughest. I don't give a fuck what anybody says. Freezing. Freezing. I was wearing double pants and underwear and winter underwear.

MIKE: (CONTINUING)

cars and I ran after him like a fucking mad man. I tackled him. I fell into him. I was out of my fucking mind. I ran after him. The fucking hat went. I run into him and I tumbled all over.

WILLIE:

I'm surprised you wear a hat, Mike.

MIKE:

Huh?

WILLIE:

I'm surprised you wear a hat, Mike.

MIKE:

You got to wear a hat. You got to.

WILLIE:

Hugo, he'd never wear a hat. Hugo, he'd never wear a hat.

MIKE:

Oh, I didn't wear my hat. I wore a hat that I got from a guy who got it from a five and dime store.

WILLIE:

Oh.

MIKE:

I pulled it on. I jammed it on my head and the day before I had a peak cap and I didn't

* EXPLANATORY NOTE.

The following conversation between Mike and Pete, both members of a crime syndicate, demonstrates the insulation attained by the top men in organized crime. They use the words, "he was a phantom", to describe "Max the Jew".

These men controlled gambling of the same type, in contiguous geographical areas, and they had actively sought out his identity for years but were unable to determine it.

How much more was this "policy banker" shielded from the public, the prosecutor and the police. Even after his identity became known there was the greatest difficulty in obtaining evidence concerning him.

"Max the Jew" will soon lose his position of eminence on the organized crime scene, but this will result from the ravages of time and illness rather than from anything that has been possible through legal process.

The conversation also gives the listener some idea of the dollar value involved in a gambling operation. "Max the Jew" controlled a "bank" which daily grossed $20,000.

* The material in this note is not on the tape, and serves only to put the following conversation in context.

MIKE:

The front line has to be friends. Therefore if a worker is in the front, they have more respect for the worker, when they don't know the boss. You know how long it took us to find Max the Jew. Maxie, he was a plainclothesman. He was the phantom. He was a guy that was a partner with a plainclothesman. He was the detective from the D.A.'s office. We never could find out who this fucking guy was.

PETE:

No kidding.

MIKE:

You could ask God. You could ask a dozen people. We went to Mike and Lefty. We went to this guy. We went to that guy. We went to the branchmen. We could never find out who Max the Jew was. He always operated with somebody in the front of him. I never met the same fucking guy twice. And that's the way he operated for year, Pete, for years.

PETE:

Until they put the finger on him.

MIKE: (CONTINUING)

What the fuck is it anybody's business how you make it. These guys, they don't wanna .....now, I made a thousand dollars on a hijack, a truck of whiskey. It's the same fucking thing. With Mr. X you could do the same thing that Max did. A little by little you give it out. Have the front...have the front line. The front line has to be friends.

PETE:

Yeah.

ANNOUNCER:

Jerry Wolff was a Wall Street brokerage house clerk who owed five thousand dollars to a loan shark named Nathan Sackin. The debt was payable at the rate of two hundred and fifty dollars weekly including five percent a week interest. Jerry was having trouble raising the money and had, on one occasion, been badly beaten for welshing on a payment.

After being threatened again and being forced to supply three other "customers" for the loan shark, Jerry Wolff went to the New York District Attorney's office. From that time on all of Jerry's meetings with Nathan Sackin were electronically surveilled. Ultimately the surveillence paid off.

GREEN:

They're not .....er....

SACKIN:

He is calling here or coming down. Hey, by the way, a thought occurs to me.

WOLFF:

Huh?

SACKIN:

If there was such a thing as stocks...

WOLFF:

Yeah?

SACKIN:

That they have in their possession.

WOLFF:

Yeah?

SACKIN:

Say for argument's sake, say this stock is in Al's possession.

WOLFF:

Right.

SACKIN:

And Al wanted you to sell the stock.

WOLFF:

Right.

SACKIN:

Can you handle that?

WOLFF:

Sure.

WOLFF:

Sure.

SACKIN:

Maybe there's a shot of you getting out of this after all.

GREEN:

Hold it. Wait a minute. Somebody stole my stock.

WOLFF:

Right. The stock is made out to...

GREEN:

And signed in the back of it.

WOLFF:

Right. I don't know who signed it.

GREEN:

After it's given to you, what happens to it then?

WOLFF:

I sell the stock and I make a delivery.

GREEN:

Wait a minute. You sell the stock to somebody and you deliver the stock to them?

WOLFF:

Right.

GREEN:

Do they investigate this? Do they call on me to find out if it's a legitimate sale or not?

WOLFF:

All right. Prove it.

SACKIN:

From X. Mr. X. Mr. Smith, who you don't know. You don't know I don't know it was stolen.

WOLFF:

Right.

SACKIN:

C mes from Mr. Smith. The stock is not signed on the back at this point. The stuff is stamped, Mr. Smith, his name.

WOLFF:

Right.

SACKIN:

Right. Now I want to sell that stock.

WOLFF:

Right.

SACKIN:

How can I do it and still avoid being picked up? Is there any way?

WOLFF:

I have the rules and regulations from the transfer agent at home in a book. I'll read it.

SACKIN:

Would you? All right, here's what you do for me. There's a possibility if you can

WOLFF:

I understand this.

SACKIN:

Understand it? In other words, as far as anybody else is concerned they look at you. "Me?"

WOLFF:

Me. I never saw you before in my life.

SACKIN:

Exactly. You got the stock from somebody. You got the stock from a guy who stole it from Smith. You stole it yourself.

WOLFF:

Hmmmmm, hmmmmm.

SACKIN:

What you did with the money nobody knows.

WOLFF:

Uh huh.

SACKIN:

Understand. Because if you open your yap they'll kill you.

WOLFF:

Hmmmmm. Hmmmm.

SACKIN:

I mean kill you. So don't you think I'm giving you an easy way out of the deal. If anything happens they'll leave you

ANNOUNCER:

Four months later on March 5, 1965 Detective Henry Cronin, an undercover agent for the New York City District Attorney's Office made telephone contact with Nathan Sackin to set up the final exchange of the stolen stock.

CRONIN:

Ah....Harry says that you are interested again and that other....ah....

SACKIN:

And you said, you know, a certain amount of time would have to elapse.

CRONIN:

That's right. All right. Listen, ah.... I made a commitment to you. I asked you to hold it.

SACKIN:

Right.

CRONIN:

And we will fulfill our commitment, believe us. Now here, as it is of now, you want, that stuff is still, you know, hot shit, still warm, but here, we will take it, but in .....ah.....how about the ah...you said before that you have some other stuff, too, to make us, you see we're going to sit on this for a long while.

SACKIN:

Let me tell you what is available besides this.

CRONIN:

What?

SACKIN:

Which is what you're really trying, you want to make the big score.

CRONIN:

Have you got any idea of, of what stuff it is? Is it big board or is it over-the-counter?

SACKIN:

Big.

CRONIN:

Big board.

SACKIN:

Right.

CRONIN:

Now, have you got any of the names of the securities?

SACKIN:

Ah....some were Bonds, Treasury.

CRONIN:

Yeah.

SACKIN:

And.....ah....which may not be available any more, I think those went already. Ah... there, you know, there was a deal on that during the week.

CRONIN:

Uh huh.

SACKIN:

I didn't ask if it went, but I think it went. I'm really not one hundred percent sure.

SACKIN:

We never discussed those figures.

CRONIN:

Well, when are you going to discuss them?

SACKIN:

I didn't discuss it at all, because at no point were we involved in anything beyond the last deal. Now, the last deal was at a much higher figure than what we're discussing now.

CRONIN:

But here, I tell you this, here, remember when I told you the first, that you said you had two to three big ones.

SACKIN:

The....the....part of it's gone.

CRONIN:

Over-the-counter?

SACKIN:

Ah....I....I don't know if that's still available. I have to talk to that guy. That may be gone because it was bank and insurance.

CRONIN:

See, and you said that ah...you know, that we could have that, too.

CRONIN:

Okay. Harry got it. Not me. I don't keep that shit.

SACKIN:

All right. Let him figure it up.

CRONIN:

All right.

SACKIN:

And I will see him when on Tuesday? There?

CRONIN:

Ah....what time would you like?

SACKIN:

Oh, you tell me what's convenient for you people and ah....

CRONIN:

Well, do you want it there when it's busy there about one or two o'clock?

SACKIN:

Ah.....ah.....

FEMALE VOICE:

Five cents please.

SACKIN:

Make it twelve noon.

CRONIN:

Twelve noon?

SACKIN:

Yeah.

ANNOUNCER:

Tuesday, March 9, 1965. Detective Carl Bogan, who has posed as "Harry" for some months, meets Nathan Sackin in a parked car for the final exchange of the stolen securities.

SACKIN:

We already have some.

BOGEN:

Ah hah.

SACKIN:

Now this is the man that's going to be coming to me, is the man that's my partner who has access to the other stuff.

BOGEN:

Uh huh.

SACKIN:

Now, I could not at this point discuss it with him because my contact with you is through Jerry.

BOGEN:

Uh huh.

SACKIN:

And I would rather be contacting you face to face and go around Jerry. Leave him out now.

BOGEN:

Uh huh.

SACKIN:

Because we've done business. We're both in this together.

BOGEN:

Yes.

BOGEN:

Uh huh. I see.

SACKIN:

But I would prefer that we move Jerry out of it. Because each time you have an extra man in there you have an extra risk in there.

BOGEN:

Uh huh.

SACKIN:

Now Jerry's made his score. You know what I mean?

BOGEN:

Uh huh.

SACKIN:

He's done nothing. He has no stake in this thing. I'm going to be taking care of him. You're going to be taking care of him. He's out.

BOGEN:

Right. Right. I'd just as soon do it that way.

SACKIN:

Now if you want to give me your phone number where I can reach you...

BOGEN:

Right.

SACKIN:

You'll have to be, y'know...

BOGEN:

That's right.

SACKIN:

Here's what you do then. You give him three.

BOGEN:

Yeah.

SACKIN:

Leave two with me...you want to give him three or five?

BOGEN:

Well, if you say five...

SACKIN:

I say five.

BOGEN:

Yeah.

SACKIN:

Leave two with me and then tell him that you had left two hundred with me and then you make the last contact and he has to come to me for the last two hundred.

BOGEN:

All right.

SACKIN:

Y'know what I mean? So, you'll give me two hundred more here and you'll tell him that the...watever you want...whatever message you want to send, you send him to me and I'll give him that last two hundred and you tell him there's two hundred waiting for him. So, you'll know that he's not

SACKIN:

You checked them.

BOGEN:

Yeah. I checked them before.

SACKIN:

Absolutely.

BOGEN:

Right. Because I checked them last time with the man you sent around.

SACKIN:

You checked them.

BOGEN:

As a matter of fact...

SACKIN:

It's not the same guy.

BOGEN:

I'll tell you what happened last time. Y'know he went into the phone to call you. He didn't believe that you had stated so far as, er....that I could have the name of the fellow at that time.

SACKIN:

Well, the only reason...well, the guy that you spoke to is a gun man. He knows only one thing and that is that he's sent to do a protective job. The guy that you're going to be talking to now is not a gunman. He's a boss in the upper echelon.

SACKIN:

No, he shouldn't.

BOGEN:

Well, that's good because..

SACKIN:

Don't give him any of the details.

BOGEN:

Uh huh.

SACKIN:

Because he becomes a witness with details.

BOGEN:

Well...

SACKIN:

See, if anything ever happens to you or your people where they get caught, y'say they make a mistake and they get caught. I assume that we understand each other. If anything happens, that we're never going to say a word about you naturally.

BOGEN:

Right.

SACKIN:

If anything happens to you, you're not going to say a word about us.

BOGEN:

Right.

SACKIN:

Now do you want me to call the man?

BOGEN:

All right. Yeah. Do it right here if you want to.

SACKIN:

That's it.

BOGEN:

I'll stay right here and I'll....

SACKIN:

I'm checking. I need a dime.

BOGEN:

Because this is more private. Because during lunch hour...it's busy, y'know.

SACKIN:

What we'll do...

BOGEN:

Y'know.

SACKIN:

If you want to do it here, it's all right with me. I think you're in a sort of a heavily trafficked area. But I'd rather you be happy.

BOGEN:

No. That's what I figure. I'm right here. I'll do it -- then get away. That's all.

SACKIN:

I'll call him right now.

BOGEN:

Well, where....I mean is this guy? Do you trust him?

SACKIN:

He's my partner.

BOGEN:

Do you trust him?

SACKIN:

Harry, have you had any reason for not believing me up to this point?

BOGEN:

No, I haven't.

SACKIN:

Do you want me to walk any...bring it back?

BOGEN:

I'd prefer, I'd prefer that...ah...because, listen I,....I....I know y'know what I mean...you and all that...

SACKIN:

(inaudible)

BOGEN:

That's right.

(PAUSE)

(SOUND: SHUFFLING PAPERS)

SACKIN:

They're lined up alphabetically.

SACKIN:

50.

BOGEN:

50. All right. Thomas & Betts.

SACKIN:

110.

BOGEN:

110....Standard Oil of Ohio.

SACKIN:

25.

BOGEN:

25 and again Standard Oil of Ohio.

SACKIN:

25. Another 25 in 50.

BOGEN:

All right.

SACKIN:

75.

BOGEN:

100, right. Now, Rockwell Standard.

SACKIN:

100.

BOGEN:

100....you say, this partner of yours...
I mean, is he coming over here or...

SACKIN:

I told him to make sure that nothing happens. Y'know what I mean? Like...er.. if he decides to come over it's all right. I'll spot him.

BOGEN:

Two shares...and what was that at?

I owe you....

SACKIN:

Nothing to mark down.

BOGEN:

All right. Okay.

SACKIN:

It's yours because it's part of the package.

BOGEN:

All right. I just want to check that off.

Public Service Electric and Gas.

SACKIN:

....140. Wait a minute, 140, 180.

BOGEN:

140, 180. Aah....Pacific Northwest Bell.

SACKIN:

106.

BOGEN:

106....Pacific Tel and Telegraph.

SACKIN:

100.....100.

BOGEN:

100. .....Olin Mathieson.

SACKIN:

25.

BOGEN:

New England Tel and Tel.

BOGEN:

Okay. Very good. Very good. Aah.... where's the (inaudible)....er...Montana, Dakota Utilities.

SACKIN:

50.

BOGEN:

50. I'm just....because now you got me, now. I'm sort'a looking around myself.

SACKIN:

Don't worry about it. He's covering us.

BOGEN:

All right. I don't know who he is. I don't see him.

SACKIN:

I know.

BOGEN:

You said he's in Nedicks.

SACKIN:

I know.

BOGEN:

All right....all right....Mississippi River Fuel.

SACKIN:

50.

BOGEN:

50. Long Island Lighting.

SACKIN:

66 altogether.

BOGEN:

66. Right. General Motors.

SACKIN:

80.

BOGEN:

80....aah....Flintkote.

SACKIN:

50.

BOGEN:

Crucible Steel.

SACKIN:

50.

BOGEN:

Continental Can.

SACKIN:

50.

BOGEN:

Consolidated Edison.

SACKIN:

50.

BOGEN:

Wait a minute, wait a minute. We have 50.

SACKIN:

Consolidated Edison. I'm sorry, it's more....100.

SACKIN:

Who's this guy here?

BOGEN:

(inaudible)....thousand....eighty-eight thousand nine hundred....I don't know these guys at all. I don't know these guys. Do you know them?

SACKIN:

No.

POLICE OFFICER:

All right. Get out!

BOGEN:

What do you mean? What do you mean?

(SOUND: SCUFFLING AND PAPERS RATTLING)

POLICE OFFICER:

Get out! I'm a Police Officer. Get out!

TESTIMONY OF HENRY S. RUTH, JR. BEFORE THE
NEW JERSEY SENATE COMMITTEE ON LAW, PUBLIC SAFETY AND DEFENSE

Mr. Chairman, my name is Henry S. Ruth, Jr. and I am Associate Professor of Law at the University of Pennsylvania in Philadelphia. I appreciate the invitation to talk with you and the members of the Committee about the proposed New Jersey Eavesdropping Warrant Act.

Since other witnesses will testify in some detail about the organized crime problem and the need for electronic surveillance, I will merely summarize my views on these matters. Enforcement against orgainzed crime requires many elements of investigative and prosecutive resources. Electronic surveillance, standing alone, is not the answer to the problem; such surveillance is merely one of many tools that have to be used in a coordinated law enforcement drive. New Jersey needs more State police working on the organized crime problem. Local communities and cities need special organized crime units in their police departments and in the county prosecutors' offices. Investigative grand juries and witness immunity provisions must be available. Strong substantive criminal laws are needed for those crimes from which organized crime derives most of its revenue. Training for police and prosecutor alike in the special techniques of organized crime prosecution and intelligence-gathering is an absolute necessity. An independent, statewide investigation commission provides additional help. Recently enacted legislation in this state has provided some of these essentials.

But even were all these reform measures to be adopted by the legislature and the executive, a prime investigative tool necessary for cracking the foundations of syndicate operations would be lacking. That is, electronic surveillance.

Atorney General Sills, in his recent testimony before the Joint Legislative Committee to Study Crime and Criminal Justice in New Jersey, emphasized the serious proportions of the organized crime problem in this state. He stated categorically that, of the twenty-four Cosa Nostra families operating throughout the United States, seven either reside in New Jersey or have substanial illegal activities within these boundaries. He stated further that, even with the limited investigation possible with available resources, the Attorney General's office has uncovered three thousand persons who have a possible connection with organized crime's unlawful operations in New Jersey.

As we all now realize in our increasingly regulated society, privacy, though cherished, is not absolute. United States Supreme Court Justice Potter Stewart pointed out recently that: "virtually every governmental action interferes with personal privacy to some degree." The Supreme Court stated that our constitution does permit limited forms of electronic surveillance. Our freedom as citizens can be removed or restricted by private as well as public action. And public action on behalf of society must have the tools to preserve incursions of freedom by private action. That is why we condone the use of search warrants and the consequent search by law enofrcement officers through desks, diaries, files, beds, cellars and attics in their efforts to find the particular item they are authorized to seize.

There is no more emotional issue in law enforcement than electronic surveillance. The specter of a nation victimized by hordes of wiretappers and snoopers is indeed a frightening, and an intolerable, one. But the presentation of that prospect serves only to becloud the very narrow issue at hand. The recently enacted Omnibus Crime Control Act in effect outlaws almost all private forms of wiretapping and electronic surveillance. The Act also outlaws all such forms of governmental surveillance except as to those specifically authorized in the Act performed in a specifically circumscribed manner provided by the Act. The states and cities, as well as the federal government, can utilize such surveillance only as the Act provides.

The issue thus becomes: Shall the surveillance provisions of the Crime Control Act be utilized? The need for such provisions has been recognized by the many kinds of groups that have endorsed these limted forms of electronic surveillance: President Johnson's National Crime Commission; the Judicial Conference of the United States; the National Council on Crime and Delinquency; the Advisory Committee on the Police Function (part of the American Bar Association Project on Minimum Standards for Criminal Justice); the National Association of Attorneys General; the National Association of District Attorneys; and the Association of Federal Investigators.

I believe firmly that electronic surveillance has built-in limitations that will prevent privacy invasion beyond that necessary to confront the massive corporate illegality of organized crime. It is neither the easy way nor the lazy way and will not become a substitute for ordinary investigative methods. Such forms of surveillance are difficult and time-consuming and

1. Section 1d permits the chairman of the State Commission of Investigation to apply for an eavesdropping warrant. This does not appear to be authorized by section 2516(2) of the federal bill. Only the principal prosecuting attorney of the state or of political subdivisions thereof are so authorized by the federal act.

2. To conform with section 2516(2) of the federal act regarding the crimes for which surveillance can be used, the words "dangerous to life, limb or property and" should be added after the word "offense" in line 6, page 2 of Senate bill no. 897. I would think also that you might wish to limit the kinds of gambling offenses and the kinds of drug offenses for which you will permit electronic surveillance.

3. Section 4b(8) of the Senate bill should be amended to conform with section 2518(1)(e) of the federal bill, so that the applicant for the warrant must give his knowledge of prior surveillance not only of the person to whom the application pertains but also of the facilities and the places named in the application.

4. Section 2518(4)(d) of the federal act requires the court order to include the identity of the agency authorizing the application and the agency authorized to perform the surveillance. This could be included in section 7 of the Senate bill.

5. Section 10 of the Senate bill, regarding emergency surveillance prior to court order, is not authorized by the federal act. Only if the provisions of section ten were confined to organized crime cases would they conform to federal requirements. My personal view is in opposition to electronic surveillance without court order, and in emergency situations I would at least require a telephone or other conversation with a judge.

6. In order to conform to federal law (section 2518(8)(a)), section 11 of the Senate bill should require the surveillance recordings to be made available to the judge immediately upon the expiration of the court order, or extensions thereof. This would require a change in the language of line 7 in section 11.

7. The applications and orders, under federal law, must be sealed by the judge (section 2518(8)(b)). Section 14 of the Senate bill should so provide.

STATEMENT SUBMITTED BY ROBERT GARRETT,
PRESIDENT OF THE BOARD, NEW LISBON COLONY FOR THE RETARDED

MENTAL RETARDATION

The Division of Mental Retardation has enjoyed excellent relationships with the State correctional institutions. They have supplied a wide variety of service to institutions for the retarded since the inception of the Division in 1958. The services provided the residents in our institutions in the Division of Mental Retardation are so many and varied, I doubt if I can list all of them. I would like to present in some detail one program I am directly concerned with as a member of the New Lisbon Board of Managers and which makes an important contribution to our program -- the Bordentown Reformatory Unit at New Lisbon.

The Bordentown Reformatory's satellite camp at the New Lisbon Colony for the Retarded supplies 60 minimum custody inmates who work at food preparation and service. During their five years at this camp, the inmates have been a significant factor in enabling the New Lisbon food service operation to continue to meet Departmental food preparation and sanitation standards. So successfully has this group been integrated into the operations of the Colony, that the Superintendent of New Lisbon has repeatedly requested that additional inmates be assigned to the camp for the purpose of maintenance and grounds work.

In addition to their assigned work, the inmates of this Bordentown detail have truly involved themselves in voluntary activities of

of laundry is 10.03¢ per pound. At the Rahway Regional laundry and the laundries located on the grounds of other institutions operated by inmates, however, the cost averages out to only 02.91¢ per pound. As a matter of fact, since the Glen Gardner cost figure reflects only the costs of supplies and wages to employed personnel and the Rahway figures include all expenditures except capital investment, this comparison of unit cost is biased in favor of Glen Gardner.

Last year the Department processed some [illegible] pounds of laundry for charitable institutions in the Divisions of Mental Retardation and Mental Health. Simple multiplication, using the previous cost figures, provides the basis for the Department's most conservative estimate of a net saving of $2,052,218 annually through this program. Put another way, this program provides, using the above unit costs, $2,890,975 in annual laundry service for charitable institutions at the Glen Gardner rate, but at a cost to taxpayers of only $838,757 per year. In addition to these savings, the consolidation of laundry services within the Department made it possible to plan both the Woodbridge and Hunterdon State Schools without the expense of constructing laundries.

Let me cite one more example of the value of this relationship between the Divisions of Correction and Parole and Mental

Since there are and have been many problems that are related to these programs I believe they require the 'family' concept if they are to be resolved. It doesn't seem realistic to me to expect either two cabinet officers or the Governor to sit down and work with us on the impact of inmate assignments at the Bordentown Reformatory on New Lisbon food services or why New Lisbon does not receive back from the inmate operated laundry at the Trenton State Hospital as many sacks as New Lisbon claims it sent to the laundry. It might be possible to achieve this type of integration between two major Departments, but my long experience as an administrator of one of New Jersey's largest voluntary, non-profit hospitals makes me highly skeptical about the achievement of successful communication.

or any witness to determine whether there are "reasonable grounds" to believe that the person in whose behalf the petition is made is an addict. If the court believes that such reasonable grounds are present, it shall issue an order "directing the addict to appear at a specified time and place and undergo a medical examination and to appear before the judge or justice * * not more than five days after such examination". (Mental Hygiene Law, § 206, subd. 2 (6)).

The statute also provides that, if there are reasonable grounds to believe that the alleged addict would not comply with the order, the court may issue a warrant directing that the person named be taken into custody, deposited with the Commission for examination and, following such examination, be brought before the court.

The statute requires that, upon the conclusion of the medical examination, the Commission personnel conducting the examination must transmit a copy of their report to the judge or justice who ordered the examination. If, after reviewing the report, the judge or justice finds that there is reasonable ground to believe that the person examined is a narcotic addict, he must advise the person of this finding, give him a copy of the petition and report and explain that, if he is found to be an addict he may be certified to the care and custody of the Commission for an indefinite period not exceeing three years. The court must also advise the alleged addict that he is entitled to a hearing at which he may have the assistance of counsel and that, if he is unable to afford an attorney, the court will appoint one for him.

If, after holding a hearing pursuant to a request, the judge finds the person to be an addict, he must grant an order certifying the person to the care and custody of the Commission for an indeterminate term of up to three years.

The addict may, within thirty days after the order of certification, apply to a Justice of the Supreme Court - - - other than the Justice

The Supreme Court (Trial Term), following the verdict, ordered James released from custody upon the ground "that the procedure mandated by section 206 of the Mental Hygiene Law for the compulsory apprehension and detention of James, an alleged addict, on an ex parte application, whether by order or warrant, violated his constitutional rights."

The Appellate Division (one Justice dissenting and one Justice concurring in result) reversed the order of the Supreme Court. The appellant appeals to this Court, as a matter of right, from the order of the Appellate Division.

On this appeal appellant argues, first, that the provisions requiring compulsory commitment are unconstitutional for the reason that they authorize the commitment of a person, who has not been convicted of any crime, without a showing that he is dangerous to himself or others or that he has lost his self-control so as to be in need of institutional confinement.

This argument might have some merit if the construction placed upon the statute by the appellant is correct. The statute defines an addict within the meaning of the statute as "a person who is at the time of the examination dependent upon opium, heroin, morphine or any derivitive or synthetic drug of that group or who by reason of the repeated use of any such drug is in imminent danger of becoming dependent upon * * * [it] * * *".

The appellant in the instant case was found to be dependent on narcotics. Persons "dependent upon" narcotic drugs, as the language and purpose of the statute make clear, are persons who, through the repeated use of narcotic drugs, have developed so great a physical and emotional dependence that they are no longer able to control craving for narcotics.[1] It is persons such as these who "are responsible for one-half the crimes committed

1. The alternative status for commitment under the statute --- persons who through repeated use of narcotic drugs are in imminent danger of becoming dependent upon the drug --- refers to person's who have yet not reached but are in imminent danger of reaching the stage where they will be unable to control their crafing for narcotic drugs.

for his detention, and that he will appear before a judge at the next court session in connection with the allegation that he is a narcotic addict. Such a person shall also inform the alleged addict that he has the right to the aid of counsel at every stage of the proceedings, that if he desires the aid of counsel and is financially unable to obtain counsel, counsel shall be assigned by the court, and that he is entitled to communicate free of charge, by telephone or letter in order to obtain counsel and in order to inform a relative or friend of the proceeding" (Mental Hygiene Law, § 206, subd. 2 (c) as amended by L. 1968, Ch. 772).

The Attorney General argues that, while such an amendment was desirable, it was not mandated by the due process clause of the Constitution, and in this case the appellant's rights were not violated. With this we cannot agree.

The Fourteenth Amendment to the Constitution of the United States provides that no person shall be deprived of life, liberty or property without due process of law. The detention of this appellant, who was charged with no crime, against his will for a period of three days, without notice of the nature of the proceeding and an opportunity to contest the basis upon which the determination to restrain his liberty was predicated is so contrary to our most fundamental notions of fairness that it must be deemed a deprivation of liberty without due process of law, if that constitutional guaranty is to have meaning at all. As we indicated in Matter of Coates, 9 N Y 2d 242, 249, in discussing the temporary detention of mentally ill persons for observation without notice and a hearing, such action may be justified only "where immediate action is necessary for the protection of society and for the welfare of the mentally ill". In the instant case the three day detention of the appellant, without notice and an opportunity to be heard, was neither necessary nor required for the protection of society or the welfare of the appellant. The Attorney General argues that: "The Legislative findings * * * concerning the dangers of addiction * * * amply justify a temporary detention. These findings stressed both the 'threat to the peace and

ing up to confinement are unconstitutional, and it is this constitutional infirmity which requires a reversal here.

The order of the Appellate Division should be reversed and the judgment of the Supreme Court reinstated.

* * * * * * * * *

Order reversed, without costs, and the judgment of Supreme Court, New York County, reinstated. Opinion by Keating, J. All concur except Bellacosa and Bergan, JJ., who dissent and vote to affirm on the prevailing opinion at the Appellate Division.

from outside state government. One of the members from outside of state government shall serve as president of the council and one such member shall serve as vice-president of the council upon designation by and at the pleasure of the governor. The nine members of the council appointed by the governor from outside state government shall serve without salary, but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder. Each of the ex officio members may designate a representative of his department or agency to act on his behalf on the council.

2. The term of office of each of the appointive members of the council shall be for three years, provided, however, that of the members first appointed three shall be appointed for terms which will expire on December thirty-first, nineteen hundred sixty-three; three for terms which will expire on December thirty-first, nineteen hundred sixty-four; three for terms which will expire on December thirty-first, nineteen hundred sixty-five. Vacancies shall be filled by appointment for the unexpired terms. The appointive members shall continue in office until their successors are appointed and have qualified.

3. The council shall meet at least every second month in each year, and special meetings may be held at the call of the president. The commission shall provide housekeeping, secretarial and consultant services to the council.

4. The members of the council shall receive no compensation for their services but shall be reimbursed for all expenses actually and necessarily incurred by them in the performance of their duties as herein set forth within the amount made available by appropriation therefor. The members of the council appointed from outside state government shall not be deemed state employees.

5. The council shall have no executive or appointive duties. It shall advise the commission in connection with:

(a) formulation of a comprehensive plan for long range development through the utilization of federal, state, local and private resources of adequate services and facilities for the prevention and control of drug addiction, diagnosis, treatment and control of drug addicts and the revision from time to time of such plan.

(b) the promotion, development, establishment, co-ordination and conduct of unified programs for education, prevention, diagnosis, treatment, rehabilitation and control in the field of drug addiction in cooperation with other federal, state, local and private agencies.

§ 202. DRUG ADDICTION UNIT IN THE DEPARTMENT; SPECIAL ASSISTANT TO THE COMMISSIONER.

The commissioner shall establish within the department a drug addiction unit through which he shall cause his powers and duties under this chapter to be carried out. The commissioner shall appoint a special assistant in charge of the drug addiction unit in the department whose sole responsibility shall be at the direction of the commissioner to carry out or cause to be carried out the powers and duties of the commissioner with respect to drug addicts and drug addiction under this chapter. The commissioner may employ in the drug addiction unit such assistants, consultants and personnel qualified by education, training and experience with respect to the field of drug addiction to carry out the provisions of this act. The commissioner may designate employees in the drug addiction unit as special drug addiction officers whose duty it shall be under orders of the commissioner or the head of the drug addiction unit in the department to return any drug addict from aftercare supervision to inpatient treatment, visit and supervise drug addicts or deliver to or receive from court custody any drug addict as is provided by this chapter. Such employees acting as special drug addiction officers shall possess all the powers of peace officers in the performance of their official duties.

§ 203. NARCOTIC ADDICTION CONTROL COMMISSION.

1. There is hereby created in the department of mental hygiene the narcotic addiction control

5. Provide public education on the nature and results of narcotic addiction and on the potentialities of prevention and rehabilitation in order to promote public understanding, interest and support.

6. Disseminate information relating to public and private services and facilities in the state available for the assistance of narcotic addicts and potential narcotic addicts.

7. Gather information and maintain statistical and other records relating to narcotic addicts and narcotic addiction in the state. It shall be the duty of every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, or apothecaries, hospitals, clinics, dispensaries or persons authorized to dispense narcotic drugs and all public officials having duties to perform with respect to narcotic drugs or users of such drugs to report and supply such information in relation thereto as the commission shall by rule, regulation or order require.

8. With the approval of the director of the budget, make agreements, including but not limited to, agreements with public and private agencies, to do or cause to be done that which may be necessary, desirable or proper to carry out the purposes and objectives of this article within the amounts made available therefor by appropriation, gift, grant, devise or bequest.

9. Establish and operate rehabilitation centers and such other facilities as the commission may deem necessary or desirable for the care, custody, treatment, aftercare and rehabilitation of narcotic addicts certified to the care and custody of the commission pursuant to the provisions of this article.

10. Establish, maintain, operate and designate medical examination or other facilities for alleged narcotic addicts for the purpose of determining whether such persons are narcotic addicts and for the care and custody of alleged narcotic addicts with respect to whom court proceedings are pending.

11. Approve facilities and services for the treatment, care or rehabilitation of narcotic addicts.

12. Assign or transfer any narcotic addict certified to its care and custody pursuant to this article to the facilities or supervision of any department or agency of the state, or of a person, association or corporation providing facilities or services approved by the commission, pursuant to procedures prescribed by law and policies adopted by the commission and agreed to by the head of the department, agency, person, association or corporation to the facilities or supervision of which such narcotic addict is to be assigned or transferred; provided, however, that no narcotic addict committed to the care and custody of the commission pursuant to section two hundred six of this chapter shall be assigned or transferred to any correctional institution.

13. With the approval of the director of the budget, accept on behalf of the state any gift, grant, devise or bequest, whether conditional or unconditional, notwithstanding the provisions of section eleven of the state finance law. All moneys so received shall be paid to the commissioner of taxation and finance and shall constitute a special fund to be used under the direction of the commission for the purposes of this article.

14. Make rules and regulations for the exercise of its powers and the performance of its duties.

15. Conduct private and public hearings, administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence; and the commission may designate any of its members or any member of its staff to exercise any such powers.

16. Employ and at pleasure remove an executive director, secretary, counsel, consultants and such other personnel as it may deem necessary for the performance of its functions, and fix their compensation within the amounts made available by appropriation therefor.

17. Furnish to a certified addict, upon his release or discharge from a rehabilitation center or other facility to which he was assigned, suitable clothing adapted to the season in which he is released or discharged, not to exceed fifty dollars in value, forty dollars in money, and transportation from the rehabilitation center or other facility to the county from which he was certified or to such place as the commission may designate.

18. Have and exercise all powers necessary or proper to effect any or all of the purposes of the commission pursuant to this article.

b. An order issued pursuant to this subdivision shall direct the alleged narcotic addict to appear at a specified time before the court for a determination whether there are reasonable grounds to order him to undergo a medical examination at a facility designated by the commission. The court shall direct that such order and petition be served upon the alleged narcotic addict personally or by registered mail and the court may further direct that such order and petition be served personally or by mail upon the husband or wife, father or mother, or next of kin of such alleged narcotic addict.

c. A warrant issued pursuant to this subdivision shall be directed to any peace officer or police officer in the state commanding such officer (i) to take the alleged narcotic addict into custody, (ii) to bring such alleged narcotic addict forthwith before the court for a determination whether there are reasonable grounds to order him to undergo a medical examination at a facility designated by the commission. If the court is not then in session, the alleged narcotic addict may be held at a facility designated by the commission or at any other detention facility until such time as the court is in session. In such case, the director or head of the facility or his duly appointed representative shall advise the alleged addict of the nature of the proceeding, the reason for his detention, and that he will appear before a judge at the next court session in connection with the allegation that he is a narcotic addict. Such person shall also inform the alleged addict that he has the right to the aid of counsel at every stage of the proceedings, and that if he desires the aid of counsel and is financially unable to obtain counsel, counsel shall be assigned by the court, and that he is entitled to communicate free of charge, by telephone or letter, in order to obtain counsel and in order to inform a relative or friend of the proceeding. Such warrant may be executed on any day including Saturdays, Sundays and holidays but shall not be executed between the hours of 9:00 P.M. and 6:00 A.M. and the alleged narcotic addict shall not be subjected to any more restraint than is necessary for the purposes specified in the warrant. Such peace officer or police officer shall exhibit the warrant to the alleged narcotic addict, and inform him of the purpose for which he is being taken into custody. Such officer shall not break open any outer or inner door or window of a building, or any part of the building, or anything therein, to execute the warrant unless, if, after notice of his authority and purpose, he is refused admittance. Such warrant must be executed within thirty days after its date, and if not so executed shall be void.

d. Upon the appearance of the alleged narcotic addict the court shall provide such alleged addict with a copy of any paper not yet served upon him and shall explain that, if the court finds reasonable grounds to believe that he is a narcotic addict, it shall order him to undergo a medical examination at a facility designated by the commission. The court shall then advise the alleged narcotic addict that if such medical examination is ordered he shall appear before the court after such examination as provided in subparagraph (iii) of paragraph e of this subdivision, and, if the petition and the report of medical examination set forth reasonable grounds to believe that he is a narcotic addict, he may thereafter be certified to the care and custody of the commission for an indefinite period not exceeding three years and that he shall have a right to a hearing prior to such certification. If the alleged narcotic addict appears without counsel, the court shall advise him that he has the right to the aid of counsel at every stage of the proceedings, and that if he desires the aid of counsel and is financially unable to obtain counsel, then counsel shall be assigned. The court shall allow the alleged narcotic addict a reasonable time to send for counsel and shall adjourn the proceedings for that purpose. The court shall inform the alleged addict, if he is being held in custody, that he is entitled to communicate free of charge, by letter or telephone, in order to obtain counsel and in order to inform a relative or friend of the proceeding. If the alleged narcotic addict does not desire the aid of counsel, the court must determine that he waived counsel having knowledge of the significance of his act. If the court is not satisfied that the alleged narcotic addict knows the significance of his act in waiving counsel, the court shall assign counsel.

e. (i) If the court, after such appearance of the alleged addict, is satisfied that there are reasonable grounds to believe that such person is a narcotic addict it shall issue an order directing such person to appear on a specified date and place for a medical examination in accordance with subdivision three of this section. A copy of such order shall be given to such person and a copy of such order and of any order or warrant issued in accordance with paragraphs b, c or f of this subdivision, shall be furnished to the commission.

(ii) If the court has reason to believe that such person will fail to appear for the medical examination, the order shall make provision commanding any peace officer of police officer of the state to take such person into custody and deliver him forthwith to the place specified for the medical examination.

6. Unless the alleged narcotic addict otherwise requests, all proceedings under this section shall be private and shall be conducted in closed sessions. The petition, the report of the medical examination, the order directing a hearing, before the court or a jury trial, as provided in paragraph c of subdivision four of this section, if one be issued, the decision of the court, and the order of certification shall be filed in the office of the clerk of the county in which the proceedings under this section were had, and copies shall be presented to the commission at the time of commitment of such narcotic addict to the commission. The court shall order all such papers so filed in the county clerk's office and all other papers in such proceeding sealed, and exhibited only to the parties to the proceedings, or someone properly interested, upon further order of the court.

7. If a writ of habeas corpus be obtained in behalf of a person certified to the commission, and if it appears at the hearing on the return to such writ that such person may properly be discharged, the judge or justice before whom the hearing is had shall so direct.

8. The court may, in an appropriate case, direct the detention of an alleged narcotic addict in any detention facility designated by the commission pending proceedings pursuant to this section.

4. Upon conclusion of the medical examination the persons conducting such medical examination shall promptly transmit a report of such medical examination to the court in which the indictment, information or complaint is pending. The defendant and the district attorney shall each be given a copy of such report.

5. In no event shall such report or any statement made by the defendant to the persons conducting such medical examination be used against him for any purposes whatsoever at the trial of the defendant, but all procedures, actions, interrogations, observations, records and reports made pursuant to this secton shall be available to and may be considered by the court in determining whether to commit the defendant to the custody of the commission in the event of his conviction.

§ 208. PROCEEDINGS WITH RESPECT TO CONVICTED NARCOTIC ADDICTS.

1. Where a defendant has undergone a medical examination pursuant to section two hundred seven of this chapter and has pleaded guilty to or has been found guilty of a felony, misdemeanor or the offense of prostitution the court shall not impose sentence prior to receiving the report of such medical examination. After reviewing such report, if the court is satisfied that the defendant is not a narcotic addict the court shall sentence the defendant in accordance with the provisions of the penal law without regard to the provisions of this chapter. If, however, the court determines, on the basis of the report and such other information as may be before the court, that there is reasonable cause to believe that the defendant is a narcotic addict, the defendant shall be so notified and given an opportunity to admit, deny or stand mute with respect to the issue of whether he is or is not a narcotic addict. Where the defendant admits that he is a narcotic addict and the court is satisfied as to such fact it shall make a finding to that effect and shall sentence the defendant in accordance with subdivision four of this section. Where the defendant denies that he is a narcotic addict or stands mute with respect to such issue the court shall proceed as hereinafter prescribed. Provided, however, that the provisions of this subdivision shall not apply if the authorized sentence for the crime is death or life imprisonment.

2. A hearing pursuant to this section shall be conducted by the court without a jury. The burden of proof shall be upon the people to prove the fact of addiction by a preponderance of the credible evidence. Evidence may be presented by either party on any matter relevant to the issue of whether or not the defendant is a narcotic addict. Any relevant evidence, not legally privileged, shall be received regardless of its admissibility under the exclusionary rules of evidence; provided, however, that the right of confrontation and cross-examinaton, as it exists at a criminal trial, shall not be abridged.

3. If the court finds after a hearing that the defendant is a narcotic addict the court shall certify or sentence the defendant in accordance with subdivision four of this section. If the court finds that the defendant is not a narcotic addict, the court shall sentence the defendant in accordance with the provisions of the penal law without regard to the provisions of this chapter.

4. A person who is found to be a narcotic addict pursuant to this section and who has pleaded guilty to or has been found guilty of a felony, misdemeanor or the offense of prostitution, shall be sentenced as follows:

a Where sentence is to be imposed for a misdemeanor or for the offense of prostitution, the defendant shall be certified to the care and custody of the commission for an indefinite period which shall commence on the date the order of certification is made and shall terminate upon the first to occur of (1) the discharge of such defendant by the commission as rehabilitated, or (2) the expiration of a period of thirty-six months from the date such period commenced.

b Where sentence is to be imposed for a felony, the court, in its discretion, may either (1) impose an indeterminate sentence to an institution under the jurisdiction of the state department of correction in accordance with the provisions of the penal law applicable to sentencing for such felony (except as otherwise provided in subdivision five of this section), or (2) certify

ruption shall continue until the return of such person to the facility from which he escaped or until his return to the authorized supervision of the commission.

3. The commission shall have the power to issue a warrant for the arrest of a person who has been declared delinquent by it. A copy of the warrant shall be sent to the state police for execution. The state police may request any peace officer or police officer in the state to assist in the execution of such warrant. Such warrant shall constitute sufficient authority to hold in temporary custody the person retaken pursuant thereto until such time as he can be returned to the commission and no order of commitment shall be necessary therefor.

§211-a. Discharge of certified narcotic addicts.

Any other provision of this article notwithstanding, a narcotic addict certified to the care and custody of the commission, may be discharged from such care and custody in order to serve another certification, commitment or sentence, provided the period of such other certification, commitment, or sentence is likely to extend beyond the termination of the certification from which he would be discharged.

§ 212. AFTERCARE AND SUPERVISION OF CERTAIN NARCOTIC ADDICTS. The commission shall establish and conduct programs of care and supervision for narcotic addicts into which narcotic addicts who have completed a prescribed course of inpatient treatment may be placed upon the commission's determination that any such narcotic addict will benefit by such supervision and aftercare treatment. The facilities and programs for such supervision and aftercare by private agencies and agencies of political subdivisions of the state shall be reviewed and approved by the commission if they conform to the standards established by the commission. The commission shall establish regulations and standards for release and aftercare placement of narcotic addicts. The commission shall have the power to order any narcotic addict from aftercare supervision to inpatient treatment.

§ 213. APPROVAL OF REHABILITATION FACILITIES AND SERVICES.

1. No narcotic addict certified to the care and custody of the commission shall be assigned or transferred to or retained by any person, association or corporation, including a municipal corporation, operating a facility for the care, treatment or rehabilitation of narcotic addicts, or providing organized services for the treatment, care or rehabilitation of narcotic addicts, unless such facility or services have been approved by the commission pursuant to this section. Such approval shall be granted pursuant to rules and regulations of the commission, which rules and regulations shall prescribe standards of good moral character, financial responsibility, adequacy of buildings and equipment, quality of care, qualifications of personnel and form of records to be maintained, and shall provide for periodic review of such approval.

2. An application for the approval of the commission, pursuant to subdivision one of this section, shall be filed with the commission, together with such other forms and information as shall be prescribed by, or acceptable to, the commission.

3. If the commission proposes to disapprove the application, it shall afford the applicant an opportunity to request a public hearing. If so requested, a public hearing shall be held and may be conducted by one or more members of the commission, as the commission shall determine.

§ 214. SEPARABILITY CLAUSE. If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court or competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 217. SAVING CLAUSE; CONSTRUCTION. Nothing contained in this chapter or any act amendatory thereof shall affect or impair the validity of any act done or right accruing, accrued or acquired, or any order, judgment or status established prior to the enactment of this chapter or prior to the enactment of any act amendatory thereof. As to any persons admitted to be certified pursuant to the provisions of this chapter prior to its amendment by this act, the provisions of this chapter prior to such amendment shall continue to govern.

not accepted by private sources, the State had devised a pattern which, in most respects, relied upon mass congregate approaches. While this approach should have been the treatment of choice for some youths, many others were forced into this mold and emerged with little change in their anti-social attitudes.

With this pattern present, the Division for Youth in 1960 set as one of its prime objectives, program diversification of State's resources.

This grew out of a number of experientially derived operating beliefs which helped clarify the Division's approaches.

We felt that the field of youth care, despite bright, notable and scattered exceptions, was hampered and harnessed by individuals who reflected basic societal ambivalences towards this difficult area. Confusing signals, emanating from legislative and political leaders and the public at large, often resulted in vacillating, short-range program philosophies. Should an agency's goal be security for the public from disturbed offenders? Should an agency focus upon attitudinal change of offenders, knowing that encouraging these changes might well result in acting out through the testing of new relationship roles? Should realistic daily alternatives be posed for choices by offenders to foster the assumption of personal responsible actions and attitudes, when these choices might well not be those an anxious staff would have wished them to adopt? Should offenders be integrated into the community fabric of resources, or isolated until they proved they could function in a less hostile, threat-free fashion?

The policy messages and sets of correctional expectations that administrators have received have been consistently contradictory. The typical admonition might well have stated, "Operate low cost, helpful, realistic programs in someone else's backyard and you will be supported, as

an eclectic approach in its attempts to modify those deficiencies revealed by the adolescents in its care which seemed to block their reaching personally satisfying and socially acceptable performance levels.

Intake Criteria

We established eligibility criteria for admitting a youth to program.

In general, youths who tended to exhibit the following characteristics were eligible:

A. Where a youth expressed unhappiness over his situation and desired to make a better life for himself (denial by the youth of any dissatisfaction was discounted, if it was recognized that the youth was hiding his true feelings);

B. Where a youth exhibited a willingness to admit, even reluctantly, that his troubles were at least partly of his own making;

C. Where the youth showed a capacity to relate to people - to exhibit some emotional response, even though it might be negative;

D. Where the youth could establish sufficient rapport with an adult to discuss his situation with him -- though not necessarily from the standpoint of seeking nor accepting help at first;

E. Where there were some indications that the youth could recall his life experiences, even though he might have been reluctant to discuss them.

Thus, youth attitudinal and behavioral indicies and not the nature of their crimes (we have admitted homicide cases) were given priority.

Program Approaches

Four basic approaches were implemented to offer differential treatment techniques for youths with problems ranging from gradations of immaturity to deep-seated conflicts manifested, in part, in delinquent behavior.

1. Conservation Camps

For the more immature youths, who were deemed to need a moratorium from home pressures and negative community influences, the camp approach was offered. While we have always advocated keeping youths as close to the realistic

"ego battering" approach in order to obtain personal change within each youth.

3. Urban Home Program

Youths were selected for this type of facility, because we thought they possessed sufficient stability, ties and strengths to be maintained in their own home community with adult guidance and support. Here a youth was programmed on an individual schedule for community work or school, while he received counselling, maintenance, tutoring and other services in relation to his needs. He participated on a daily basis in local community activities. It was believed that these youths had a sufficient degree of socialization, so that they could function in this local setting.

4. STAY Program (Short Term Aid to Youth)

Here we conceived a non-residential program for youths, very similar in characteristics to those admitted to a START program. A daily supervised work experience was followed by group sessions, emphasizing a confronting, probing approach. Daily experiences of the youths were utilized as material to be analyzed in the group meetings. Daily gains were tested out each evening as youths returned to their own homes. Parent-youth group sessions were scheduled with the director as well.

Staff Orientation and Roles

When we attempted to recruit staff, we had little different to offer except longer hours, harder work and higher expectations along with potentially more job satisfactions. The director level facility positions were filled through the orientation that the Division was seeking individuals who wanted to utilize their skills rather than remaining enmeshed in the comfortable ivory tower of treatment consisting of neat, complete case folders,

upon to cook, drive a truck, supervise a work crew, fight forest fires, accompany youths to community shopping plazas, conduct a 2 A.M. confrontation about stolen locker items, meet with irate parents on weekend facility visits, and discipline a youth embarked upon destructive activities, when [redacted] these were required, in addition to assuming his counselling, case reporting, administrative, and community relations roles. Because he was able to exhibit this flexibility, he grew to know youths in many stances and at all stages of their program involvement. Thus, he transcended the role of a therapy specialist who interacted with a youth during a 50 minute session periodically, but an adult whose personality and influence were all pervasive. This meant two basic things to youths. First, that it was of little use to attempt to "con" or manipulate this type staff member, because he was viewing and working in program in a variety of situations and relationships in which youths' behavior patterns were revealed. Second, it meant this person was not concerned on a part time basis. He was reaching out to help and not waiting for youths to be brought in or request his services. For the director - counsellor - administrator, this involvement meant he was truly in charge of program and not relegated to making innocuous decisions.

What had to be held out was a constant reminder that the goal of the program was not passive adjustment or control. Staff would not be judged on these criteria. It was felt that in most large prisons or institutions custodial staff was no less dedicated than our small unit child care staff. But the vastness of the mass congregate system imposed tremendous obstacles to involvement and job satisfactions.

Treatment Threads

In creating four basic program approaches, the camp, START, Home and STAY, to meet differing levels of needs of youths referred to us, the Division recognized that a certain commonality of treatment threads needed

shopping trips, tours of cultural sites, and the implementation of a general open door policy which encouraged local civic groups to utilize our facilities for their uses. Staff was urged to bring their own families to the facilities and participate in Christmas parties, bowling leagues and other social events.

Furloughs for youths were an important program activity to foster the increasing interaction of youth and the "outside" world. We worked hard towards the understanding and acceptance of the notion that furloughs were a needed testing out period for youths as well as a necessary reinforcement of the idea that they ultimately belonged in the real world. On the one hand furloughs, if they were full of conflict and dissatisfying for youths because they reopened old family frictions and negative personal relationships, served as a reminder to all that changes were still required. Thus the camp and its staff could be portrayed in the youth's mind as less of a scapegoat for the way things were and more of a potential mechanism to help rectify personal problems.

In our community based units, the concept of community involvement was not less important and needed to be consciously fostered. We found that an urban home could be as much of a prison or isolating experience as any high walled bastile, unless the staff worked at community involvement. Some youths were so insecure and lacked so much confidence that they attempted to make the home meet all of their needs and withdrew into the facility womb. Our desire to avoid such dependency and institutionalization made us seek community programs and outlets for youth involvement. We purposely did not INCORPORATE adequate recreation, educational or other socializing experiences into our home programs in order to foster and encourage a community focus.

3. Youth involvement in programs of service to others was important.

Another program approach designed to enhance feelings of self worth was the concept of rendering service to others. Many youths entered program with a basic hustler attitude. "What's in it for me?", was an oft heard comment.

5. Youth acceptance of responsibility was paramount.

Most institutions take responsibility away from offenders. It is small wonder that offenders are usually ill-prepared to function after discharge in a world which demands personal responsibility and initiative.

In most institutions, because of the large numbers involved, the routine becomes so structured and rigid that there is little chance for decision making on the part of the offender. The program is geared only to choose the alternative previously selected by staff. The offender must meet administration's expections by succeeding in all he is required to undertake. He must be courteous, he must learn a trade, he must not leave, he must be cooperative, he must fit into routines. What he surely must submerge and stifle are the feelings, beliefs, attitudes and acts which make him an offender. We have always felt that the way to modify self-defeating acts on the part of a youth was to give him the opportunity to fail in program as well as the opportunity to succeed. In other words, we have always expected negative, revealing behavior, so that we could hold a mirror to it and then analyze with a youth how this present conduct was related to the personal dilemma and legal difficulty he had experienced which had led to his institutionalization. There was little to be gained through moralizing about past indiscretions. What we have sought are concrete examples of the very behavior which had led to trouble and which had been rationalized away by the youth. Because most youths tended not to be abstract in their reasoning, the handling of the "here and now" of conduct on their part was much more meaningful to them. We hypothesized that overcontrolling and structuring their behavior, so that they adjusted admirably and quietly to the facility was not conducive to their long range rehabilitation. This is a concept that has been sorely misunderstood. Some judges, probation officers and law enforcement officials have severely criticized our "desire to get the youths to

at a passing train and blinded a trainman. Two youths fleeing another facility slashed the furniture, paintings, walls and belongings of a nearby family's summer home. It was of little solace to the community to point out that thousands of other youths, who had successfully completed program, became responsible family members, served their country in the Armed Forces, and had done well in employment or school. When these few incidents occurred, our Citizens' Advisory Committees have been of tremendous assistance to us. These local leaders had been selected not because they were politically influential. What we had sought in the composition of these groups were individuals who were known, respected, and trusted by the neighborhood at large in which our facilities were located. When an unfortunate situation occurred, they interpreted to the community the steps we had taken to rectify the situation, as well as reminding the community of all the positive contributions the youth and the facility had made to the locale. We have learned that a community's tolerance level for deviant behavior on the part of our youths was in direct correlation to the confidence and personal relationships the director of the facility had engendered. A director for each facility had been hired several months before the actual opening, and, in addition to attending to the numerous administrative chores of equipping, recruiting, etc., he was given time and task of becoming known to our neighbors. It was important to maintain the policy that an individual director could, at his discretion, immediately remove any youth from program and not be overruled by a bureaucracy located somewhere in the state capitol. If the community felt that the director was able to take decisive action in any case, and if they had gotten to know him as a person who was sensitive and sympathetic to their anxieties, their acceptance of acting out behavior on the part of youths was increased. The town's people could relate to a neighbor who happened to be a director, rather than feeling powerless and forced to relate to a governmental agency.

B. Cluster Programming

We found that our ability to maintain a youth in program was enhanced by having planned meetings of small groups of center directors who represented various treatment approaches (START, Camp, STAY, Home) on a geographical cluster to initiate an alternate, and hopefully more appropriate, treatment approach when individual youths were not responding to the original treatment plan.

C. Apartment Complex

Our urban homes originally were designed to accommodate approximately 20 youths. In order to offer more flexible individualized services for the youths, three units physically separate but administratively coordinated were established. These units were composed of seven youths each, under the administrative control of one professional director who supervised three sets of houseparents. In addition to the above advantage, we found that neighborhoods more readily accepted seven youths than twenty and capital costs were reduced as well.

D. Aftercare Teams

Rather than depending solely on a case work approach to assist youths after discharge, we began grouping youths and making this larger case load the responsibility of a team of workers which included a group worker, a case worker, an ex-offender community aide, and a team captain. Thus, youths had a variety of resources and treatment approaches available to help them through their community readjustment period.

E. Satellite Camps

In conjunction with our own forestry camps, our youths constructed a series of affiliated summer facilities to which inner city, disadvantaged, 10 to 13 year old youths were invited, many of whom were actually siblings of our campers. A full program of recreation, nature study, cultural trips, etc. was offered and most

thus far when the input from these various sources are compared. Three out of every ten youths discharged from our facilities were rearrested, utilizing the gross criteria of the number of post treatment arrests. The time period considered was up to 24 months after discharge. Records to date indicated that one out of every twelve youths had to be re-institutionalized. We have much more intensive analysis to undertake here to understand the program process by which different outcomes are achieved.

In closing it should be stressed that despite disappointing setbacks, our program has helped to diversify the public sector's programming for adolescents in our state. The courts and social agencies now have greater flexibility in their search for resources, since alternative systems of treatment intervention have been placed at their disposal. Many youths who previously had to commit delinquent acts in order to receive needed service, now can be placed voluntarily in a variety of beneficial settings. We have, upon request, transferred some of our facilities to other agencies to afford them greater program flexibility. Most importantly, we have moved toward and involved the community in our endeavors to serve adolescents, because, in the final analysis, it is only in these settings that the youth and the community, sorely in need of each other, can be truly reintegrated.

Senate Bill 675 would make it unlawful for any person to wiretap other than duly authorized law enforcement officers acting under court supervision.

I note among the findings in Section 2 of the bill the following:

"(c) Modern criminals make extensive use of the telephone and telegraph as a direct instrumentality of crime and as means of conducting criminal business. In some circumstances, interception of wire communications in order to obtain evidence of the commission of crime is a necessary aid to effective law enforcement."

I wholeheartedly concur in that finding. It sums up, in a few words, everything that has been said about the importance and the necessity of legalized wiretapping.

I have served in the office of the District Attorney of New York County for thirty-two years, the last twenty-five of them as District Attorney.

On the basis of that experience, I believe, as repeatedly I have stated, that telephonic interception, pursuant to court order and under proper safeguards, is the single most valuable and effective weapon in the arsenal of law enforcement, particularly in the battle against organized crime.

It is an irreplaceable tool and, lacking it, we would find it infinitely more difficult, and in many instances impossible, to penetrate the wall behind which major criminal enterprises flourish.

The New York Experience

In New York, by vote of the electorate in 1938, our State Constitution was amended to authorize court-ordered wiretapping, where it could be shown that there was "reasonable ground to believe that evidence of crime may be thus obtained." In 1942, implementing legislation placed the entire procedure under judicial control. Statutory requirements were enacted to restrict the use of this privilege to intercept and to make certain that civil liberties were not abused in the utilization of the privilege. In 1958, similar laws were passed to bring eavesdropping by electronic device, commonly known as "bugging," under judicial control with correspondingly strict safeguards on the use of this technique and severe penalties for its unlawful use.

On numerous occasions, prior to the Benanti ruling, our office supplied information and evidence obtained from wiretaps to many other jurisdictions throughout the United States which resulted in the apprehension and conviction of notorious criminals.

Over the years, also, our office has been able, with court approval, to provide Committees of the United States Senate and the House of Representatives with transcripts of telephone conversations which proved of great value to them in important Congressional investigations.

The late Senator Estes Kefauver wrote to me in 1951 endorsing a statement of a magazine writer that material from the New York County District Attorney's Office--brought to public attention at the hearings of the Special Committee to Investigate Organized Crime in Interstate Commerce--"helped make the Senate crime investigation a smashing success." Virtually all of that material had been uncovered by court-authorized wiretaps.

Telephonic interception enabled us to give similar assistance to the Select Senate Committee investigating organized crime's infiltration of labor and business. In letters to our office and in the Congressional Record, Senator John McClellan, the Chairman of the Committee, expressed appreciation for our cooperation. Senator Robert Kennedy, then counsel to the Committee, made constant use of our information and knows how valuable electronic surveillance is to the preservation of law and order.

No member of Congress ever raised the slightest objection to the receipt or use of the valuable information which my office had obtained by legal wiretapping and was enabled by court direction to make available to them.

Surely these facts shed some light on the question of Congressional intent in the enactment of the Federal Communications Act of 1934.

Yet the Supreme Court tells us that it is a crime under the act for us to intercept and divulge telephone conversations. And that is the law of the land.

The result, obviously, has been to place the prosecutor in a dilemma. He is sworn to investigate and prosecute crime and to use all legal weapons available to him. One of the most important of these weapons certainly is legal wiretapping. But if that key weapon is used, he may find that by so doing he violates Federal law.

to a court's order based on a judge's determination that probable cause exists for belief that such interception may disclose evidence of the commission of a crime. This is a right which in New York State we have utilized in the public interest since 1938 and which I believe we have utilized with fairness and discretion.

The Use of Legal Eavesdropping in New York

Eavesdropping has been the subject of many popular misconceptions. There is much confusion, so it seems, in the minds of good people between lawful interceptions, pursuant to court order, and illegal interception of oral communications by private persons.

Our appraisal of the subject should be a reasonable and objective one and our approach should be based on facts and experience, not on preconceptions. We must keep a sharp eye out for the hysterical alarmist with a flair for the dramatic. This is a field that produces the most extravagant accusations of abusive practices, as ill-founded and unsupported as they are shocking, and as irresponsible as they are inaccurate.

A notable example of loose talk was the assertion some years ago by a distinguished jurist that in the year 1952 alone there were 58,000 court orders permitting wiretapping in New York City.

Now this was unadulterated fiction. The researcher, who came up with this figure for the Justice, at first sought to explain it away by declaring that he had included illegal wiretaps as well as those authorized by the courts, and then, by way of amplification, he indicated that he was unable to recollect the name of a single one of the informants who allegedly supplied the factual quicksand upon which his calculation was unfounded.

We were able to demonstrate that the Justice's figure was off by at least 10,000 per cent. As a matter of fact, legal wiretapping is rare. Its danger to the privacy we all cherish is minimal. It is used almost exclusively in the area of organized crime, and, for the most part, only when other avenues of investigation are closed.

But we still hear tales of the fabulous number of telephone booths and private lines which have been wired for sound by the police. Most of today's horror stories seem to be concerned with the companion investigative technique, that of eavesdropping by electronic device. These fantastic stories serve to generate an emotional reaction hostile to wiretapping, a fear of the wholesale and indiscriminate invasion of the

A court order for wiretapping is in the nature of a warrant for search and seizure and the one raises no more a problem of privacy or a violation of civil rights than the other.

Indeed, our New York State Constitutional provision empowering law enforcement officials to intercept telephone messages uses almost the exact language of the Fourth Amendment, and our implementing legislation holds us to the same restrictions as for any other search warrant.

The quest for evidence, whether by search of the premises of a suspect or by interception of telephonic communications must be based upon "reasonable" grounds. That is the key word.

The sworn affidavit which we submit to the court in connection with a wiretap application must set forth our reasons for believing that evidence of crime will be obtained. It must specify the specific telephone line or lines which it is proposed to tap and must identify the individual in whose name the telephone is listed.

There are, also, some very practical considerations which rule out the arbitrary and capricious use of this important investigative weapon and which necessarily reduce invasions of privacy to a minimum.

At least two detectives, usually four, and sometimes six, are required to man each installation, depending upon the activity of the line and the number of hours of the day it is being used. It is not simply a matter of monitoring the conversations. The listeners may overhear arrangements for a meeting of two or more of the conspirators. One of the officers must be prepared to cover that "meet," as it is called in police parlance. The rendezvous may well disclose the existence of hitherto unknown participants in the criminal activity under investigation and the surveillance by the detective at the scene may bring to light new clues worth developing.

Since we must necessarily be selective, we confine our attention to major targets and the most serious crimes, especially of the organized variety. Specifically, we are most likely to use wiretapping in investigations of the drug traffic, of extortion and coercion, of bribery, corruption and murder.

Now just how great is the threat to personal privacy posed by legalized wiretapping? Let us examine some facts and figures. Every year, in New York County, we dispose of upwards of 4,000 felony indictments in our Supreme Court. As a result

had worked well in New York for over twenty years, that it had popular approval, and that it enjoyed the overwhelming support of our highest State officers, executive, legislative and judicial. There was unanimous agreement that law enforcement in New York had used this investigative weapon fairly, sparingly, and with the most selective discrimination.

Invasion of Privacy

Law enforcement asks for and welcomes judicial examination of the need for eavesdropping in every proposed investigation, and judicial authorization, supervision and review of its use. Indiscriminate and promiscuous use of the legal privilege to intercept conversations is as offensive to police and prosecutors as it is to society as a whole. We believe that the individual must be protected against any unnecessary invasion of his privacy. None of us wants other people to be poking into his personal affairs. Everyone cherishes his right to be left alone.

But there is no civil right which is absolute. All of us have a right to expect security and protection from the depredations of the criminal. Police investigation, by its very nature, must intrude, to some extent on the privacy of the individual. A court ordered warrant to seize a ransom note in a kidnapping case necessarily will bring before the searcher's eye a number of personal documents that the court never intended to be seized and that the searcher never desired to see. The fact is that perception is not seizure. And it makes no difference whether the searcher perceives aurally or visually.

What we must focus on is unwarranted intrusion. It is not the law enforcement officer, intercepting communications pursuant to court order on a showing of probable cause under oath, who is to be feared. Rather we should be alarmed at the activities of the private operative. It is he who is seeking evidence on the suspected spouse, or attempting to discover the plans and programs of a commercial enterprise, or trying to gain some secret information for purposes of blackmail. Are we to assume, because the privilege of wiretapping in criminal investigations is denied to law enforcement, that there will be no illegal interceptions by these snoopers for hire?

Let us fix our attention on the heart of the problem. Let us make a clear distinction between the burgeoning unregulated eavesdropping and the statistically rare court-ordered incidents of wiretapping.

Most of the illegal operators specialize in planting electronic listening devices, but there are wiretappers among

Need for and Effectiveness of Eavesdropping

Why is eavesdropping so essential in combatting organized crime? In this area, we are confronted by two serious problems: first, the persistent unwillingness of complainants, victims, or witnesses of any sort, to come forward, because of apathy, fear or self-interest; and, secondly, the inaccessibility of the top figures in the rackets.

The street corner bookmaker, the policy runner, the dope pusher, often an addict himself; these are the expendables of organized crime. They are arrested by the scores and are readily replaced. From time to time, there may be a raid on some minor, or major, outpost: a seizure of narcotics, the "knocking over" of a policy bank, or of a horse wire room. But these casualties are the occupational hazards of the rackets. Annoyances, yes. Inconveniences, but they hardly discourage the bosses of the illicit traffic in heroin or the high command of a gambling empire.

As the President's Commission repeatedly demonstrates in its Report, the criminal organization is dedicated to protecting its masters. The reluctance, or fear, of witnesses as well as lower level functionaries to assist law enforcement agencies - oftentimes creates insurmountable barriers to the obtaining of information. Omerta, the code of silence, is more than just a word. Often, when the organization has pervaded legitimate businesses and, on occasion, corrupted local officials, law-abiding citizens, who are the real sufferers, remain unaware that they have been victimized.

The professional racketeer of today is not a common hoodlum. He is an astute businessman, dealing in and with the most up-to-date business institutions, but scrupling at nothing to achieve his objectives.

In his illicit enterprises, there are no tell-tale records or books of account to be seized and examined. There are no files of inter-office memoranda. There is no documentary trail of evidence. All communication is by word of mouth.

His interests are scattered across the nation as are his associates. He must have at hand the means of ready contact with them. It is the telephone that thus becomes the vital and essential instrument of communication.

That is why, despite extraordinary expenditures of effort and the most diligent investigation, without wiretapping, law enforcement can hardly advance beyond the street level.

Let us take one in the field of narcotics. The drug traffic is perhaps the worst scourge that law enforcement must battle in New York City. We have 40 per cent of the nation's addicts, who commit many assaults, robberies and burglaries to finance their desperate needs.

In January, 1960, after an intensive investigation lasting many months, we indicted eight defendants for conspiracy as a felony, for felonious possession and sale of heroin, and for other crimes. It was one of the most important roundups in years. The heads of this ring were engaged in the importation and distribution of heroin on a major scale. They operated extensively throughout the East and did a narcotics business running into millions of dollars annually.

Caught in the net were Joseph Russo, who had previously served a State prison term of two to five years; his brother Anthony, also a notorious wholesaler and no stranger to police lineups; Aniello Carillo, whose police record covers a page and a half and who faced a life sentence if convicted on this indictment; his son, Frank, also sporting a diversified criminal record; as well as John "Baps" Ross, who was considered to be the largest narcotics distributor on the retail level in the country.

The transaction, which resulted in the arrest of the eight, was the sale to Ross of one kilo of pure heroin, worth from a quarter to half a million dollars to the underworld when cut and sold in decks at the street level.

The case well illustrates the insulation of the key figures in this vicious traffic. Here the top men made all arrangements for the importation of heroin and its sale and delivery to major distributors, but they never touched the drug. Only these top figures knew the details of the entire operation. They dealt only with trusted lieutenants. The heroin was handled by at most two of the conspirators and they were on the courier level. Some of the conspirators had never met and not one man in the operation knew all his confederates.

Thus, even if there were a break in one of the links of the chain, those at the top would be secure from apprehension.

But, while the chief figures in the ring never came in contact with the heroin, it was essential that they communicate with one another as to the amount, place, and type of each transaction.

We delayed proceeding to trial for almost two years in the hope that Congress would enact legislation permitting the use of court-authorized wiretap evidence. But these hopes were disappointed and, most reluctantly, we moved for the dismissal of the defendants. All seven of these vicious criminals went scot-free.

In June of 1964, we began an investigation into suspected payments of graft to police officers to overlook violations of the gambling laws by a mob operating a thriving numbers racket in the East Harlem section of Manhattan.

At the very outset, fourteen police officers, including a lieutenant, were called before the Grand Jury and were asked to sign waivers of immunity before testifying. All refused. They were thoroughly within their rights, of course, in invoking their Constitutional privilege against self-incrimination, but their action could fairly be interpreted to mean that these officers could not truthfully answer questions about the performance of their duties without involving themselves in crimes. The consequence of their refusal to sign the waiver was the forfeiture of their jobs.

Later, five of the officers were recalled before the Grand Jury and offered immunity. They still refused to testify and all were cited for contempt.

In the course of this investigation, we had succeeded in infiltrating the policy racket with an undercover investigator. But he could not get beyond the lower echelons. He did, incidentally, observe the passage of money to a police officer. But his conclusion about what he had seen, while quite obvious, did not constitute legal evidence. With his help, however, we did manage to indict and convict the three operators of one policy bank on felony charges and we proved perjury charges against a police officer.

But we never did get to the heart of the matter. Had we been able to introduce the court-authorized wiretap evidence in our possession, we could have proceeded against the top underworld figure who dominated the numbers racket in East Harlem and we could have exposed the corruption of all too many police officers who had been assigned to enforcement of the gambling laws in the area.

But of much greater interest was the fact that through seemingly innocent messages heard over this wire--and through these intercepted messages alone--we came upon evidence of a crooked and flourishing policy racket which had sunk its roots in three States and compromised the integrity of a midwestern financial institution.

This crooked game was operated by a Newark mob and its victimized players were mostly residents of New Jersey and Pennsylvania. Its swollen profits were due to the rigging of the winning number each day by the respected secretary of the Cincinnati Clearing House. It was his assignment to falsify the daily clearance figure to provide the number wanted by his gangster accomplices, the number that had been least played that day.

A lengthy investigation in New York, New Jersey and Ohio was required to piece together all the fragments of this fabulous jigsaw puzzle. It resulted in the conviction of eight members of the tri-State ring, including such underworld notables as Daniel Zwillman and Irving Bitz, and Dennison Duble, the Cincinnati Clearing House Secretary and a pillar of his community, who was corrupted by payments of $1,000 weekly, a pittance in the light of the mob's take from this fraudulent scheme.

It was the seemingly innocuous telephone messages, essential to the operation of the conspiracy, relayed through New York each day and the only overt acts committed in New York County, which made it possible for us to assume jurisdiction and uproot the racket at its key centers in other States.

Wiretap evidence was of tremendous advantage in the successful prosecution of a half-million-dollar stolen bond ring, led by one Irving Mishel, who acted as a broker for burglars specializing in the theft of securities. His system of negotiating these securities was quite devious and required constant use of the telephone.

Mishel operated with forgers and underworld characters, including Irving Mitzberg, an alumnus of Murder, Inc. A wiretap on his home telephone was the prime factor in bringing about his indictment, conviction and a ten to twenty-year prison sentence. In addition, Nitzberg and eight others were indicted. All pleaded guilty to charges of grand larceny and forgery.

We began a lengthy investigation in 1950 on the basis of information that he was using his union as an instrument of extortion. We expected to be able to prove that Clemente was demanding money from shippers, under threats of strikes and work stoppages, for permitting them to unload paper at the piers he controlled.

The evidence, which we had developed as a result of a court-ordered wiretap, did not establish the necessary proof of the crime of extortion, but it did bring about Clement's downfall. It made it possible for the Grand Jury to indict him and for my office to prove him guilty of the crime of perjury in the first degree as a result of his false testimony at hearings before the State Crime Commission in 1953.

Meanwhile, the taps had provided us with direct leads which resulted in the conviction of two of Clement's henchmen, Saro Mogavero, vice-president of Local 856, and Louis Giaccone, its business agent, for the crime of extortion. By this prosecution, stemming directly from the tap on Clement's wire, we were able to establish that the so-called public loading system on the city piers was outright coercion and extortion and we were thus instrumental in bringing about the abolition of this racket by the State Legislature.

The uncovering of criminal activity in the field of labor-management relations is all but impossible without the utilization of legal wiretapping. Industrial racketeering we have found, takes two forms. On the one hand, there is the faithlessness of labor leaders who betray the trust reposed in them by the rank and file of their unions. On the other, there is the more disturbing development--the infiltration of the labor movement by underworld hoodlums who seek to pervert the machinery of unionism into an instrument of extortion and coercion.

My office has maintained a continuing interest in John Dioguardi, better known as Johnny Dio, since he was first sent to prison for racketeering in the garment area of New York back in 1937. When he returned to his old haunts, we kept an eye on him and, in the fall of 1950, discovered that, among other things, he had begun to blossom out as a power in a number of labor unions.

Dio managed to get himself a charter from the United Auto Workers' Union of the American Federation of Labor, not to be confused with the United Automobile Workers of America.

This same Goldstein, together with Max Chester and Dio himself--who, in the meanwhile, had the effrontery to open an office as a labor relations consultant--were convicted in July, 1957 of conspiracy to commit the crime of bribery of a labor representative.

The scheme was for officials of a plating company to pay a $30,000 bribe to Max Chester for a soft contract in order to head off and frustrate the genuine collective bargaining activities of the United Electrical Radio Workers of America.

In the course of our continuing surveillance we uncovered, in 1956, an ambitious scheme of Dio, in league with another underworld character, Anthony Corallo, better known as "Tony Ducks," to capture control of Joint Council 16 of the Teamsters' Union, the governing body of the union in the New York area. The evidence of this conspiracy was made available to the Senate Committee on Improper Activities in the Labor or Management Field, as were the telephone conversations of this gangster Dio with Mr. James Hoffa, then vice-president and later the president of the International Brotherhood of Teamsters.

Corallo, we discovered, had acquired a dominant role in the affairs of Local 875 of the Teamsters' Union, and this local, court-authorized wiretaps disclosed, was being used as an instrument of extortion. All of its officers and representatives were indicted in 1956: Jack Berger, president; Nathan Carmel, vice-president; Aaron Kleinman, secretary-treasurer; and Jack Priore, Milton Levine, and Sam Zakor, organizers. All pleaded guilty to charges of conspiracy or extortion.

In sum, during the four years from 1954 to 1958, we were able, thanks to legal wiretapping, to indict and arrest some twenty-five officials of labor union locals, either corrupted officers who had sold out their members, or hardened criminals who owed their jobs to the underworld.

I have given but a sampling of our cases which have been dependent for their success upon our wiretapping privilege, but this sampling will demonstrate, I hope, why we attach such importance to this technique of criminal investigation.

The contention that wiretapping is unproductive is rebutted by the figures. Because we no longer divulge evidence so acquired in court or before Grand Juries, I cannot offer any current records of arrests and convictions that could be attributed directly to wiretapping.

sent to other individuals and corporations, eliciting corroboration and evidence showing the method and extent of the conspiracy. For the proof demonstrated that Anselmo had purchased his supplies from animal food suppliers and packaged it as fit for human consumption. By bribing a federal inspector, he had placed counterfeit inspection stamps on the cartons and sold them to Merkel, who knowingly passed the contents on to the consumer. Indicted for selling adulterated and mislabeled foods, Anselmo interrupted his trial to plead guilty to that charge and to conspiring with Lokietz. The president of Merkel also pleaded guilty to the same conspiracy count, and the vice-president Goldman pleaded guilty to perjury.

Organized crime has also gone into business for itself. In another New York case, Anthony Lombardozzi, the defendant, and nine others contrived a "bust-out" operation. Under such a scheme, a store is opened and builds credit with suppliers by promptly paying for goods for several months. Then, stocking a large inventory on credit, ostensibly to meet a consumer demand, the store is suddenly closed, the owners disappear, and the goods are spirited away to be sold at a clear profit. Naturally, proof of such a larceny by false pretense depends entirely upon establishing that the storeowners have no intention of paying for articles ordered. In this case, the ten defendants combined to open a store named Co-op Discount Stores, Inc. To all appearances a legitimate business, the company paid for purchases religiously and on time for a six-month period. An eavesdrop device, installed upon information as to the real nature of the business, disclosed that the owners were not intending to pay for merchandise delivered after December 8, 1963. By that time, the store would have received a quarter of a million dollars of goods on the pretext that a large inventory was needed for the Christmas season. Actually, the defendants intended to shut the premises and melt away with the merchandise. The conspirators were arrested on December 9th as they were carting off the merchandise; all ten pleaded guilty.

Another operation of organized crime is illustrated in a case featuring John Lombardozzi and Michael Scandifia. Falsely claiming to be a Teamster Union official, Scandifia, together with Lombardozzi, obtained $88,000 worth of diamonds on memorandum from Kaplan Jewelers in Manhattan by representing that other union officials were interested in purchasing the jewels. After complaint was made to the authorities some weeks later, investigation disclosed that the stones had been sold for

They were given the "contracts" to assault designated victims, and supplied Burkhard with the dynamite. Although paid for, the beatings were, of course, faked, and the explosive was specially designed to react like a wet firecracker when ignited.

The undercover agents, however, were never able to approach the persons directing the conspiracy, nor to obtain much more than hearsay evidence implicating them. Eavesdropping warrants were therefore issued by the court, authorizing electronic probes into Habel's office and Teamster Union headquarters. The plans conceived in Furtherance of the conspiracy were thereby detected, resulting in the indictment and conviction of the key men in the operation, whose acts were confined to plotting in the privacy of their offices and issuing orders to subordinates.

Electronic eavesdropping pursuant to court order was of invaluable assistance in an investigation, beginning in 1962, which exposed wholesale corruption in the administration of the New York State Liquor Authority. It led directly to the indictment of Martin C. Epstein, who was ousted as Chairman of the Authority because of his refusal to waive immunity before the Grand Jury. Because of serious illness his trial on charges of accepting unlawful fees has been delayed.

Electronic eavesdropping also made possible some of the charges brought against former Judge Melvin H. Osterman of the State Court of Claims. He pleaded guilty during trial to three counts of conspiracy to bribe Epstein.

Electronic eavesdropping led also to the accusations against several other defendants who were among the seventeen indicted in the course of the investigation. Seven of them have been convicted so far.

Many others with long experience in law enforcement support my contention that wiretapping and electronic eavesdropping are indispensable tools in combatting organized crime.

Every former United States Attorney for the Southern District of New York, now living, advocates court supervised eavesdropping. In a letter, dated March 7, 1967, addressed to Senator McClellan, they emphatically give expression to their conviction that it is needed for the protection of society. The signers of that letter, in order of their service, were

New York, New York
March 7, 1967

Senator John L. McClellan
Subcommittee on Criminal
Laws and Procedure
United States Senate
Washington, D. C.

Dear Senator McClellan:

The Undersigned being all the former United States Attorneys for the Southern District of New York now living urge on the consideration of the Committee on the Judiciary of the United States Senate immediate clarification of Federal law relating to wire tapping and electronic eavesdropping.

The commission of crimes on a national scale and the infiltration of legitimate business by criminal elements are heavily dependent on telephonic communication. Without the means of meeting crime effected through such communication, law enforcement officers are handicapped to a point where their proper pursuit of the protection of society is virtually impossible to carry out. At the same time we recognize the importance to society of protecting the individual in his rights to privacy in the use of his telephone. A proper balancing of the two considerations is essential.

Without considering the merits of the individual bills such as S.634 and S.675 introduced in January 1967 and referred

Two: make appropriate exception to permit the attorney general of any State or the principal prosecuting attorney for any political subdivision, if authorized by statute of that State, to make application on a showing of probable cause to a State court judge for leave to intercept wire communications and electronically listen to or record a conversation when such action may provide evidence of the commission of any crime or conspiracy to commit a crime.

Three: provide for suppression of any evidence obtained by wire interception or electronic eavesdropping except that obtained by authorization of the Federal or State judiciary and to authorize the use of the latter in any court or grand jury proceeding.

Four: provide for method of prompt reporting to the Administrative Office of the United States Courts and to the Attorney General of the United States by any State or Federal judge who has granted or denied leave to intercept or record with the purpose of informing the Congress of the volume of interception and recording which occurs during the period of a year.

/S/ Myles J. Lane

Myles J. Lane (1952)
19 East 70th Street
New York, New York

/S/ J. Edward Lumbard

J. Edward Lumbard (1953-1954)
United States Court House
Foley Square
New York, New York

/S/ Paul W. Williams

Paul W. Williams (1955-1957)
Cahill, Gordon, Sonnett, Reindel
& Ohl
80 Pine Street
New York 5, New York

/S/ S. Hazard Gillespie

S. Hazard Gillespie (1959-1960)
1 Chase Manhattan Plaza
New York 5, New York

Also, there seems no reason to believe that capital construction funds would be more readily available to a Department of Criminal Justice than have been made available to the Department of Institutions and Agencies.

The basic question, however, is whether the rehabilitative programs would be more successfully provided if the Division of Correction and Parole were taken out of the Department of Institutions and Agencies and placed in a Department of Criminal Justice. Thoughtful evaluation of the factors involved convinces us that this would not be the case.

The Department of Institutions and Agencies, as you know, was created as the result of careful study by two important New Jersey commissions more than a half-century ago headed by the late Dwight W. Morrow and Ellis P. Earle. Their recommendations and the resulting legislation established the principle that the Department's programs for the sick, the handicapped, the disadvantaged and the delinquent should involve citizen participation, nonpolitical administration and expert professional involvement. By and large, the system has worked well. In 1958 our Board requested, and Governor Meyner appointed, a commission to study the Department's legal and organizational framework to see what changes might be needed in view of the passage of time. This commission had as its chairman Archibald S. Alexander; the other members were Messrs. Raymond A. Brown, Barklie McKee Henry, William H. Jackson, General Edward S. Greenbaum and Miss Jane A. Stretch. This commission of distinguished citizens suggested certain changes in the administrative structure of the Department, most of which have been implemented. Support for the integrated Department as presently constituted and for a web of services reaching from the Department into the community was reaffirmed without equivocation or qualification.

The main advantages to an integrated Department include:

First, maximum citizen involvement in every aspect of the Department's functioning with free and constant association between those citizens involved in mental health, mental retardation, welfare and correction. Certainly the problems in correction have their root causes in many, many cases in poverty, mental retardation or mental illness, either directly involving the offender or the offender's family and social organization. To lose this broad approach, recognizing the interrelated basis of social disorder, and citizen involvement would be a grave mistake.

Second, the transfer of correctional programs and facilities to a Department of Criminal Justice would mean the loss of the professional approach to rehabilitation which has characterized New Jersey's programs.

improved or actually impaired by the proposed transfer. Active prison industry has been criticized by both manufacturers and organized labor when it becomes a significant competitor in any field; consequently, the prison industries never can become truly efficient, nor can they easily expand into new production activities. In addition, 75% of the total volume of "state use" sales, which amounted last year to $2,329,000, was used within the Department itself, in the main because other facilities in this Department are attuned to the need for constructive work for prisoners. There is serious doubt that if correction were placed in another department these sales and inferentially such work for prisoners would continue on any such scale.

In an effort, however, to find more meaningful and productive work for the people in our institutions, this Department has involved them to a most extraordinary degree in work at charitable institutions. Over 760 minimum-security inmates now actually reside on the grounds or are regularly transported to work in mental hospitals, institutions for the retarded, soldiers homes, etc. An additional 420 are employed within prison walls in laundries and in bake shops or on prison farms, supplying the charitable institutions, or are assigned to charitable institutions on a daily basis for maintenance, etc. Attached are two charts more specifically itemizing these figures. Experience in other states suggests that such integration would not occur were the Division of Correction transferred out of this Department.

Thus, meaningful, productive work for offenders is provided, the State is saved many hundreds of thousands of dollars, and the patients in charitable institutions are better cared for through the release of employees for direct care and therapeutic service to patients.

Finally, an integrated Department such as ours makes possible easy transfer of individuals between institutions for specific necessary services. For example, boys sent to Jamesburg and found to be retarded are transferred to institutions more suitably designed to care for them; those in the correction system needing psychiatric care are quickly transferred to the Trenton State Hospital; the Diagnostic Center, serving the courts and dealing primarily with offenders, finds a comfortable relationship with both the Division of Correction and the Division of Mental Health.

The Department enthusiastically welcomes the Commission's recommendations regarding the passage of laws to integrate and strengthen probation systems, to make "work release" possible, to revise the limit on "gate money," and to reduce the impediments to the re-employment of offenders. We have sought most of these changes for a long time. None of these, however, is contingent upon the removal of the Division of Correction from this Department. Their absence is basically a function of New

INMATES PRODUCING FOOD AND SERVICES AT CORRECTIONAL INSTITUTIONS
FOR CHARITABLE INSTITUTIONS

Correctional Unit Providing Goods and Services	Charitable Unit Receiving Goods and Services	Number of Inmates
RAHWAY PRISON Regional Laundry	Greystone State Hospital Woodbridge State School North Jersey Training School Marlboro State Hospital Menlo Park Soldiers Home New Jersey Diagnostic Center Arthur Brisbane Child Treatment Center Vineland State School	
	Sub-total	164
BORDENTOWN REFORMATORY Laundry	Vineland State School Neuropsychiatric Institute Johnstone Training Center	
	Sub-total	145
RAHWAY PRISON BAKERY	Woodbridge State School New Jersey Diagnostic Center Menlo Park Soldiers Home	
	Sub-total	4
LEESBURG FARM	Charitable Institutions as needed	
	Sub-total	45
BORDENTOWN REFORMATORY Farm	Charitable Institutions as needed	
	Sub-total	12
ANNANDALE REFORMATORY Farm	Charitable Institutions as needed	
	Sub-total	50
	TOTAL	420

Submitted by Dr. Dewitt Hendee Smith

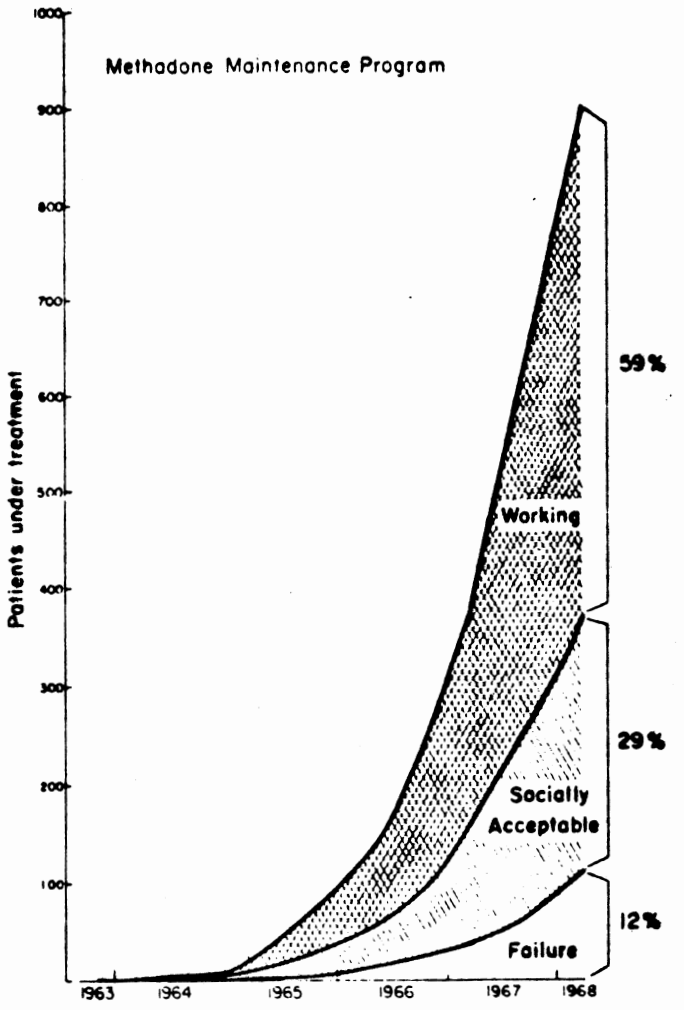

Figure 1

Growth of the Methadone Maintenance Treatment Program. In addition to the patients in treatment, approximately 1000 addicts now on the streets or in jail are awaiting admission to the program.

Submitted by Dr. Dewitt Jones Smith

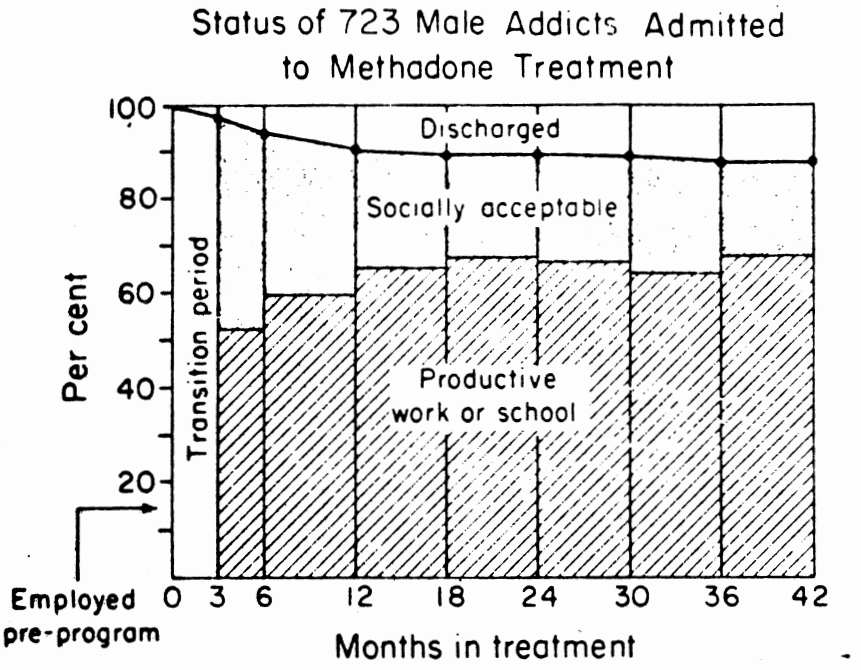

Figure 3

Rehabilitation, as measured by productive employment and crime-free status, over a period of four years.

HEROIN ADDICTION AND METHADONE MAINTENANCE*

Why has the daily imbibing of two cents (2¢) worth of methadone in a glass of orange juice by former heroin addicts aroused the ire of so many persons—laymen and professionals—connected with the care, cure and rehabilitation of addicts? In some quarters the medication of methadone is looked upon as heretical, and opposition to it has taken on the proportions of a virtual religious war.

"Just substituting one addiction for another,"—"The basic emotional problems of the addict remain unresolved."—"The addict is a hedonist, a pleasure seeker after basic gratification and euphoria."—"Whatever drew the addict to drugs is still the main motivating force within his life."—"The addict will be a slave to methadone for the rest of his life."—"Methadone masks other illnesses."—"I am an ex-addict. I've abstained from heroin without methadone. So can any heroin addict. The reason why they need the crutch of methadone is that they lack moral fiber"; or, in a more scientific manner, "The Addict is the victim of a character disorder, a condition which he has refused to face and which he will not have to face now that he has methadone." These are some of the arguments which are dogmatically proclaimed with the clarion call and finality of an exhorting prophet. However, the truth of the matter is that these arguments reveal a profound misunderstanding of the many ramifications of heroin addiction and the use of methadone as a medication. Yet, this medication has had a unique success in stopping the heroin addictions of hard-core addicts when other programs have failed.

The methadone maintenance program was initiated in 1964 by Dr. Vincent P. Dole and Dr. Marie E. Nyswander, research physicians, at Rockefeller University after years of individual and collective research. Subsequently, facilities of Morris J. Bernstein Institute of Beth Israel Medical Center, Harlem Hospital, and Van Etten Hospital were utilized for an expanded test program. Today, there are approximately 750 addicts living in the community who are successfully stabilized on methadone. The number is increasing as a result of daily admissions taken from a list of voluntary applicants, many of whom have waited approximately $1\frac{1}{2}$ to 2 years for admission to this particular program. The admission rate is seven patients per week while the application rate for entrance into the program is 35 per week—a rate which is increasing as the program becomes known throughout the community. At present, the backlog is caused by the small number of beds (60) allocated to this program for initial stabilization. However, it must be noted that the problem of heroin addiction is so widespread that there would be a backlog of hospital facilities even if a substantial number of beds were available. New administrative procedures would have to be developed if the program is to reach the large number of addicts desiring and requiring this type of help. Six hundred addicts are on a 2-year waiting list with an additional 500 applicants in and out of jails waiting to get on the waiting list.

Before the emergence of methadone and other programs (i.e., Synanon, Daytop) the heroin addict became the total reject—to a degree the twentieth century leper—in American society. What we observe from the viewpoint of the non-addicted is a group which has severe impositions placed upon it by laws and mores thereby creating in the addict group a shell of criminal behavior. The addict is reacting to a severe drug hunger the resolution of which is unappeased within current legal structures. Once the heroin craving is destroyed or brought under control, most addicts stop being criminals. What has been studied to date about addicts and the addict personality is a distortion since the studies and

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*This essay deals with the problem of heroin addiction. The essay does not apply to the problems of barbiturate addiction, LSD, marijuana or other hallucinogens.

segments of the community. The drug-free hustler and pusher have assumed a nefarious but tempting status with certain adolescents as a person who has cracked "the system" and is "making it" with easy money, clothes and cars. Unfortunately, illegal activity may be the only avenue open for poverty stricken youths to gain financial affluence. In this process many youngsters fall prey to heroin addiction The very fact that crime syndicates are allowed to exist distributing drugs throughout the country is sufficient to indict the more responsible institutions for indifference and non-action or complicity. Once the process of addiction has started, the addict works seven days per week supporting a vast illegal economic apparatus both national and international involved in the growth of poppies plus the manufacture and distribution of heroin.

There is a school of thought that claims that the prime interest of the addict in heroin is the euphoria or "high" which the drug is capable of producing. This state of euphoria can best be described as a feeling of unusual contentment, a feeling of being insulated from anxieties, tensions and aggressions—essentially a trance-like condition of total insularity from one's circumstances and surroundings. Considering the cost of drug addiction in terms of lost status, criminal behavior, constant arrests, unemployment, incarcerations and hospitalizations, euphoria may well be a means of escaping the reality of the social pressures involved in drug addiction.

However, does euphoria constitute the aim, the goal of an addict's existence? In the initial stages of addiction, the adolescent who is experimenting with heroin may be subjected to discomforting side effects such as nausea and malaise rather than pleasure. A few may find their initial contacts with heroin to be pleasurable. In either case, if the use of heroin is continued, a craving will be generated and a state of euphoria will develop without the unpleasant side effects. However, as addiction develops, the user finds that he needs an ever-increasing amount of heroin to achieve euphoria. The increased use of heroin in order to satisfy cravings and to produce euphoria indicates that a tolerance to the narcotic effects of heroin is produced within the addict. Subsequently, a point is reached when the addict finds that despite the use of a large amount of heroin, it is extremely difficult to achieve euphoria although he is subjected to cravings. However, if he desists from further use, he will become physically ill with pain, general malaise, nausea and a craving for heroin. This set of symptoms is known as a withdrawal or abstinence syndrome. In hospitals, the addict is given medication, usually methadone, which alleviates the discomforts of the withdrawal from heroin. This process is called detoxification. However, after the withdrawal or detoxification, the addict is again subject to cravings for heroin and the addiction is repeated with a more immediate appearance of euphoria since the addict by this time is conditioned against the initial discomforting effects of heroin. It is possible during the course of an addiction, that the addict could die from an excessive amount of heroin taken in a single shot. This death from an "overdose" of narcotics is a common phenomenon in the lives of street addicts. It has been estimated that a substantial number of known addicts (perhaps 25 to 30%) die in this manner. Because of the unsanitary conditions such as dirty needles in the administration of heroin, several diseases can be transmitted to the drug addict including hepatitis which can be fatal.

For years many persons (i.e., legislators, doctors, ministers, and the addicts themselves) thought that the addict could be helped through psychiatric treatment, extensive hospitalization with ancillary services, probation, parole, residence in specialized facilities such as Daytop or Synanon, vocational training, religious and/or moral indoctrination. None of these methods has managed to produce a large number of verifiable cures. However, these abstention methods have helped a small percentage of the addict population and

However, when we discuss methadone as used by Drs. Dole and Nyswander, we are discussing it as administered under controlled conditions of frequency, method of administration and the quantity of the medication prescribed. This is a critical point which is missed by opponents of the program. Drs. Dole and Nyswander administer methadone so that certain pharmacological properties are exploited. The result is that the heroin addict loses his craving for heroin and if he should inject heroin or morphine into his system, narcotic effects such as euphoria and withdrawal symptoms are blocked by the methadone. The methadone acts as a replacement mechanism similar to the function of insulin in diabetes. Diabetes is a disease which involves a metabolic deficiency. The exact causes and method for "cure" are not known. However, a patient regulated on insulin is able to function normally. If the diabetic is not regulated correctly, he feels uncomfortable; if he does not receive his insulin, the results can be fatal. If the heroin addict is not regulated or stabilized correctly on methadone, he will be subjected to cravings for heroin or tranquilization and/or euphoria from methadone. Furthermore, if the addict should abuse opiates during the stabilization process, the property of methadone which blockades the effects of heroin and destroys the craving can be vitiated. If the correctly stabilized patient does not receive his methadone, he will return to heroin usage. Just as the diabetic is physically dependent on insulin, so the heroin addict is physically dependent on methadone; he is dependent on it for normal functioning. He does not develop a craving for it nor does he experience euphoria or tranquilizing effects; under these conditions methadone is not addicting.

How is this method of treatment accomplished? As indicated above certain drugs take on different properties depending on frequency and type of administration and the amount prescribed. Methadone is a prime example of this phenomenon. It is possible to administer methadone orally in such small dosages to patients that euphoria, tranquilizing and addicting effects of the drug are avoided. It is this basic premise that is used in stabilizing addicts. At the beginning of the process, the patient is given a small dosage twice per day. This small dosage is increased in stages over a period of approximately one month and at each stage the body adjusts to the medication so that euphoria, tranquilizing effects and addiction from methadone are eliminated. When the stabilization point is reached, the dosages are administered in decreasing time intervals until one single dose with the same effectiveness is achieved. It is a simple but subtle medical process demanding care and observation on the part of the physician. Each addict must be regulated individually. Furthermore, there is no correlation between psychiatric diagnosis and the amount of methadone needed for stabilization. The only correlation is the relation between metabolic damage and the amount of methadone needed for a correct stabilization. Methadone, when used in this manner, is a long lasting medication for at least a 24-hour period. Once the level of stabilization is achieved, it remains constant so that the patient can receive the same amount of medication over a period of several years. If the patient wishes to terminate treatment, he can be withdrawn from methadone—a simple but careful process that takes less than one week. It is a painless process without malaise or other symptoms. Hospital tests have shown that when a stabilized patient is withdrawn from methadone, the craving for heroin returns; again there is no craving for methadone as a result of this treatment. This is an important point which is not understood by some critics of the program.

Laboratory tests have confirmed that maintenance dosages of methadone block the narcotic effects of dilaudid, morphine and other opiates. It was also discovered that methadone blockage is effective against the narcotic effects of methadone itself so it is not possible for the patient to achieve euphoria through the abuse of methadone and dolophine

The average patient has a 12.5-year addiction history and is 32.3 years old. The approximate racial and ethnic breakdown for the first 500 patients is as follows: 41.6% Caucasion, 38.6% Black, 18.2% Puerto Rican (white and black), 1.6% other Spanish-speaking or oriental groups.

What has happened to the patients in the program? As of April, 1968, 750 patients (male 653, female 97) have been stabilized. Sixty-five percent of the patients in the program longer than four months are working, in school or both. This percentage also includes the women who are successful homemakers. If patients are broken down into groups according to their length of time in the program, then the groups that are in the program for longer periods have a higher percentage of productive patients. For instance, those patients remaining in the program for two years have a higher rate of steady employment or school attendance than those in the program for one year. The I.Q.'s of the first 155 patients roughly follows the patterns found within the general population except for the superior range—10% of the patient group as opposed to 6% of the general population. The patients are capable of learning skilled trades, attending colleges and entering the employment market in a variety of fields, including computer programming and related technology. Some were under the erroneous impression that the medication would provide a "legal high" or euphoria. However, when they learned that this was not the case and that their problem was one of destroying a craving for heroin, they remained, accepting and adjusting to the program. At present, the average patient is working, reunited with his family. Some are in school, others are building careers—a way of life which this medication made possible.

The unit at Harlem Hospital (8 beds) had 146 patients known to their outpatient department in February of 1968. These patients were drawn almost exclusively from the streets of Harlem. The percentage of productive patients (employment, school or both) for this group is substantially higher than for the program as a whole. Seventy-five percent of the total patient group in the Harlem unit are working, in school or both. About 14% are unemployed trying to get jobs and the other 11% are having problems adjusting to the program (i.e., borderline cases, emotional problems, etc.). Again, the employment percentage increases the longer a group of patients remains in the program.

The Harlem unit should be an inspiring example. Many of these men had never held jobs, let alone good jobs. The majority are school dropouts with addiction histories going back to their early teens. Three years ago these same men were the fear and shame of the community — "street junkies" in the full sense of the term. However, once in the methadone program, they made up for lost time and many are in good salaried positions, not the usual lowpaying jobs. These feats were accomplished by the men themselves with the help of a few counselors—no deep psychotherapy, no halfway house, no arcane theories, no civil commitment.

Who does not succeed in the program? Since January 1, 1964, 865 patients have been admitted; 115 (about 13%) have been discharged, leaving a balance of 750 patients. All were discharged for reasons unrelated to heroin addiction. Despite the abatement of their drug hunger, they were unable to adjust to the administrative limitations of the program. Some would not comply with simple regulations, others were serious behavior problems. Notwithstanding careful screening, some were mentally ill, a few became involved with alcohol, amphetamines and barbiturates, refusing or unable to accept further help. A small percentage were convicted and incarcerated while a few left the program voluntarily. To change one's way of life within a short period of time is not easy. Despite the rigors of the program, its success is shown by the fact that about 87% of the hard core addicts admitted over a four-year period have voluntarily remained in the program.

removed the craving still persists. The methadone program has demonstrated this in case after case. When necessary, the methadone patient enters individual or group psychotherapy or counseling after the craving is destroyed. It is in dealing with the problem of euphoria that psychological and metabolic theories of addiction diverge. The psychological and abstinent theories claim that euphoria is central to addiction and that the main reason for continuing addiction by an addict is to achieve euphoria in order to obfuscate inadequacies and emotional problems. If this were true then the methadone program would fail. Methadone maintenance does not produce euphoria. If the psychological or abstinent theories are valid, then the anticipated deep-seated problems should emerge when euphoria is removed.

This does not happen. The typical patient stops his criminal activity, irresponsibility and heroin-seeking behavior. He no longer lies, but attempts to analyze his situation realistically in order to plan constructively for his future. Employment, school and reunion with families are immediate goals. In view of the challenge to the psychological or abstinent theories, Drs. Dole and Nyswander have indicated that the central reason for heroin addiction is an altered response to narcotics which is caused by a metabolic change. The euphoria or "high" is a side effect of addiction. The result of heroin addiction is primarily social deterioration since psychologically ill patients would be unable to achieve the type of adjustments that are being made without therapy by the majority of the patients in the program. What most of the patients on methadone need is social rehabilitation--jobs, education and new friends.

An argument usually put forth is the "the addict will be a slave to methadone for the rest of his life." The patient is no more a slave to methadone than millions of Americans who drink their orange juice every morning. Methadone is administered in a glass of orange juice which is more expensive than the methadone. Furthermore, considering what the heroin addict went through with arrests, the police, hospitals and jails, he is as free as a bird for the entire day except for the 30 seconds that it takes to drink a glass of juice. This argument is usually advanced by advocates of the abstention-group therapy-halfway-house approach. What must be remembered is that not everyone is suited for the group therapy-halfway-house confrontations in abstention programs. Some people are more solitary types and in all honesty, many of the greatest contributions to humanity were made by the solitary personalities of our society. So if an addict does not want to join the halfway house group, there is nothing wrong or morally inferior with his choice. Furthermore, one does not know whether methadone will be necessary for the rest of the patient's life. This question can only be answered through further research. Some may have to drink methadone in their juice each morning until the age of 90. This is a better fate than dying of an overdose of heroin at the age of 20 or 30.

Some persons, including professionals, have claimed that methadone masks other illnesses. If these people are talking about methadone maintenance, then their claim is medically wrong. They have not read the literature analytically. On the contrary, methadone patients have responded well to medical treatment, reporting all symptoms and responding to prescribed medications.

Unfortunately, many addicts who are in a state of abstinence or in halfway houses have criticized their brothers in the methadone program. Their argument runs as follows: "I'm an ex-addict. I've abstained from heroin without methadone--so can any junkie. The reason they need the crutch of methadone is that they lack moral fiber." The problem here is that many patients on methadone have been in halfway houses, through psychotherapy, and have experienced periods of abstention. An illustration is the case of the man who

Perhaps as programs are developed, existing criteria such as age factors (21 to 40) can be modified so that persons who are addicted can secure methadone if desired as prescribed by examining physicians. Successfully stabilized patients can be used to help those who are having a difficult time adjusting within the community. There is room for new administrative ideas in order to maximize the full potential of the program, possibly coordinating projects with the jails, probation, parole and the courts. In the future, perhaps, consideration can be given to the development of hybrid programs bringing together various areas of research (i.e., mixed addictions).

Another factor in planning is the economic and social cost to the community. This should not be overlooked. Compare the long-term costs to the community in terms of crime, arrests, jails and hospitalizations as against stabilization on two cents' worth of methadone per day resulting in an employed, functioning, law-abiding citizen.

Concerning programs and success in programs, Drs. Dole and Nyswander have written:

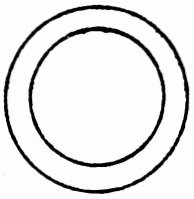
> "Those of us who are primarily concerned with the social productivity of our patients define success in terms of behavior—the ability of the patients to live as normal citizens in the community—whereas, other groups seek total abstinence even if it means confinement of the subjects to an institution. This confusion of goals has barred effective comparison of treatment results.
>
> "Actually the questions to be answered are straightforward and of great practical importance. Do the abstinent patients in the psychological programs have a residual metabolic defect that requires continued group pressure and institutionalization to enforce the abstinence? Conversely, do the methadone patients who are blocked with methadone exhibit any residual psychopathology? No evidence is available to answer the first question. As to the latter point we can state that the evidence so far is negative. The attitudes, moods, intellectual and social performance of patients are under continuous observation by a team of psychiatrists, internists, nurses, counselors, social workers, and psychologists. No consistent psychopathology has been noted by these observers or by the social agencies to which we have referred patients for vocational placement. The good records of employment and school work further document the patient's capacity to win acceptance as normal citizens in the community.
>
> "The social deterioration of addicts may be profound—they may have lost family, property and social status—but it must not be too quickly assumed that these are weak individuals who would fail in society if relieved of the compulsion to obtain drugs. The faults cannot be judged while addicts are trapped in the orbit of drug abuse." [1]

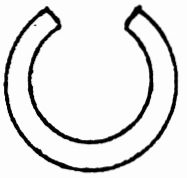
At present there are several areas open for continued research. In order to clarify the initial stages of addiction and implement prevention programs further studies are needed of youngsters in neighborhoods where drugs are readily available. The question about the fate of the aging addict must be answered. If possible, the precise forces involved in abstention and relapse should be clearly identified; however, this area might further metabolic studies before a definitive answer is found.

The methadone program removes from the drug subculture the steadiest customers of the crime syndicates. With proper administration, this program could reduce crime in

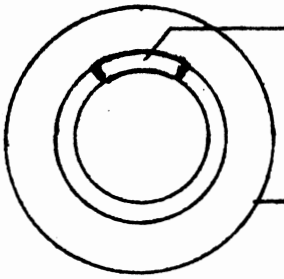
Addendum

SCHEMATIC REPRESENTATION OF METABOLIC THEORY:

A.  Closed ring represents normal metabolism

B.  Open ring represents metabolic deficiency caused by heroin addiction. The result is a hunger or craving for heroin.

Methadone Maintenance

C. 

RESULT:

There is no craving or hunger for heroin nor is there euphoria. Methadone maintenance generates a blockage against the narcotic effects of heroin, morphine, dilaudid and methadone. Also, the metabolic deficiency is replaced.

If methadone maintenance is removed from C, then condition B returns with heroin addiction. There is no craving for, or addiction to, methadone as a result of this treatment. Symptomatic of an alteration or deficiency in an addict's metabolism is the immediate appearance of euphoria in response to a shot of morphine or heroin after a period of abstention or detoxification.

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2. Dole, Vincent P., M.D., Nyswander, Marie E., M.D. and Kreek, M.J., M.D. "Narcotic Blockade," Archives of Internal Medicine, V.118:304-309, 1966.

3. Additional information received from Drs. Dole and Nyswander, and patient interviews.

4. Statistical material reviewed from A. Warner, Ph.D., Statistician for methadone program.

PROGRESS REPORT OF

EVALUATION OF METHADONE MAINTENANCE TREATMENT PROGRAM

THROUGH MARCH 31, 1968

Background

The Methadone Maintenance Program under the direction of Dr. Vincent Dole and Dr. Marie Nyswander has now been in operation for approximately four years. It was initiated by a grant from the New York City Health Research Council, has been continued and expanded by a contract from New York City Department of Hospitals through the Inter-departmental Health Council to Beth Israel Medical Center and as of October 1, 1967 the program has been funded through the State of New York Narcotic Addiction Control Commission. This program is an outgrowth of work at Rockefeller University which indicated that Methadone Maintenance offered hope as a treatment modality in the rehabilitation of "hard core" heroin addicts.

The charge to the Evaluation Unit at the Columbia University School of Public Health and Administrative Medicine has been to attempt to evaluate the results of this program in an objective manner and to make recommendations based on this evaluation.

Description of Patients

The patients in the Methadone Maintenance Program have all been well established heroin addicts, for an average of ten years prior to admission to the program. They are between 20 and 50 years of age with an average age of 33 years as compared with an average age of 28 years for addicts reported to the New York City Narcotics Register. Sixty-eight per cent of the patients in the program are over the age of 30 contrasted with 34 per cent of addicts reported to the Narcotics Register. This is illustrated in Figure 1. The ethnic distribution of patients in the program compared with addicts known to the Narcotics Register is shown in Figure 2. The proportion of white patients is considerably higher in the program (48% vs 25%) and the proportion of

Results

As of March 31, 1968 a total of 871 patients had been admitted to the program. One hundred nineteen or 14 per cent have left the program. Of these, 87 or 10 per cent have been discharged, 3 per cent have dropped out and 1 per cent have died. Table 1 shows the census for each of the groups which are currently being followed. Experience with the Van Etten Tuberculosis group, the Rockefeller University Ambulatory treatment group, and the group from Riker's Island, is limited both in numbers and in length of follow-up, therefore, this report will focus on the results obtained in the two largest groups with the longest experience who are being treated under the program contract with Beth Israel Medical Center. This group includes 375 men from Morris J. Bernstein Institute and 169 men from Harlem Hospital who have been in the program three months or longer.

Among these 544 men only 28 per cent were known to be gainfully employed at time of admission and 40 per cent were known to be receiving welfare support. The progress of these patients is shown in Figure 3. After five months in the program 45 per cent are employed, after 11 months 61 per cent are either employed or in school and among those remaining 24 months or longer, 85 per cent are employed or in school. The proportion of patients receiving welfare support shows a progressive reduction from 50 per cent at five months to 22 per cent after one year and 15 per cent after two years. The experience with the 79 women who have been in the program for three months or longer shows a similar pattern.

None of the patients who have continued under care have become re-addicted to heroin, although 11 per cent demonstrate repeated use of amphetamines or barbiturates, and about 5 per cent have chronic problems with alcohol.

Another measure of rehabilitation is a decrease in the number of arrests. Figure 4 shows the proportion of men in the Methadone Program who have been arrested in each period of observation contrasted with the proportion of arrests in a contrast group selected from patients admitted

2) Expansion of the program to other units which can provide all elements of the current program

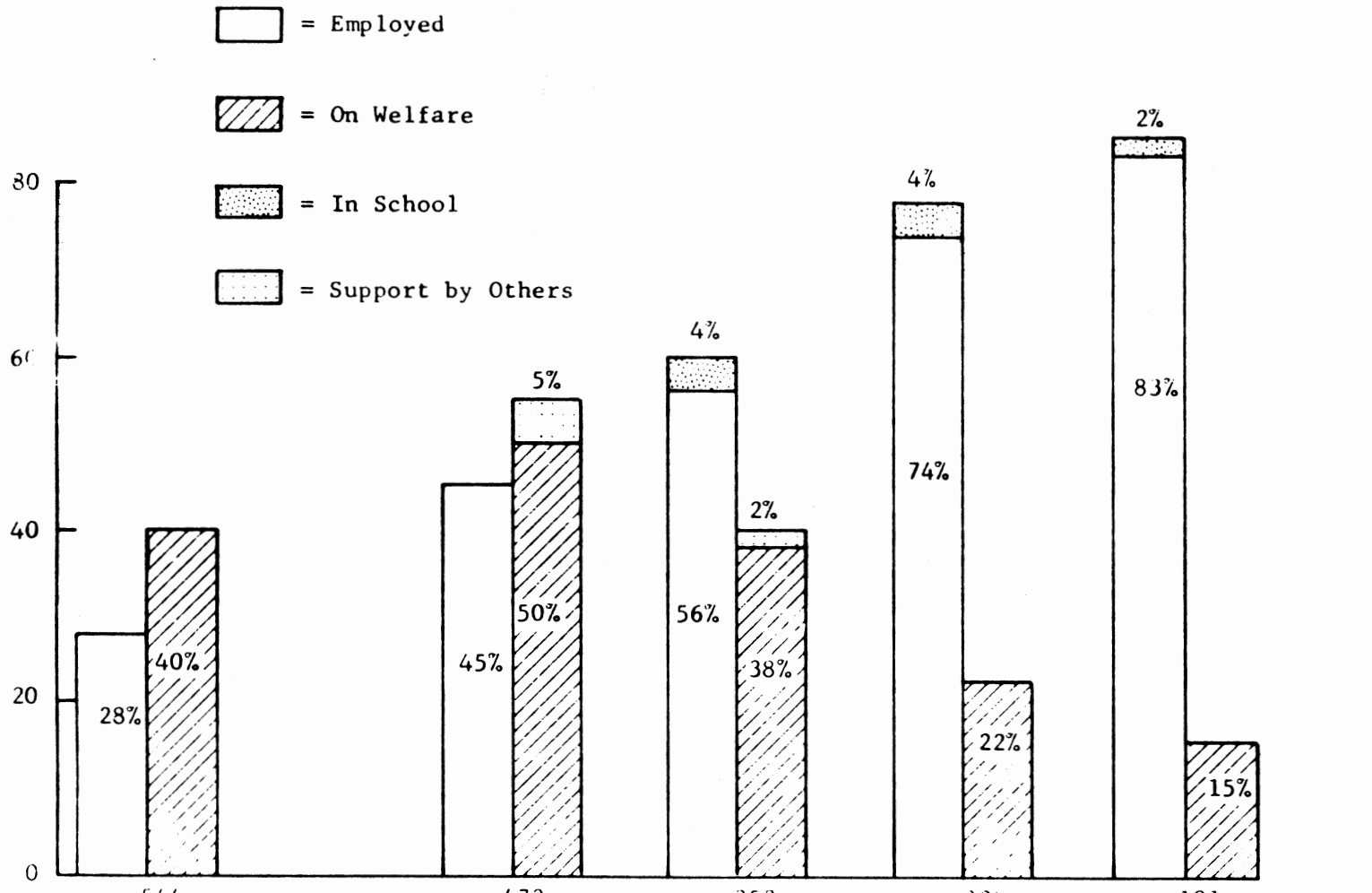
3) Extension of the program (a) to other groups, using different criteria for admission such as younger patients, or a prison population, in order to determine the applicability of this treatment program to a broader segment of the addict population and (b) variations in technique, including induction on an ambulatory basis.

4) Further research on the impact of each major component of the program.

5) Continued follow-up and evaluation of all patients currently in the program and any new programs to be developed in order to assess the long term effects and results.

Employment Status and School Attendance for 544 Men in Methadone Maintenance Program Three Months or Longer as of March 31, 1968 According to Months of Observation

Figure 3



6/7/68

committed to the California program are made up largely of individuals who would have been imprisoned rather than free and may, on the balance represent an amelioration (though not an elimination) of a punitive approach to the control of drug dependency. On October 16, 1967, 194 people, 10 percent of the confined population of the California Rehabilitation Center, were involuntarily committed but without preceding criminal commitments, while 4 percent were voluntarily commitments. Physicians caring for addicts in the community have generally been unwilling to initiate commitment to this program and even the non-criminal commitments are usually initiated by the police. This then has become primarily an alternative to prison or jail for most of the inmates. Instead of incarceration in prison or jail the addict is placed in another institution where some of the stigmata of imprisonment are eliminated and where a genuine and earnest effort is made to treat him, or at least to convince him to remain abstinent.

The objectives of the California program are not limited to inducing persistent abstinence but include bringing about personality changes since it is hypothesized that drug use is merely a symptom of aberrant personality patterns and inadequate socialization and that it is useless to hope to change the symptom without effecting changes in patterns of thinking and reacting. Even if abstinence is not sustained following release, staff and clients both express pleasure when evidence is presented that the addict, despite his return to drug use, has "fallen again, but at a higher level".

Because the concept of "treatment" has been introduced and a real effort is being made to help the committed person, this program is a step forward. Since it may be seen as a step forward, it might have the paradoxical effect of blocking, for a time anyway, other efforts. Because it might satisfy constitutional requisites for "treatment" for drug dependent individuals and may also satisfy judges, legislators and public opinion that a sufficient program is being offered to cope with this problem, the pressure may be diminished to try other methods of treating the drug dependent.

For people released to OPS during the first nine months of 1967 the median lengths of stay were:

1st admission - 12 months
2nd admission - 8 months
3rd admission - 8 months
4th admission - 9 months

This represents a decrease in the average length of stay from previous years. The decrease was introduced by design. The ultimate effect of this speedier turnover cannot yet be evaluated. But the immediate effect has been to increase the return rate.

While on OPS the outpatient is expected to abstain from the use of all narcotics and dangerous drugs except if prescribed by a physician. Moderate use of alcohol is usually permitted though it may be forbidden in individual instances.

OPS may be suspended for violation of any one of 13 "Conditions of Outpatient Status". Drug use is the most common violation leading to return to the institution but not the only one. Arrests for alleged criminal acts and absconding from supervision result in return as may increasingly poor "adjustment" exemplified by changing jobs or residence without permission, failing to attend group counseling, failing to send in monthly reports, abusing alcohol, driving without a license or insurance, associating with known addicts or delinquents, leaving the county of residence without permission, or failing to maintain regular or acceptable employment. Suspension of OPS, however, is not casually initiated. With the relatively small caseloads (about 30) carried by the supervising agents, considerable familiarity with each outpatient is the rule and the suggestion to suspend must be documented and given final approval by an autonomous parole board, the Narcotic Addict Evaluation Authority (NAEA). It is this board which determines placement and removal from OPS.

Drug use, the most frequent reason for suspension of outpatient status (see Table 4), may be discovered or determined by test, by the outpatient's own statement, by needle marks or other physical evidence. Positive test results are considered sufficient reason to suspend OPS

ethnic background, county of residence, treatment unit, living arrangements, occupation and income. Such information as reason for suspension, arrests, convictions and detection of drug use while on outpatient status are also tabulated.

IV. Results

A. One Year Following Release to Outpatient Status

The 1209 people placed on OPS from June 1962 through June 1964 included men and women, people of different ethnic derivations, of varying intelligence, skills, criminal history and family resources. They were followed in different parts of the state by scores of supervising agents. Differences in outcome appear to be related to many of these variables. We deal here with overall outcome only.

TABLE 1

Status One Year Following First Release

	N	%	N	%
In good standing on OPS	424	35		
Returned to C.R.C.	594	49		
Not in good standing, but not returned to C.R.C.	178	15		
In custody			59	5
At large			63	5
Suspended, but released on Writ of Habeas Corpus			46	4
Deceased, Addiction related			10	1
Removed from program while in good standing	13	1		
By Writ of Habeas Corpus			10	1
Deceased, Not addiction related			3	0
Total	1209	100		

Among the groups "in custody" and "at large" are a few individuals who will have been cleared of charges or will have adequate explanations for a failure to be located by the supervising agent.

entitles him to termination of his commitment and consideration for dismissal of any criminal charges pending.

TABLE 2

Status One and Three Years Following First Release

	One Year		Three Years	
	N	%	N	%
In good standing	148	33	74	16
Not in good standing	299	66	366	81
Removed from program while in good standing	7	2	14	3
Total	454	101*	454	100

*Rounding error

C. One Year Following Second Release:

Having been suspended and returned for a further inpatient stay, the individual will subsequently be re-released. Evaluation of success upon re-release can be made only after a period of original unsuccessful outpatient status, plus a period of reinstitutionalization, plus one year following re-release. Twenty-six percent of the second release group remained in good standing for one year. In table 3 the results of their original release are included for comparison.

TABLE 3

Status One Year Following First and Second Release

	One year following:			
	1st Release		2nd Release	
	N	%	N	%
In good standing	5	3	46	26
Not in good standing	170	97	128	73
Total	175	100	174*	99

*One person removed from program while in good standing

large" (RAL). They tended to be apprehended promptly: The median time at large was 9 weeks; only 15 were not apprehended on their first anniversary date and only 3 of these remained at large at the end of three years.

Return to inpatient status is often precipitated by violation of several of the conditions of release only one of which may be use of opiates and another may be use of marijuana or dangerous drugs. Table 5 shows that 56 percent of the outpatients were detected using drugs during the first year of OPS, 6 percent having been detected using non-opiates. Among the 44 percent not detected in illegal drug use are some who may have used alcohol to excess. Of the patients detected using drugs, most had been returned to the Center, but many were in custody elsewhere or at large on the anniversary date.

TABLE 5

Detection of Drug Use During First Year on OPS

	Entire Group		Returned to Center	
	N	%	N	%
Opiate use	594	50	440	74
Marijuana or dangerous drug only	74	6	61	10
No illegal use detected*	528	44	93	16
Total	1196	100	594	100

*The category "no illegal use detected" includes some subjects returned for excessive use of alcohol.

Determination of drug use is uncertain even with intermittent testing. Informal reports from returnees suggest that some outpatients have used opiates as well as other drugs occasionally without being discovered, but it is unlikely that prolonged daily use of opiates would remain undetected for long. When it does occur it is usually among those who have absconded from parole.

3. Self-perception: For the first time in their lives, many are given the opportunity to examine their own motivations and behavior through a community group technique which aims at altering their long term patterns of functioning which are believed to underlie the symptom of addiction.

4. Therapeutic effort genuine: Whether it is viewed as successful or not, the effort to provide therapy is genuine and not a subterfuge.

5. The correctional setting: In 1962 Richard A. McGee, then Administrator, California Youth and Adult Corrections Agency, said in regard to this program "...putting a particular departmental label on the administration of a program does not by itself make a program either therapeutic or punitive".[8] The effect has been, however, to create a program which is interpreted by the addicts and by many professional visitors as more punitive than therapeutic. In contrast, it will be interesting to follow the progress of the New York state commitment program, which is under an independent authority and which is operating with a majority of staff drawn from the area of mental health, with a minority from corrections.[16]

6. Negative reaction: The compulsion, which is the heart of the commitment program, as well as the correctional tone which pervades the program, serves to induce resistance in many of the addicts to the goals of the program. Addicts who volunteered for commitment (4 percent) frequently voice resentment and indicate that they thought they were coming to a hospital, not a prison.

7. Length of stay: Since the median length of stay for the first admission is about one year and since a majority of the addicts will return for additional though usually shorter periods, the time an addict spends incarcerated can be considerable. Those also convicted of a felony (70 percent) will probably spend less time incarcerated than they would have in prison, while the misdemeanants (16 percent) and those without preceding criminal convictions (14 percent) will probably spend more. Studies are now underway to help determine whether the time spent within the institution can be reduced without seriously jeopardizing the value of the program to those for whom it is useful.

VI. Discussion

From his finding that at least nine months in prison followed by close parole supervision yielded a year's abstinence in 20 of 30 prisoners released from Lexington, Vaillant predicted great success for the compulsory supervision approach, advising relatively prolonged reincarceration for violations.[14] We have found that 56 percent of the outpatients are detected using drugs during the first year following first release, while additional outpatients "fail" for reasons other than drug use so

California felon-addict programs the parolees are older on the average and the criteria for suspension are less stringent than in the civil commitment program their one-year success rate is also about 35 percent. We concur with Vaillant that, in general, compulsory parole supervision will have the effect of inducing periods of abstinence in some individuals though in our experience the rate is lower than he suggested. But there is an important additional consideration he did not discuss, specifically the consequences of failure. If a fairly large majority succeed for prolonged periods of time in such a program then it would be a useful approach. When, however, a majority fail within a year, and the average periods of intermittent incarceration are about equal to the time spent on parole, we will probably find our patients spending about half of a lengthy commitment incarcerated. It is obvious that a 35 percent success rate after one year and a 15 percent rate after three years in a commitment program has different consequences than an equivalent numerical result would in a voluntary program.

The ultimate effect has been to produce a system into which a large number of addicts are locked, most of them shifting between approximately equal periods of incarceration and parole. Though a small proportion of the population are removed from the system by "succeeding", the majority will either remain in the system until the termination of their commitment or be extruded from the system following suspension in one of several other ways, as by a Writ of Habeas Corpus, by being excluded as unfit following a new conviction, or by death or disappearance. The value of a program like this should not be viewed solely in terms of the number who succeed but also in terms of what happens to the majority who do not.

We conclude then, that commitment programs for addicts can be considered at this time an interim procedure between a totally punitive and evolving non-punitive approaches to the issues of drug dependence, though perhaps they will persist as an alternative for those who are not helped by other programs. Implicit in this view is the expectation that alternative approaches will be explored and encouraged. As new understanding of this problem develops, the public and its representatives hopefully

SEPTEMBER 18, 1968

RE: PUBLIC STATEMENT BEFORE NEW JERSEY SENATE COMMITTEE HEARINGS ON SEPTEMBER 16, 1968, MADE BY WITNESS, HENRY RUTH, UNIVERSITY OF PENNSYLVANIA LAW PROFESSOR.

REBUTTAL TESTIMONY OF CHIEF RAYMOND MASS, PRESIDENT, NEW JERSEY STATE ASSOCIATION OF CHIEFS OF POLICE.

COMMENTARY OFFERED:

GENTLEMEN: IT HAS BEEN BROUGHT TO THE ATTENTION OF EVERY CHIEF OF POLICE IN NEW JERSEY THAT A ONE MR. HENRY RUTH, REPORTEDLY A PROFESSOR AT THE UNIVERSITY OF PENNSYLVANIA, APPEARED BEFORE THIS COMMITTEE ON SEPTEMBER 16, 1968, AND QUOTING FROM VARIOUS NEWSPAPER REPORTS, STATED THAT "ORGANIZED CRIME IN NEW JERSEY CAN GET ANYTHING IT WANTS".. BECAUSE THIS MAN WAS ALLOWED TO MAKE THIS UNSUPPORTED COMMENT, IT IS MY OPINION, AND THAT OF THE MAJORITY OF THE CHIEFS, TO DEMAND, NOT SIMPLY REQUEST, THAT THIS MAN BE COMPELLED BY A STATE GRAND JURY, AND ALSO A FEDERAL GRAND JURY, TO REVEAL ANY EVIDENCE THAT HE MAY HAVE TO POLICE OFFICIALS WITHIN OUR STATE, NAMELY THE ATTORNEY GENERAL. OUR REASON FOR REQUIRING A FEDERAL GRAND JURY ALSO, IS THAT THE ARTICLES ALSO QUOTED THIS MAN WAS ACTING IN AN OFFICIAL CAPACITY AS AN ASSISTANT U. S. ATTORNEY OF THE NEW JERSEY U. S. ATTORNEY'S OFFICE AND WE THEREFORE FEEL THAT HE HAD A PUBLIC OBLIGATION TO FULFILL WHILE HE WAS HOLDING THIS OFFICE. ALSO WE QUESTION WHETHER THIS MAN SHOULD NOT BE CHARGED WITH MALFEASANCE OF OFFICE IN THAT HE WITHHELD CRIMINAL INFORMATION FROM THE PROPER AUTHORITIES. WHILE HE WAS AN ASSISTANT U. S. ATTORNEY HE WAS UNDER OATH TO THAT OFFICE TO REVEAL ANY WRONGDOINGS, NOT ONLY TO HIS SUPERIOR, BUT TO ANY OTHER LAW ENFORCEMENT OFFICIAL WHO MAY HAVE BEEN INVOLVED.

SUBMITTED BY GABRIEL DUKAS

Why Compulsory Closed-Ward Treatment of Narcotic Addicts?

David P. Ausubel

Bureau of Educational Research

University of Illinois

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sale or purchase of drugs, or illegal diversion of legitimate stocks for personal use, drug addiction for all practical purposes is a criminal offense.[3]

The present legal status of drug addiction as a crime in effect (if not according to the letter of the law) is an unfortunate social anachronism. When the first federal hospital for the treatment of drug addiction was established in 1935, the U. S. Public Health Service regretfully went along with the proposal to retain the criminal status of acts associated with the practice, in the mistaken belief that only in this way could compulsory treatment, a drug-free therapeutic environment, and adequate supervision of the released addict be insured. Actually, all three aspects of treatment could be satisfactorily accomplished without making drug addiction a crime, by requiring mandatory hospital commitment of all addicts, including those who voluntarily commit themselves.[4]

Many unfortunate consequences have resulted from this legal anachronism. The federal drug addiction hospital has acquired an unmistakable prison atmosphere, which not only subtly influences the attitudes of physicians and attendants toward patients, but also focuses undue attention on the security and custodial aspects of treatment. Little hope for attitudinal improvement can be anticipated when society adopts a punitive approach towards victims of a behavior disorder and treats them as criminals. The social stigma attached to ex-convicts also impedes the rehabilitation of treated drug addicts when they return to the community, and discourages parents from seeking the help of courts and social agencies for their addicted adolescent children.[5]

To regard drug addiction as a personality disorder rather than as a crime or moral infraction does not mean, however, that society must refrain from making any evaluative judgments regarding the practice, or permit individuals to acquire and continue the practice if they so desire. The mere fact that a drug is used habitually is not necessarily a bad thing. But when the habitual use of certain drugs happens to be detrimental to the well-being of both the individual and society, it must be regarded as a pernicious vice. It has been unequivocally demonstrated that opiate addiction, in the overwhelming majority of cases, interferes with the productivity of work, with the desire for real achievement, and with mature, responsible adjustment to problems of vocational, family, social, and heterosexual adjustment. Historical experience in China, Egypt, and other Eastern countries has also shown that drug addiction is a major

legal access to drugs. The chief burden of their argumentation is accordingly focused on the issue of legalization. 'Give (the addict) pure, clean, cheap and legal drugs," and then try to motivate him to accept treatment and abandon narcotics, is the essence of their proposals for handling drug addiction.[8] A more complete statement of the legalization thesis runs something like this:

> The present system of legal controls constitutes the primary cause of drug addiction by creating the possibility of making fabulous profits in an illicit market. 'Profit', states the Subcommittee on Drug Addiction of the New York Academy of Medicine, is the 'principal factor in drug addiction.' Hence, the most effective way to eradicate drug addiction is to take the profit out of the illicit drug traffic.[9] One does this by treating drug addicts on an ambulatory basis in out-patient clinics or in physicians' offices. Addicts who are prepared to undergo withdrawal treatment immediately are so treated; but addicts who are not ready for such treatment are given supportive therapy and provided with legal drugs until such time as they can be persuaded gradually to give them up. 'Incurable addicts' (i.e., those permanently refractory to treatment), on the other hand, are provided with a minimum maintenance dose for the rest of their lives. In this way, since drugs are legally accessible to all addicts at cost, the illegal drug traffic vanishes and with it the profit motive that causes addiction. Drug addicts are (then) no longer obliged to turn to crime to support their habits and can lead normal, productive lives.[10]

How Important is the Profit Motive?

"The assertion that the profit motive is the primary cause of drug addiction is excellent Marxism, but poor psychology, bad sociology, and worse logic."[11] Although the opportunity for making astronomical profits in the illicit drug traffic undoubtedly motivates the underworld to engage in this traffic, it is no more the primary cause of narcotic addiction than the profit motive in "murder for hire" is the primary cause of gangland murders. Hence, eliminating the profit motive in drug peddling, by legalizing drug addiction, could be expected to

> to purchase most of their narcotics on the illicit market and would continue their criminal careers to obtain money to do so. That legal provision does not eliminate illegal traffic is clear not only from our own American experience with ambulatory clinics after World War I,[15] but also from the experience of China and other Asian countries with serious addiction problems[16] and of such Western nations as Sweden and Great Britain with relatively minor problems.[17]

The distribution of legal drugs would, in fact, be welcomed by the illicit market because it would reduce the motivation to seek treatment and would remove "whatever deterrent value lies in the fear of abstinence syndrome. Always sure of the minimal dosage necessary to prevent withdrawal symptoms, addicts would have little immediate incentive to seek a cure, and nonaddict users and potential addicts perceive (greater attractiveness and) fewer hazards in addiction."[18]

The Myth of "Normal Attrition"

The permissivists' assertion that if addiction were legalized for our current crop of known addicts, the drug addiction problem would be automatically liquidated by "normal attrition" once these latter individuals died, is sheer wishful thinking. As long as motivationally immature adolescents continue to approach adulthood in blighted slum areas, to join predatory teenage gangs, and to be encouraged by tolerant community attitudes toward narcotics, large numbers of potential addicts will exist; and as long as this "continuing reservior" of avid addict candidates is available, black market operations in narcotics will be economically feasible and will flourish.[19] Thus, "unless other things are done to make drug use less attractive," for each legally supplied comfirmed addict who dies off, another home-grown neophyte addict will arise and, in due time, will demand that his name also be inscribed in the golden book of those entitled to receive "pure, clean, cheap," and licit drugs. Actually, assuming that all other causal factors remain constant, the modicum of moral sanction that legalization would give addiction under these circumstances, would undoubtedly serve to recruit more new addicts than could be expected to disappear by normal attrition.[20]

Reducing the Availability of Narcotics: Effects on Addiction Rate

The folly of making drugs legally accessible to addicts is further highlighted when one considers that measures reducing

> than availability affect the rate of addiction; and (b) that no single aspect of a prevention program is foolproof.[25]

Would Drug-Satiated Addicts Lead Normal, Productive Lives?

The permissivists argue that if drug addicts were only permitted legally to gratify their desire for narcotics, they would then be free to lead normal and productive lives, and would not have to turn to crime to support their habits. All of the available evidence, however, indicates that this contention is based on a myth that applies at most to a tiny segment of the total addict population, namely, successful professional persons, usually physicians, who take small doses solely to relieve anxiety. The more typical addict, when permitted to use as much narcotics as he desires, invariably chooses a highly euphoric dose, and is lethargic, semi-somnolent, undependable, devoid of ambition, and preoccupied with grandiose fantasies.[26] He loses all desire for socially productive work, exhibits little interest in food, sex, companionship, family ties, or recreation, and lives mainly in the euphoric glow of his last dose and in anticipation of his next one.[27]

Compulsory Hospitalization

Lastly, let's consider the issue of voluntary treatment. Critics of mandatory hospitalization claim that it cannot work because the motivation for treating any compulsive or addictive disorder must come from the patient, and hence must depend on his voluntary cooperation.[28] It is undeniable, of course, that coercion does have certain undesirable implications and that voluntary treatment would be preferable <u>if</u> it were feasible. But since it is both impracticable and dangerous, any person who is sincerely desirous of treating drug addicts in a realistic fashion, as well as of protecting both susceptible nonaddicts from addiction and society in general from the addict's depredations, must necessarily favor compulsory treatment.

First, coercion is[29]

> absolutely essential to ensure the adequately controlled and prolonged treatment prerequisite for cure. Because of the tremendously efficient adjustive value of narcotics for inadequate personalities, the typical addict cannot be relied upon either to initiate or to complete treatment voluntarily as long as he is free to dabble in the illicit market. His judgment can

and the criminally insane are isolated in special institutions, and patients suffering from syphilis and tuberculosis are required to submit to treatment. Similarly, when individuals are unable to impose internal controls in relation to behavior that is either self-destructive or socially dangerous, society has an obvious duty to impose external restraints. Psychotics with suicidal or homicidal tendencies, and active pyromaniacs, for example, are not given any choice about whether to accept treatment, and are invariably treated in closed institutions. In the light of this honored public health tradition, which represents the hard-earned triumph of a long and bitter struggle against the forces of ignorance, superstition, social apathy, and misguided individualism, it is little short of incredible to find certain prominent representatives of the medical, legal, and psychological professions advocating that a narcotics addict be hospitalized only "when and if he signifies a willingness to try."[35]

Outpatient Narcotic Clinics

Realistic and effective treatment of drug addiction not only requires compulsion, but also prolonged commitment of addicts to special closed-ward hospitals that can guarantee a drug-free therapeutic environment and an intensive program of rehabilitation.

> It is utterly naive to expect addicts treated on an ambulatory basis voluntarily to adhere to a withdrawal schedule, when even those addicts who voluntarily seek hospitalization almost invariably try to smuggle drugs into the hospital. Also, without continuous observation by trained personnel in a controlled clinical setting how can proper dosage schedules be determined? Ambulatory treatment, furthermore, requires either that clients report four or five times daily for injections or that they be given drugs for self-administration. The first procedure is unwieldy and incompatible with normal vocational and family existence, and the second procedure is hazardous. Addicts may hoard or sell their daily ration or inject it intravenously.[36]

Outpatient clinics are also in no position to provide prolonged and intensive vocational training, and the average American physician is ill-prepared at present to diagnose or

even under the best of circumstances, the prognosis for cure in drug addiction is relatively poor, both because of the serious underlying personality disorder, and because of the highly efficient adjustive value of euphoric drugs for this disorder. Nevertheless, despite the inherently unfavorable prognosis, the recovery rate would undoubtedly be substantially higher if we could eradicate the prison atmosphere and punitive attitudes that currently prevail in the federal hospitals; if we could provide more adequate vocational rehabilitation, and follow-up services than these hospitals presently furnish; if we could abolish the criminal stigma associated with addiction; and if we could reduce the high availability of and favorable attitudes toward drugs in the communities to which addicts return.

There are also good reasons for believing that the personality maturation of the drug addict is retarded rather than permanently arrested, and hence that improvement can be expected with increasing age if a favorable drug-free environment could be provided. As Dr. Gamso, former Superintendent of Riverside Hospital, points out, even quite young addicts often make very satisfactory vocational adjustments within a highly structured institutional situation;[41] and in the course of my psychiatric work at the Lexington Hospital, I was frequently impressed by the excellent work records in industry which many of my older patients were able to maintain without drugs during the war emergency years -- when illicit narcotics were difficult to obtain and the desperate need for manpower abolished many discriminatory practices.

In any case, even a recovery rate of twenty-five per cent is better than a defeatist approach that seeks to treat addicts by providing them legally with drugs until they "feel ready" to give them up, which in effect means indefinitely. If the prognosis is poor <u>with</u> compulsory hospitalization, it is self-evidently very much worse <u>without</u> it. It is hardly within the medical tradition to advocate that serious attempts at treating a given disease be abandoned simply because its prognosis happens to be poor. We do not complain about the futility of hospitalizing patients with such chronic, prognostically unfavorable diseases as cancer, arthritis, epilepsy, schizophrenia, and multiple sclerosis; and oftentimes we are successful in effecting cure or significant remission. But even in instances where rehabilitation is impossible, truly incurable addicts are both decidedly better off as individuals, and less dangerous to society, when hospitalized for life in a humane, progressive institution, than when legally provided with a maintenance dose of narcotics and left free to deal in the illicit drug market, to wallow in a dreamy state of self-defeating, drug-induced euphoria, to spread the drug habit

returns to his normal home environment. Oxygen tents are provided for acute pneumonia and coronary patients, respirators for patients suffering from bulbar poliomyelitis, and a simplefied social and occupational environment for mentally-ill patients; yet merely because these patients find these artificial measures helpful and even necessary in the acute stages of the disease, does not mean that they will require them indefinitely and hence relapse when released from the hospital. Any training situation or intensive treatment program necessarily requires initial artificial simplification of the problems that the individual must eventually face unsimplified in the real world; but without this initial simplification he would never be able to acquire the resources that he needs to survive and function adequately. This is especially true in the case of the narcotics addict, because he typically lacks the normal motivational, vocational, emotional, and social resources necessary for satisfactory adaptation to a complex world without a full-time chemical crutch.

The Dole-Nyswander "Treatment"

Now I am sure that many of you are thinking that the recent Dole-Nyswander findings contradict everything that I have just said about compulsory, closed-ward treatment of drug addiction. But do they? Let Dole and Nyswander speak for themselves in their article in the August 23, 1965 issue of the JAMA.

First, by their own admission, Drs. Dole and Nyswander are administering massive doses of methadone to known heroin addicts. This goes far beyond anything contemplated in the "British system." The Rolleston Committee Memorandum of 1926 (as well as the more recent Brain Report), which governs the present administration of Britain's Dangerous Drugs Act of 1920, provides that narcotics may be legally administered to addicts by physicians "where it has been . . . demonstrated that the patient, while capable of leading a useful and relatively normal life, when a certain minimum dose is repeatedly administered, becomes incapable of this when the drug is entirely discontinued."[44] Technically, this interpretation is consistent with the Dangerous Drugs Act, because physicians may give only minimum maintenance doses; it is still illegal in Britain to prescribe narcotics solely for the gratification of addiction. Although this interpretation of the law is technically correct, many physicians in the United Kingdom actually give addicts sufficient narcotics to gratify their euphoric needs, since the authorities demand no proof that the treated addicts in question are actually leading "normal and useful lives," or that the drug is, in fact, essential for this purpose and is also given in "minimum maintenance doses."

oversedation, urinary retention, and abdominal distension.[48]

It is abundantly clear to any unbiased observer, therefore, that one does not cure a craving for heroin-induced euphoria by substituting a methadone-induced euphoria that is euphemistically labeled "stabilization dosage," and by then asserting that this latter state is "normal" and should be perpetuated indefinitely. I fail to appreciate how legalized addiction is any improvement over illicit addiction. Morally, in fact, it is much less defensible, because it indicates that society is actively abetting the well-proven personality deterioration and social demoralization that have invariably accompanied narcotic addiction over the past 350 years.

What about the assertion that with this "treatment" regimen, i.e., a single massive oral dose of methadone, patients are converted into useful, socially productive citizens?[49] As Dr. Vogel[50] points out, this is a rather tenuous conclusion to reach when ten of twenty-two cases have been followed over a period of less than two months, and the other twelve for varying periods up to fifteen months. The authors, of course, formally qualify their conclusions, by stating in the introduction to the JAMA article, that "this paper is only a progress report, based on treatment of twenty-two patients for periods of one to fifteen months."[51] But if they consider this "only a progress report," how do they explain the unqualified conclusions stated at the end of the article, and how do they reconcile the three feature articles in Look[52] and The New Yorker[53], obviously prepared with their consent and cooperation, with the tentative nature of a progress report? Millions of people throughout the United States have been led to believe by these mass-circulation journals, that the menace of drug addiction is now comparable to that posed by poliomyelitis after the discovery of the scrupulously tested oral vaccine against that latter disease. Furthermore, are not addicts, supplied with free, licit, euphoric doses of narcotics, highly motivated to create an impression of complying with their benefactors' expectations.

How seriously, also, can we take the statements of addicts that they experience no euphoria with massive ("stabilization") doses of methadone? Most narcotic addicts claim that they use drugs solely to "remain normal" (i.e., to avoid withdrawal symptoms); both Dr. Nyswander and I know this from our psychiatric experience at Lexington. However, we both know, also, that experimental readdiction studies at the Lexington Hospital incontrovertibly established the euphorogenous action of methadone when given in doses above 40 mg. daily.

Footnotes

[1]New York Academy of Medicine, Committee on Public Health, Subcommittee on Drug Addiction. Report on Drug Addiction: II Bull. New York Acad. Med., 1963. 39.417-473 (July)

[2]Drug Addiction: Crime or Disease, Interim and Final Reports of the Joint Committee of the American Bar Association and the American Medical Association on Narcotic Drugs, 1961. (Bloomington, Ind.: Indiana Univer. Press).

[3]D. P. Ausubel, "Controversial Issues in the Management of Drug Addiction: Legalization, Ambulatory Treatment, and the British System," Ment. Hyg. 44 (October 1960), 535-544.

[4]Ibid.

[5]Ibid.

[6]Ibid.

[7]Ibid.

[8]H. Berger, "Dealing with Drug Addiction: A Reply to Mr. Kuh," New York Law Journal, 144, August 29, 1960.

[9]New York Academy of Medicine, op. cit., 1963.

[10]D. P. Ausubel, op. cit., 1960.

[11]Ibid.

[12]Ibid.

[13]L. Kolb and A. G. Du Mez, "The Prevalence and Trend of Drug Addiction in the United States and Factors Influencing it." Public Health Reports, Reprint 924, 1924.

[14]The following quotation is from D. P. Ausubel, op. cit., 1960.

[15]C. Terry and M. Pellins, The Opium Problem, Committee on Drug Addiction, Bureau of Social Hygiene, 1926.

[16]F. T. Merrill, Japan and the Opium Menace, Institute of Pacific Relations, 1942.

[17]A. R. Lindesmith, "The British System of Narcotics Control," Law and Contemporary Problems, 22, (1957), 134-144.

[37]Ibid.

[38]H. Berger, op. cit., 1960.

[39]Ibid.

[40]M. J. Pescor, "Follow-up Study of Treated Narcotic Drug Addicts," Public Health Reports, Supp. No. 170, 1943.

[41]R. R. Gamso, op. cit., 1960.

[42]H. Berger, op. cit., 1960.

[43]Ibid.

[44]See note 17, supra.

[45]A. Wikler, op. cit., 1953, pp. 49-50

[46]Marie Nyswander, op. cit., 1956, pp. 25-26.

[47]V. P. Dole & Marie Nyswander, "A Medical Treatment of Diacetylmorphine (Heroin) Addiction." JAMA, Aug. 23, 1965, 195, No. 8, 646-650.

[48]Ibid.

[49]Ibid.

[50]Dr. V. H. Vogel, Letter to the Editor, JAMA, "The Treatment of Drug Addiction." JAMA, Nov. 8, 1965, 194, No. 6.

[51]Dole and Nyswander, op. cit., 1965.

[52]Look, Nov. 30, 1965, pp. 23-27.

[53]New Yorker, June 26, 1965, pp. 32-77; July 3, 1965, pp. 32-57.

[54]Dole and Nyswander, op. cit., 1965.

[55]Ibid.

[56]Ibid.

[57]For the outlines of such a plan, see R. H. Kuh, "Dealing with Narcotics Addiction," New York Law Journal, 144, June 8, 9, and 10, 1960.

INSTITUTION	DIR. SERVICES PROVIDED	NUMBER PERSONNEL NEEDED TO REP. THEM IF PROG. FAILS	COST AT MED. OF EXISTING SALARY RANGES	COST OF FRINGE BENEFITS
Glen Gardner	Grounds	8	$ 39,632	$ 5,944
Arthur Brisbane	Housekeeping	3	12,231	1,834
N.P.I.	Food Service, Laundry Farm & Maintenance	59	311,762	46,764
New Lisbon	Food Service	74	256,334	38,450
Woodbridge	Food Service, Grounds, Laundry & Maintenance	100	444,429	66,664
TOTAL		689	$3,151,896	$472,779

The total staff costs for correctional supervision of the above programs amounted last year to $436,590, and if to which we add 10 percent for range revision and normal increments, amounts to $474,245. It might be argued that such supervisory expenditures can be used as an offset against the personnel cost projected above. I do not advance this argument, however, since it would become necessary in the sense of complete objectivity to anticipate situations where the inmates can be absorbed without additional supervisory cost.

There is another important factor that relates to each of New Jersey's twenty-one counties, as well as a considerable number of citizens who contribute toward the maintenance of their relatives in our institutions for the mentally ill and the mentally retarded. For instance, the projected increased personnel costs at Marlboro State Hospital, minus an offset of $97,097 for Correction Officers' supervision and $11,500 for inmate wages, amounts to $787,601, or more than 8 percent of the authorized budget of $9,636,814 for that institution last fiscal year.

At Marlboro last year county payments for the maintenance of patients amounted to $2,222,375 and private payments amounted to $247,733. Without the program of utilizing inmates to provide direct services, Marlboro's budget would have had to be increased by 8 percent and contributing counties would have paid about $180,000 additionally last year, while the cost to private citizens would have risen by almost $20,000. This fiscal obligation of counties and private citizens of costs applies to all the institutions projected above with the exception of the Vineland Soldiers Home where we do not receive contributions from either the counties or the members. Thus, if my prediction of collapse of the program of utilization of correctional inmates on the grounds of other institutions were to prove correct, a percentage of the total increased costs of

would be required for the continuing responsibilities and operations of this Department, it would not be possible to transfer with the Division of Correction and Parole to another Department, other than some of the lower echelon administrative positions.

One final comment that I believe is significantly related to the social and individual meanings in the programs referred to in this letter, Senator Italiano raised a question about the relative effectiveness of our correctional system. After pointing to some of the difficulties involved in a meaningful response, I replied to the effect that it is my opinion that New Jersey does as well as any United States correctional system with which I am acquainted, and better than most. The crucial issues in making comparisons relate to the populations compared and the criteria utilized to measure effectiveness. If return to a correctional institution is the criteria used to measure effectiveness, reliable, comparable data is difficult to secure. We do, however, have available a study of 1,962 parole releases during the period July 1966 to January 1967 all of whom had been in the community and thus exposed to risks for at least 12 months at the time the study was completed January 1, 1968. The number of individuals returned to correctional institutions from parole status within one year of release totaled 325 or 16 percent. There is also available a study completed by the National Parole Institutes of 8000 male adults released to parole supervision during 1965 including 367 from New Jersey. After 12 months of exposure in the community, New Jersey had a 79 percent success rate compared with a 71 percent rate for all the samples from the 21 participating States. While these figures have to be interpreted with a great deal of caution, I think they do tend to support the limited conclusions I offered your committee on effectiveness.

In this letter I have tried not to repeat the many additional arguments that were marshalled by others around the proposed transfer. If this transfer is completed and if my prediction is correct, New Jersey will lose programs whose value to the taxpayers is obvious and whose relation to sound penal policy needs no further elaboration from me.

Since Senator Mariziti and Assemblyman Vander Plaat chair the Institutions and Welfare Committee in the Senate and Assembly respectively, I hope you have no objection to my making available a copy of this communication to them.

Sincerely yours,

Lloyd W. McCorkle
Commissioner

LWMcC:d
c.c. Hon. Joseph J. Mariziti
Hon. Richard J. Vander Plaat
Members, State Board of Control

ADDITIONAL COST PER COUNTY, PER INSTITUTION, COST INMATE DETAILS

COUNTY	MARLBORO	ANCORA	WOODBINE	VINELAND	TRENTON	N.P.I.	NEW LISBON	WOODBRIDGE	ADDITIONAL COUNTY COST
Atlantic	$ 1,955.20	$13,490.88	$ 2,556.84	$ 1,772.16	$ 1,487.20	$ 2,399.80	$ 3,243.24	$ ---	$ 26,905.32
Bergen	---	2,737.28	4,571.32	2,371.20	3,317.60	7,199.40	7,469.28	34,245.12	61,911.20
Burlington	244.40	4,008.16	2,324.40	1,547.32	4,004.00	3,322.80	2,555.28	---	18,006.36
Camden	488.80	12,708.80	8,212.88	4,392.96	2,845.60	7,199.40	8,059.96	---	43,908.40
Cape May	---	3,519.36	1,084.72	698.88	711.40	---	687.96	---	6,702.32
Cumberland	---	5,376.80	1,782.04	1,173.12	1,487.20	369.20	2,457.00	---	12,645.36
Essex	10,998.00	6,256.64	15,573.48	7,587.84	35,120.80	21,782.80	20,343.96	37,914.24	155,577.76
Gloucester	---	6,549.92	2,014.48	1,223.04	1,716.00	923.00	2,162.16	---	14,588.60
Hudson	9,976.00	586.56	9,607.52	4,442.88	16,359.20	14,583.40	11,597.04	26,295.36	93,447.96
Hunterdon	733.20	293.28	852.28	149.76	7,321.60	923.00	1,277.64	2,242.24	13,793.00
Mercer	488.80	293.28	4,803.76	2,471.04	47,904.00	3,138.20	6,191.64	1,019.20	66,309.92
Middlesex	64,032.80	---	5,113.68	2,570.88	7,779.20	6,091.80	6,093.36	13,453.44	105,135.16
Monmouth	39,837.20	391.04	4,803.76	2,220.44	2,402.40	2,030.60	5,503.68	1,019.20	58,208.32
Morris	244.40	684.32	1,627.08	723.84	915.20	1,846.00	3,341.52	9,376.64	18,759.00
Ocean	5,132.40	1,466.40	1,472.12	873.60	1,029.60	1,476.80	1,375.92	407.68	13,234.52
Passaic	1,466.40	3,030.56	3,796.52	1,572.28	3,088.80	7,753.20	8,354.80	19,772.48	48,835.04
Salem	---	4,496.96	1,084.72	848.64	686.40	923.00	1,277.64	---	9,317.36
Somerset	1,466.40	97.76	1,394.64	474.24	11,554.40	3,876.60	2,850.12	4,076.80	25,790.96
Sussex	---	97.76	309.92	324.48	915.20	553.80	1,375.92	2,242.24	5,819.32
Union	83,340.40	293.28	5,578.56	2,895.36	5,262.40	7,568.60	8.746.92	16,511.04	130,196.56
Warren	244.40	---	697.32	449.28	7,664.80	1,292.20	1,375.92	2,446.08	14,170.00
TOTAL	$220,648.80	$66,379.04	$79,262.04	$40,783.24	$163,573.00	$95,253.60	$106,340.96	$171,021.76	$943,262.44

form or another. Consequently, the only significant difference between what New York reports and what New Jersey has are: (1) civil commitment, and (2) either grants to or purchase of care from voluntary agencies. A June 1967 change in the New Jersey narcotic law, however, does permit counties to contract with public or private facilities to provide approved clinic services.

California, in 1961, enacted legislation which provides for the civil commitment of addicts. The California statute provides that narcotic addicts convicted of a crime may have the criminal complaint suspended and receive an indeterminate civil commitment to the State Department of Correction. The civil commitment provides for a seven year maximum, although in the instance of voluntary non-criminal commitments the maximum is two and a half years. Individuals become involved in the program in three ways all of which relate to civil rather than criminal proceedings:

1. The addict, or a person who has knowledge of the addict, may report this to a district attorney. The district attorney, on the basis of this information, may then petition the courts for the addict's commitment. In such instance, the commitment would be for a two and a half year period, but a minimum of six months is spent as an inpatient.

2. Any person convicted of a crime in a lower court may be sent, if the judge believes he is an addict, to a court to determine that issue. The commitment proceedings do not differ from those employed for the commitment of the mentally ill. The procedures provide that he be examined by two qualified medical examiners, that he be present in open court, have an opportunity to produce witnesses, and be represented by counsel.

3. In some instances, a person convicted of a crime in a superior court may be tried on the issue of addiction. If it is determined that the individual should be processed as an addict under civil proceedings, the imposition of criminal sanctions is suspended. The California statues, although signed into law in June 1961 did not go into effect until September 1961.

Under the California statute individuals in the above categories are committed to the California Rehabilitation Center at Corona and must remain in residence for at least six months. After three years of drug free supervision in the community the individual may be discharged and at that time any criminal charges against them may be dropped. The law provides that upon detection of narcotic use the addict may be returned to the California Rehabilitation Center. The Rehabilitation Center at Corona provides facilities for a maximum population of 3000 and is

The New Jersey program has been criticized on two points: (1) lack of sufficient bed space at the Institute, and (2) short period of stay at the Institute. In his Special Message to the Legislature April 25, 1968, the Governor proposed changes in our statutes to come to grips with both these problems. In essence, the Governor proposed that: (1) the treatment alternative should be truly meaningful by extending the average stay in treatment to six months and requiring four and one half years of probation supervision in the community by specially trained probation-parole officers, and (2) relative to the above a request for funds for the development of "one or more Narcotic Rehabilitation Centers to give the minimum residential treatment period real meaning." Projecting a residential treatment population of 350 the Governor requested $1,080,000 for operating costs, $500,000 to rent appropriate facilities with an option to buy, $500,000 for the community supervision program and $200,000 for the establishment of additional aftercare clinics in areas of greatest need for the testing and supervision of addicts on parole. In December 1967, the State Board of Control indicated that if a Bond Issue were approved for this Department in the amount of $100 million it would recommend that $6 million of these funds be utilized to construct capital facilities to enable the Department to better discharge its responsibilities under Chapter 100, P.L. 1967.

The above program, in my view, is more consistent with New Jersey's experience and retains its significant advantages which briefly are: (1) the New Jersey program makes significant distinctions between criminals who use drugs and the non-criminal addicts, and (2) it does not attempt to coerce a patient-physician relationship in a treatment setting where the impulse for treatment on the part of the addict may very well be non-existent. It also appears to be, in general, consistent with the position of the Narcotics Advisory Council whose positions I forwarded to you at the request of its Chairman, Dr. Harold Scott.

I trust this information will be helpful to you and the members of your committee. Since Senator Maraziti and Assemblyman Vander Plaat chair the Institutions and Welfare Committee in the Senate and Assembly respectively, I hope you have no objection to my making available a copy of this communication to them.

Sincerely yours,

Lloyd W. McCorkle
Commissioner

LWMcC:d

c.c. Hon. Joseph J. Maraziti
Hon. Richard J. Vander Plaat
Members, State Board of Control
Members, Narcotics Advisory Council

, NOR ANY DESCRIPTION OF WHAT A "NON-RESIDENTIAL PROGRAM" IS. WHILE SECTON 16A OF ARTICLE 4 DOES REFER TO PROBATION, SECTION 26 REVOKES PROBATION PRIVILEGE AND MAKES ANY YOUNGSTER ON PROBATION SUBJECT TO REARREST AND TO BEING TRANSPORTED TO A ORRECTIONAL INSTITUTION AS A DELINQUENT FOR A 2 YEAR PERIOD WE URGE SERIOUS RECONSIDERATION OF THE COMPONENTS OF THIS PIECE OF LEGISLATION WE DO NOT BELIEVE THAT THIS BILL WILL OFFER ANY SUBSTANTIAL IMPROVEMENT T CORRECTIONAL PROCEDURES ALREADY IN EXISTENCE THAT RELATE TO DELINQUENT YOUTH IF ALL WE CAN THINK OF AND DEVISE FOR OUR YOUNG PEOPLE IS A MORE PATERNALISTIC METHOD OF ISOLATION, IF ALL WE CAN COME UP WITH IS THE POSSIBLE SUBVERSION OF POSITIVE AND MEANINGFUL PROGRAMS THAT WORK FOR YOUTH, THAN WE HAVE ACCOMPLISHED NOTHING THE JOB CORPS IS NO SOLUTION FOR DELINQUENT YOUTH BECAUSE THEIR PROBLEMS DEMAND THE ATTENTION

AND SKILL OF A WIDE VARIETY OF PROFESSIONAL EXPERTIST, ONLY SOME OF WHICH MAY BE FOUND IN A JOB CORPS SETTING THIS PIECE OF LEGISLATION BEING PROPOSED UNCONSCIONABLY LINKS AND WOULD IDENTIFY IN THE MINDS OF THE PEOPLE AT LARGE AND IN THE MINDS OF ALL LAW ENFORCEMENT PEOPLE, THE DISADVANTAGED YOUTH IN JOB CORPS OR ANY WHERE ELSE, WITH THE ADJUDIATED CRIMINAL DELINQUENT THIS IS TOO OBJECTIONABLE A PROSPECT TO BE CONSIDERED VIABLE WE, AT THE UNITED COMMUNITY CORPORATION SPEAKING FOR THE DISADVANTAGED YOUTH IN THE CITY OF NEWARK, AND FOR THE PARENTS FOR DISADVANTAGED YOUTH URGE YOU TO USE ALL YOUR INFLUENCE AND ASSURE THAT THIS PIECE OF LEGISLATION SB802, IF IT IS EVER PROPOSED, BE SOUNDLY DEFEATED

REV EVIN B WEST PRESIDENT UNITED COMMUNITY CORP AND DR L SYLVERSTER ODOM EXECUTIVE DIRECTOR UNITED COMMUNITY CORP

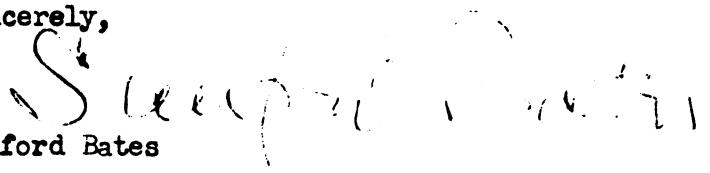
SF1201(R2-65)

Senator Joseph C. Woodcock: (continued)

The Department of Institutions and Agencies is established for the purpose of initiating rehabilitative measures, is closely connected and entirely advised with reference to the County penal systems and the results would be in my judgment much better than if this authority was granted to a new and untrained Criminal Justice Department.

I intended to make this statement to you and I would appreciate it if you would make this letter part of your records and in addition to my testimony.

Sincerely,



Sanford Bates

SB:F

1967 Attendance Records
Correctional Boards of Managers

Institution	Meetings Held	Member	Meetings Attended	% of Mtgs. Attended	Comments
State Home For Boys	12	L. Ballantine	9	75.0	
		A. T. Barth	12	100.0	
		P. J. Cobb	9	82.0	(Appointed 1-25-67
		M. L. Harrison	10	83.0	
		R. M. Higgins	10	83.0	
		O. W. Rittenhouse	6	50.0	
		J. Thoma	6	50.0	
		Total	62	623.0	
		Average	9.0	89.0%	
State Home For Girls	12	J. Blum	9	75.0	
		C. H. Drewry	5	42.0	(Ill)
		J. J. Kline	11	92.0	
		M. K. Kuser	6	50.0	
		G. Morris	6	50.0	
		G. D. Ring	9	75.0	
		L. P. Stern	5	42.0	(Husband ill)
		Total	51	426.0	
		Average	7.3	60.8%	

RECAPITULATION

Prison 6 Members	12	Average	8.3	74.0%
Reformatory 14 Members	12	"	8.0	71.5%
Clinton 6 Members	12	"	9.3	77.5%
Jamesburg 7 Members	12	"	9.0	89.0%
Home for Girls 7 Members	12	"	7.3	60.8%
		"	8.4	74.5%