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New York State Senate Committee on Crime and Correction

ator Christopher J. Mega
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1986

ANNUAL REPORT

SENATE STANDING COMMITTEE ON CRIME AND CORRECTION

Room 947

Legislative Office Building

Albany, New York 12247

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December 31, 1986

The Honorable Warren M. Anderson
Majority Leader
New York State Senate
State Capitol
Albany, New York 12247

Dear Senator Anderson:

In compliance with the rules of the New York State Senate, I am pleased to submit the 1986 report of the Committee on Crime and Correction.

The report summarizes Committee action on legislation and nominations considered during the 1986 session. Also included are the substantive sections of two Committee reports on drug law enforcement and felony processing in New York City.

During 1986, the Committee held two public hearings. The first examined the issue of interim probation supervision in New York City. The second hearing explored the connection between AIDS, intravenous drug abuse, and the current inmate population of New York State correctional facilities.

Highlights of "Correction on Canvas," the annual art show jointly sponsored by the Committee and the New York Department of Correctional Services, concludes the report.

Sincerely,

CHRISTOPHER J. MEGA

Committee members and staff are grateful to Lorraine Casey for contributing her considerable word processing skills with grace, humor, and speed in the production of this report.

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I N T R O D U C T I O N

The 1986 report of the New York State Senate Committee on Crime and Correction summarizes the legislation and nominations approved by the Committee during the calendar year. Much of the Committee's legislative output focused on the rights of victims of crime.

With the generous help of data supplied by the Division of Criminal Justice Services and other sources, The Committee published two studies during 1986. The first -- Penelope's Justice, A Report on the State of New York City's Narcotics Law Enforcement System -- is reprinted here but with all thirteen case studies deleted. The second study -- Demoralization and Corruption in the City's Narcotics Law Enforcement System -- is included in its entirety.

The Committee held public hearings in January and February of 1986. The January hearing was held in New York City and dealt with the problem of "interim probation supervision." The February hearing was held in Albany. The Committee heard testimony from New York State administration officials on the serious and

complex connection between AIDS, intravenous drug abuse, and the inmate population of the Department of Correctional Services.

The report concludes with an account of "Correction on Canvas," the annual inmates' art show jointly sponsored in Albany by the Committee and the Department of Correctional Services.

SUMMARY OF LEGISLATION

During the 1986 legislative session the Committee continued consideration of bills introduced but not reported in 1985 and initiated consideration of a number of new bills. Thirty-six bills were approved by the Committee and reported to the floor. All of these were passed by the Senate and nineteen were signed into law. The remaining seventeen did not achieve passage in the Assembly. The following constitutes a summary of bills reported and the subsequent action thereon.

Crime Victim Benefits

As in 1985, the most substantial block of the Committee's work was devoted to consideration of legislation to assist crime victims. Seventeen bills were reported for this purpose and 14 of these were signed into law.

Important new rights were created for child victims and witnesses as well as for the close relatives of child victims by Senate 8458-B, which was enacted as Chapter 263. Under this legislation:

- The cost of professional counselling services will be reimbursed for children under 16 who suffer physical, mental or emotional injury as a direct result of a crime or as a result of witnessing a crime.

- Professional counselling costs also will be paid for the parents, guardians and siblings of these children and for the parents, guardians and siblings of missing children who are presumed to be victims.

- The Crime Victims Board is required to be the advocate for child victims and to ensure that the necessary assistance is provided.

- Special guidelines are established for criminal justice agencies, crime victim related agencies, social service agencies and the courts in relation to dealing with child victims as witnesses.

- The Division of Criminal Justice Services and the Crime Victims Board are required to comprehensively research and report on the problems of criminal victimization of children and the status of services to child victims in their respective areas of concentration.

Three other bills that became law expanded authorization for rehabilitative training and counselling awards to victims and members of their households.

- Senate 7717 (Chapter 309) eliminates the $3,000 limitation on awards to victims for rehabilitative, occupational training or similar employment-oriented rehabilitative or educational services. This legislation also authorizes awards for such services supplied to the family members of victims where necessary as a direct result of a crime;

- Senate 7791-B (Chapter 312) authorizes reimbursement of expenses of counselling services for the eligible spouse of the victim of a sex crime, provided he or she resides with the victim; and

- Senate 8225 (Chapter 327) authorizes reimbursement of counselling costs to elderly and disabled victims for mental and emotional stress resulting from an incident in which a crime occurred, notwithstanding absence of physical injury to such victims, provided counselling is commenced within ninety days from the date of the incident.

Additional expanded benefits for victims consisted of the elimination of charges to all victims (irrespective of physical injury) for copies of police reports of the crime (Senate 7719-A, Chapter 548) and elimination of the need to show financial difficulty in cases where the claim is less than $2,000 (Senate 8224, Chapter 465). It should be noted, however, that the $2,000 exemption is phased in and the exemption is

less for victims of crimes committed prior to September 1, 1987.

Past victims were not forgotten either. Senate 8847 (Chapter 478) gave retroactive effect to the 1985 law that authorized a $10,000 increase in crime victim awards limits from $20,000 to $30,000 making this increase applicable to persons whose claims were pending on August 1, 1985. And Senate 5150 (Chapter 529) lifted a time limitation to allowance of a claim that originally was excluded by a bar subsequently recognized to be unfair.

Restitution

Two proposals were reported to the floor for the purpose of requiring the State Board of Parole to make restitution a condition of early release from prison (i.e., a condition of parole). One was enacted and one passed the Senate but failed to clear the Assembly.

The proposal that was enacted (Senate 8238-A, Chapter 466) applies only where the sentencing court imposed a restitution order at the time of sentence. In such case, the conditions of parole "where appropriate" are to include a requirement that the parolee comply with the court's restitution order. The bill that failed to win Assembly passage (Senate

2818-B) would have required restitution or reparation as a condition of parole in all appropriate cases (irrespective of whether there was a preexisting court order) unless it appeared that there was a good reason for not so doing.

Improvement of Administration
of Laws to Benefit Crime Victims

Seven bills proposing improvements in the administration of crime victim programs were reported to the floor. Five of these were enacted and the other two, although achieving approval in the Senate, died in the Assembly.

Senate 7718 (Chapter 893) makes it clear that the code of Fair Treatment Standards for Crime Victims applicable to criminal justice agencies throughout the State also applies to the Unified Court System. It adds a new section to the Executive Law (Sect. 645) which parallels the standards for other criminal justice agencies to constitute a comprehensive code of "Fair Treatment for Crime Victims in the Courts." This was deemed necessary because the Office of Court Administration had taken the position that the existing code was not applicable to the courts. A key provision in the new law requires the Chief Administrative Judge to review practices and

procedures in the unified court system regarding the Fair Treatment Standards and to implement measures for changes and improvements.

Unfortunately two other bills reported by the Committee and passed by the Senate to strengthen the Fair Treatment of Victims Standards died in the Assembly. Senate 9111 would have added a new provision to the Standards requiring notice to the victim, along with a statement of reasons, before the district attorney consents to a plea bargain or dismissal of charge if such action would permit a defendant to avoid a mandatory state prison sentence, or before the district attorney consents to a prolonged (indefinite) delay in imposition of a mandatory state prison sentence. Such notice would have advised the victim of a right to be present and a right to submit a written statement to the court in opposition to the proposed action. The other bill, Senate 8223, would have put teeth into the Standards by requiring the Commissioner of Criminal Justice Services to consider whether agencies are in substantial compliance with the Standards as one of the criteria in determining allocation of criminal justice grant funds.

In other legislative action related to administration of laws for the benefit of victims, the

Senate passed (Senate 7720) and the Governor signed (Chapter 73) a bill that reduced the time limit (from 30 days to 48 hours) for notification to the victim of the recapture of a prisoner who had been sentenced for the crime but had escaped from custody.

Three bills addressed to operational needs became law.

- Senate 8932-A (Chapter 346) authorized the Crime Victims Board to delegate screening of small claims to its employees so as to free up the time of Board members for more rapid consideration and determination of claims.

- Senate 7875 (Chapter 74) corrected numerous technical errors and omissions in the laws governing the operation of the Crime Victims Board.

- Senate 8797-A (Chapter 477) creates a mechanism for coordination of the Crime Victims Board with the Attorney General in efforts to recoup from criminals, where possible, the money paid out by the Board to victims. Under this new law the Board is required to review claims that have resulted in awards over $1,000 for the purpose of identifying cases where the State might be likely to recover the amount of the award from the perpetrator and to submit the information to the Attorney General monthly. The Board also is required to keep records and report to

the Governor and the Legislature with respect to actions brought by the Attorney General for recovery and the amounts recovered.

Parole

Seven bills aimed at tightening parole procedures were reported to the floor and passed the Senate, but all were blocked by the Assembly.

- Senate 3913-B in its original version would have changed the present parole release determination procedure by legislating the need for at least a three member panel and requiring that each of the three Board members who serve on a parole release panel actually interview the inmate. This was watered down after it was reported by the Committee so that in its B print version it required only that more than one member personally interview the inmate and vote on release before parole, but even this version failed in the Assembly.

- Senate 7280, would have eliminated the necessity for a preliminary revocation hearing to determine whether there is probable cause to find that a condition of release has been violated in cases where the released person has been charged with a felony committed while under supervision and a court of competent jurisdiction has found probable cause to

believe that he or she has committed that crime. This bill was introduced at the request of the State Division of Parole which urged its own probable cause hearings in such circumstances are "superfluous," and that the proposal would have a positive budgetary impact by eliminating duplicative work and facilitating more effective use of parole officer time.

- Senate 7282-A would have relieved the Parole Board of the burden of conducting final revocation hearings in cases where releasees are convicted of new crimes committed in other jurisdictions during the period of supervision and are sentenced there to terms of imprisonment in excess of one year. It also would have clarified several other matters, including elimination of double credit for jail time in some cases. This bill too was introduced at the request of the Division of Parole in order to eliminate futile, unnecessary procedures.

- Senate 3917-A, another bill that would have eliminated unnecessary work, proposed deletion of the statutory requirement that the Parole Board reconsider parole at least once in every twenty-four months after denial of release. The twenty-four month provision is a vestige of a former system where the Board fixed a minimum itself, based upon specified criteria. Under

the present sentencing system the first date for parole consideration is set by the court-imposed minimum fixed as part of the sentence and not by the Board. As a result, there are many cases where there simply is no realistic possibility that the Board will grant parole within twenty-four months after initial eligibility (24 months after expiration of the minimum) and in such cases the statutorily required hearings within that time not only are a waste of valuable resources but also give the inmates false hope and foster bitterness.

- Senate 3914-A would have created a much needed statutory mechanism for rescission of a parole release determination where an inmate misbehaves between the date of the determination and the date scheduled for release.

- Senate 7716-A would have required the Parole Board to formulate a written statement of its reason or reasons for granting release on parole (it now only has to do so where it <u>denies</u> release) and to furnish that statement both to any victim of the crime who has filed a statement with the Board and to any victim of a crime subsequently committed by the parolee during the period of parole supervision.

- Senate 2790-B would have required the Board of Parole to solicit the opinions of the sentencing judge

and the prosecutor before granting release on parole to a felon serving a term in excess of one year.

Two other bills dealt with inter-agency problems relating to mentally ill inmates. Senate 7303-A, which was signed into law (Chapter 230), codified present practice with respect to access of Division of Parole personnel to inmates confined in Mental Hygiene institutions and also corrected a technical omission with respect to custody of convicted inmates paroled directly from Mental Hygiene institutions. Senate 8125, which passed only the Senate, would have clarified the procedure for removing a parole violator, who shows signs of mental illness while lodged in a local jail awaiting a revocation hearing, from the jail to a State Mental Hygiene facility.

Correctional Facilities

Five bills dealing with State correctional facilities were reported. Four of these were enacted and the fifth passed the Senate but died in the Assembly.

An experimental "community treatment facility" program was established under Senate 8126-A (Chapter 554). This program authorizes 300 community-based beds for selected inmates of State correctional facilities who are in need of substance abuse

treatment. It permits release from State correctional facilities to privately operated community-based contract facilities one year prior to the date of parole eligibility. No more than 50 inmates may be placed in any one facility and community supervision will be provided under contract with the Division of Parole. Authorization for the program expires September 30, 1989.

Senate 7747 (Chapter 395) extended the basic temporary release program an additional year.

An amendment to the laws governing county jails authorizes the use of compulsory labor programs on Sundays for intermittent sentence prisoners who serve less than the five preceding days in the jail, provided the jail has an employment program designed especially for intermittent sentence prisoners (Senate 8203-B, Chapter 403).

Improved procedures for removal of mentally ill prisoners from State and local correctional facilities outside the City of New York to State Mental Hygiene facilities were legislated by Senate 7876, enacted as Chapter 164. This new law provides that correctional superintendents must deliver inmates within 24 hours of authorization for emergency commitment to a mental hygiene facility. It also provides for more effective and less costly service of notice of commitment or

continued retention upon persons committed to mental hygiene facilities.

Senate 4084-A, which was not enacted, would have required contributions from State correctional facilities to localities for volunteer fire department and ambulance service coverage furnished to the State facilities.

State Correction Commission

Three bills dealing with the State Commission of Correction were reported to the floor. All of these passed the Senate and died in the Assembly.

The most important of these, Senate 1761-B would have required the Commission to promulgate rules and regulations establishing minimum requirements for riot control plans for local correctional facilities. The bill passed the Senate in 1985 as well as in 1986 and was killed both years by the Assembly.

Senate 8093 would have required that at least one of the members of the Commission's Citizen's Policy and Complaint Review Council be a veteran who served in Indochina between 1963 and May 7, 1975. And Senate 7289 would have relieved the Commission of the statutory obligation to routinely receive and store raw data comprising statistics on the temporary release programs of the Department of Correctional

Services for which the Commission has no use.

Miscellaneous Legislation

Senate 9112 reported by the Committee would have eliminated the uncertainty in the law concerning whether New York City Probation Department attorneys can legally act as prosecutors in proceedings for revocation of probation for violation of conditions. It would have authorized the Department to employ attorneys for such proceedings, but only where the county district attorney has declined to appear and prosecute. The bill passed in the Senate but did not pass the Assembly.

Finally, a bill to give constables in towns of the second class access to DCJS records was once again reported by the Committee, passed by the Senate and killed in the Assembly (Senate 4083-A).

The RICO Legislation S9601

The Committee chairman and Committee staff also directly participated in the intensive bill drafting and negotiations that went into the RICO Bill S9601 that was eventually signed into law as Chapter 516 from the Assembly Print A 11,726. The bill that passed was reported from the Codes Committee to the Rules Committee and thence to the Senate floor.

This legislation creates a new Title X of the Penal Law, "Organized Crime Control Act," and provides for criminal and civil penalties for the crime of enterprise corruption.

NOMINATIONS APPROVED

Lawrence T. Kurlander	Commissioner, Division of Criminal Justice Services
John J. McNulty	Member, State Commission of Correction
George L. Grobe, Jr.	Member, Crime Victims Board
Angelo Petromelis	Member, Crime Victims Board
Peter Cella	Member, Crime Control Planning Board
Bishop Leroy Robert Anderson	Member, Board of Visitors of the Agricultural and Industrial School at Industry
Samuel A. Ferace	Member, Board of Visitors of the Agricultural and Industrial School at Industry
Stanley T. Zawacki	Member, Board of Visitors of the Agricultural and Industrial School at Industry
Theodore C. Juroe, Esq.	Member, Board of Visitors of the Agricultural and Industrial School at Industry

Irene Rivera de Royston	Member, Board of Visitors of the Agricultural and Industrial School at Industry
Kenneth A. Harris	Member, Board of Visitors of the Agricultural and Industrial School at Industry

I N T E R I M R E P O R T S

PENELOPE'S JUSTICE: A Report on The State Of New York City's Narcotics Law Enforcement System

> I used to keep working at my great web all day long, but at night I would unpick the stitches again by torchlight. I fooled them in this way for three years without their finding it out....
>
> The Odyssey, XIX. 146-150

A new drug epidemic is sweeping New York State and other sections of the country. The drug involved is heat-treated cocaine, called "CRACK" on the street. It is a variant of free-basing which converts cocaine from its sniffable form into a smokable form, which can then be inhaled by means of a water pipe or similar device. From the lungs, it is transported very rapidly to the brain to produce a more intense euphoria than cocaine absorbed through the nose. CRACK is extremely dangerous since it quickly causes addiction by its rapid depletion of the brain's chemical neurotransmitters, which is believed to set in motion the craving for more.

City neighborhoods with an intense CRACK problem are now reporting a big upsurge in crime. For example, upper Manhattan in the first six months of 1986 reported 169 homicides from January through June (compared with 106 last year) of which 106 were drug-related and 80 were directly tied to CRACK.[1] This was to be anticipated since earlier studies conducted by the state's Division of Substance Abuse Services among heroin addicts demonstrated that an enormous amount of crime is attributable to drug addicts seeking money to purchase drugs. Daily heroin users were found by state researchers to commit an average of 209 non-drug crimes per year thereby obtaining $18,000 in cash income to support their habit.[2] We can, therefore, expect an upward push on our already incredible crime rates as the new CRACK addicts join the crime-prone pool of traditional drug abusers supporting their habits through crime.

We shouldn't be too shocked by these events. A review of the literature on the problem of substance abuse in New York reveals an early warning of the

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[1] New York Daily News, July 31, 1986, p. 3.

[2] Current Drug Use Trends In New York City, June 1984, pp. 6-7. Dr. Blanche Frank, N.Y.S. Division of Substance Abuse Services.

CRACK epidemic. The federally funded Drug Abuse Warning Network (DAWN) reported two years ago that its indicators of hospital emergency room episodes, police lab analyses, deaths from narcotism and admissions to state funded treatment programs all showed strong upward trends for cocaine abuse.[3] Our picket lines sounded the alarm at least two years ago but the official response was subdued until the summer of 1986 when the crisis erupted onto the front pages and special reports of the media. Even now, the proposed responses have been incremental at best: more judges, more beds for treatment, and more money.

The following report is offered as a contribution to the search for responses to the CRACK epidemic. It is the result of a Committee study of the defendants who avoided incarceration upon their conviction for a felony involving the sale of drugs in New York City. The Committee's study disclosed a very slack criminal justice enforcement system through whose cracks the vast majority of arrested drug dealers evade punishment. The customary metaphor of "cases dropping

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[3] Ibid. pp. 8-9. See also America's Habit: Drug Abuse, Drug Trafficking, And Organized Crime, Chap. II, Cocaine, President's Commission On Organized Crime, pp. 15-32, March 1986, U.S. Gov't. Printing Office, Wash. D.C.

through the cracks in the floor" doesn't do justice to the size of the slippage. An analogy to the criminal justice system focussed on drug law enforcement can be found in the story of Penelope, the wife of Odysseus in Homer's epic, who at night unravelled the tapestry she wove during the day so the tapestry wouldn't be completed.

The official statistics for the drug law enforcement process demonstrate this analogy. In 1984, there were 4,842 defendants processed through the New York City criminal justice system upon their indictment for a drug felony. In that same year, the City's police made 10,251 felony arrests for the sale or manufacture of heroin or cocaine and another 12,391 arrests for the use or possession of heroin or cocaine. The attrition rate in felony drug cases from arrest to indictment is, therefore, about 80 percent. The Committee's empirical studies show the street level seller of heroin or cocaine can expect to have his felony arrest reduced to a misdemeanor at arraignment for his first two or three felony arrests if he is not caught in possession of a large quantity of "bags" or "vials" of drugs when arrested. The attrition rate for the State in contrast to the City is 67 percent.

The slackness of the system becomes especially

noticeable when the number of state prison sentences is controlled for predicate offenders and Class A drug offenders. Predicate offenders are persons convicted of their second or further felony. Predicate offenders must be sentenced to prison even if their two felony convictions are for stealing cars. Class A drug offenders are categorized by the Penal Law as major drug offenders (selling two or more ounces of heroin or cocaine and possessing four or more ounces of same) whose plea bargaining opportunities are controlled and whose sentence to prison is mandatory unless the prosecutor files a statement requesting an alternative sentence of lifetime probation because of the defendant's cooperation and assistance with other prosecutions. When these two forms of mandatory sentences are deducted from the total of state prison sentenced drug offenders, a different picture emerges from the numbers.

In 1984, for example, 6,670 drug offenders had their felony indictments disposed of throughout the State. In that number were 931 categorized as Class A or major drug offenders. Out of those 6,670 defendants, 5,849 were convicted and 2,300 sent to prison. That last number gets interesting. It is composed of 1,029 predicate offenders and 685 Class A

(major) offenders.[4] Separating these 1,714 mandatory incarcerations from the total sentenced to prison leaves 586 first felony non-major drug offenders sentenced to prison in the entire state in 1984. Controlling the imprisonment ratio of convicted drug offenders for these two variables, first felony conviction and a Class B or less category of indictment offense, results in a ratio of 14 percent of state prison sentences to felony convictions. Stated another way, six out of seven drug dealers convicted of their first felony offense for selling less than two ounces or possessing less than four ounces of heroin or cocaine do not receive a state prison sentence when they are convicted.

CONCLUSION

1. Drug sellers charged with drug felonies committed while other drug felonies are pending, when convicted, must be sentenced consecutively. There should be no free felonies.

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[4] 1984 Crime and Justice Annual Report, N.Y.S. Division of Criminal Justice Services, Albany, 1985, pp. 184-188. The actual number of Class A offenders convicted was 739 but that number included 54 predicate offenders. These predicates have been deducted from the Class A number because they were already counted in the 1,029 predicate offenders.

2. Restitution to law enforcement agencies of drug "buy" money by convicted drug sellers should be ordered whenever possible.

3. When the court and prosecutor agree to plea bargains in Class A drug cases, which transgress the restrictions contained in Section 220.10 of the Criminal Procedure Law, the Special Prosecutor For The Investigation of The New York City Criminal Justice System or the Attorney General must be notified before the plea is taken.

4. Conviction for a new drug felony while on probation or conditional discharge from a previous drug felony should require a re-sentence to prison on the first felony conviction in addition to the sentence imposed for the second drug felony conviction.

5. Sections 715 of the Real Property Actions And Proceeding Law and Section 231 of the Real Property Law should be amended to include felony violations of Article 220 of the Penal Law (the narcotics article) as among the illegal uses or occupancy for which a lease or tenancy may be terminated.

6. It should be made an explicit condition of public assistance that the recipient refrain from drug dealing. A conviction for selling drugs shall lead to a rebuttable termination of public assistance.

7. All sentences of probation or conditional discharge for drug felonies shall carry the condition that the defendant not loiter in any drug-prone area designated as such by the Police Commissioner. Thus, known drug dealers on probation could be arrested for violation of the terms of probation or discharge if observed by the police loitering in the vicinity of drug-prone areas. Any search incidental to the arrest that turned up drugs would be legal.

8. When a court determines a sentence of imprisonment for a C felony narcotics conviction would be unduly harsh, it must state its reasons for such determination on the record and a prosecutor may appeal from such sentence.

9. Any sale or possession of narcotics while armed with a firearm should be made an A-II felony.

10. Two felony drug arrests reduced to misdemeanors and resulting in convictions should

qualify as a predicate felony for purposes of sentencing on any drug felony conviction.

11. No convicted drug felon may qualify for interim supervision.

12. When money is seized from a defendant at the time of arrest in a drug case, the court must impose a fine in addition to any other sentence that is at least twice the amount of the money seized.

13. During the allocution at the time of the entry of a plea of guilty to a drug felony, the court must inquire in detail into the defendant's conduct and means of support during the five years immediately preceding the crime to which he is pleading guilty.

14. Separate detention facilities should be established for illegal aliens arrested on drug charges where they can be held without bail, but after a hearing, until the Immigration and Naturalization Service acts on their case.

15. All non-incarcerative sentences imposed on drug felons should be reported monthly to the Commissioner of the Division of Criminal Justice

Services who shall forward such to the appropriate police agency for their comment or response.

September 2, 1986

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Demoralization and Corruption in New York City's Narcotics Law Enforcement System

The recent revelations of apparent police misconduct in enforcing the narcotics laws in the 77th Precinct in Brooklyn must be looked at in the context of the collapse of narcotics law enforcement in New York City. Initial official reaction is that the phenomenon is limited to the 77th Precinct. We believe that is a mistake.

Corruption stems from demoralization and demoralization pervades the narcotics law enforcement system in New York City. It would be hypocritical to condemn a few police officers for seizing narcotics and the fruits of crime without warrant while ignoring the massive disobedience of clear legal strictures by professionals within the system who took a similar oath of office as the police.

There is a kind of Gresham's law at work in narcotics enforcement in New York City. Bad enforcement discourages good enforcement. The

criminal justice system imprisons one out of six arrested narcotics sellers in New York City. These cases are not loitering or stop and frisk arrests but invariably a purchase of narcotics by an undercover police officer at some personal risk. The usual result of good police work against narcotics sellers is paperwork to be processed and little else. The police are thus caught between the community that demands the eradication of the drug traffic in their neighborhood and a criminal justice system that returns to the streets five out of six arrested narcotics dealers. There should be no surprise when some police lose respect for the narcotics enforcement system and resort to extra-legal means to harass these merchants of death.

At the end of August 1986, the New York State Division of Criminal Justice Services released a report that tracked the arrests of narcotics sellers through the courts of the state during 1985. The report should have set off alarm bells at the highest levels of state government because it confirmed that narcotics enforcement in New York City has slowed to a crawl. There are many distressing disclosures contained in the DCJS report. We summarize below the ten major ones. In some instances, in fleshing them out, we have referred to trial and plea bargaining

figures contained in another recently released DCJS report that tracks the dispositions of all felony drug charges for the State and City of New York.

1. If you are arrested for selling narcotics in this state and you have not previously been convicted of a felony, your chances of going to prison are less than one in ten. And if you are that unlucky one out of ten, you will probably not have to serve more than one year.

2. The police are arresting 32 sellers each day in New York City, only 4 of whom will be sent to prison for a median sentence of at least 2 years. That's 1 for each of the 4 larger boroughs of the City. For 2 of the 4, it will be their second felony conviction.

3. If you are arrested in New York City for a Class A-II major drug felony, you have a 40 percent chance of having the charge reduced to a misdemeanor at arraignment.

4. If you are arrested in New York City for selling narcotics, your chances of having the charges dismissed are 3 in 10.

5. When you do get sentenced to prison for the first time as a Class A-II major drug seller, you will only have to serve about 13 months.

6. If you are unlucky enough to be indicted for the highest category of drug felony, an A-I in New York City, you have a 20 percent chance of getting an illegal plea bargain that negates the possibility of receiving a life sentence.

7. If you are arrested in New York City as a major drug seller and go to trial, you have 1 chance in 3 of being acquitted.

8. If you are arrested in New York City for an A-II narcotics felony, you have 1 chance in 20 of getting the mandatory minimum sentence of at least 3 years.

9. It you are indicted in New York City for an A-I drug felony, your chances are 1 in 3 of serving more than 3 years in prison and 1 in 10 of receiving the appropriate sentence of 15 years to life.

10. The best the New York City criminal justice system could do in 1985 was convict 67 major narcotics dealers (A-I and A-II) by trial and plea bargain down the rest (664) to lesser sentences than they deserved. That's 6 verdicts per year for each of the 12 narcotics parts financed directly by the state for the purpose of processing narcotics cases.

The DCJS report paints in numbers a picture of a New York City criminal justice system that is inefficient and demoralized. It has no enthusiasm for the laws it is supposed to enforce. The heroic efforts of the police to infiltrate and capture narcotic distribution rings are countermanded by a system that at arraignment reduces to misdemeanors 54 percent of those arrested on B felony or higher charges secured at considerable risk by the police. The justice system also dismisses or acquits 30 percent of the narcotics sellers brought to it. The State cannot wage a war against narcotics with criminal justice forces so lacking in efficiency and enthusiasm.

In 1973, a report very similar to the August 1986 DCJS report was presented to former Governor Rockefeller. It had been put together by the Joint Legislative Committee On Crime, which reviewed every

arrest in the City of New York from January 1, 1969, through October 31, 1971, where the police charged the then equivalent of a Class A-I narcotics felony. Governor Rockefeller was told that only 16 percent of those arrested received a state prison sentence. He was also told that 45 percent of those early A felony narcotics cases were dismissed.

The dismissal rate in 1985 in New York City was 33 percent for A-I possession cases. In 1985, 43 percent of the major drug sellers arrested for a Class A-II narcotics sale had their cases reduced at arraignment to misdemeanors. Then in the lower court, 65 percent (n = 40) of those A-II's had their charges dismissed and 8 percent or 11 received a jail sentence.

Governor Rockefeller was told that 20 percent of the heroin dealers indicted for an A felony received an A felony sentence. Governor Cuomo was told that 12 percent of the narcotics sellers indicted for an A-I felony received an A-I felony sentence.

Hindsight tells us part of the dismal record of enforcement found in the 1973 report was the product of corruption at all levels of government. A special prosecutor for corruption was created to tackle that problem and he is functioning today. Another special prosecutor was appointed just to handle narcotics

cases. What then is the explanation for the equally dismal record in 1985?

When the results of the 1973 study were presented to then Governor Rockefeller in the midst of that earlier narcotics crisis, he responded by introducing the famous Rockefeller drug laws which the legislature passed. Besides the mandatory sentencing laws and restrictions on plea bargaining, the state also created new judgeships, court parts, and a special narcotics prosecutor for New York City. The 1986 cost of those initiatives is $10.5 million in direct state aid and $39.7 million in indirect state and federal funding.

When the Rockefeller drug laws took effect, the federal government funded an evaluation study of their effectiveness. With this support, the Association of the Bar of the City of New York and the Drug Abuse Council formed the Joint Committee On The New York Drug Law Evaluation to perform the appraisal of the new law's effectiveness. The Joint Committee's final report appeared in 1977 under the title: The Nation's Toughest Drug Law: Evaluating the New York Experience.

In essence, the report found that the new law provided some degree of deterrence during its promotion phase (the State spent $500,000 on media

advertising), but in fact the law was never fully invoked or applied. (Emphasis supplied.) Although the number of special narcotics court parts in New York City has grown by 12 since 1973 when 31 additional parts were authorized by the new law, and although a special narcotics prosecutor was appointed for the City, the new law failed because it was never properly implemented. A main observation of the report was the following:

> The key lesson to be drawn from the experience with the 1973 drug law is that passing a new law is not enough. What criminal statutes say matters a great deal, but the efficiency, morale, and capacity of the criminal justice system is even more of a factor in determining whether the law is effectively implemented.
>
> Whatever hope there is that statutes like the 1973 revision can deter anti-social behavior must rest upon swift and sure enforcement and a dramatic increase in the odds that violators will in fact be punished. Until New York's criminal justice process is reformed so that it can do its work with reasonable speed and reasonable certainty, the Legislature does not in reality have serious policy options to choose from. Without implementation there is no policy: there are only words.

The City Bar Association report was right on target in 1977 when it said morale, efficiency, and capacity were crucial to the success of the anti-narcotics effort; and their conclusions are just

as valid in 1986. Governor Cuomo and the current legislature do not have serious policy options in confronting the narcotics crisis until they first reform the criminal justice system. In 1986, the State funded 12 Supreme Court parts in New York City to handle narcotics cases, 60 special prosecutors, together with all the ancillary personnel with the meager result that only 16 percent of arrested narcotics sellers got sent to prison for a median sentence of 2 years. And half of that meager 16 percent are going to prison because it is their second felony conviction. Prison is mandatory for all second felony offenders. The best the New York City criminal justice system can do after 12 years of increased resources and tougher laws is to imprison for 2 years 1 seller per day from each of the 4 major boroughs of the City.

It is obvious that a crisis of morale afflicts the New York City criminal justice system where narcotics enforcement is concerned. The system displays little enthusiasm for enforcing the narcotics laws as the Governor and legislature have decreed. When the police arrest a narcotics seller, invariably after an undercover purchase by an officer, the prosecutor will immediately reduce the charges against 54 percent of those sellers to a misdemeanor. This

means the case is diverted to the Criminal Court. Because of the gridlock in the lower court, 2,500 out of 5,588 narcotic sellers diverted there (44 percent) will have the charges against them dismissed.

Such prosecutorial indulgence is not reserved for minor sellers only. The DCJS report shows that 43 percent of those arrested for an A-II sale (1/2 to 2 ounces of heroin or cocaine) have their charges reduced to misdemeanors. Diversion of an A-II seller to the lower court leads to dismissal in 2 out of 3 cases.

This Committee examined the handling of narcotics cases in New York City for 1984. Its report, entitled Penelope's Justice, was issued September 2, 1986. The Committee found that many narcotics sellers were arrested on sales charges 3 and 4 times before prosecutors would finally obtain an indictment on felony charges. The Committee's report also documents the demoralization of the judiciary in narcotics enforcement. In 1983, a total of 629 indicted narcotics sellers pled guilty to a C felony which carries a mandatory prison sentence unless the judge was of the opinion that a sentence to prison of at least 1 year would be unduly harsh. The judiciary decided in 3 out of 4 C felony narcotics convictions that a sentence of 1 year in state prison would be

unduly harsh.

Another indicator of the demoralization of the narcotics law enforcement system in New York City is the record of its handling of narcotics dealers caught with a loaded firearm. In New York City in 1983, only 41 percent of convicted narcotic dealers also charged with possession of a loaded gun (in many instances used to threaten the undercover police officer) were sent to state prison. The worst record of all came out of prosecutions handled by the special narcotics prosecutor's office where only 30 percent of gun-toting narcotics sellers were sent to state prison. Here again, the sentencing judge had to find that a prison sentence for a narcotics seller caught with a loaded firearm would be unduly harsh in order not to sentence to state prison.

In this Committee's report, the question was asked: By what standard were our courts finding that 1 year in prison would be an unduly harsh sentence for 3 out of 4 sellers convicted of a C felony and 6 out of 10 narcotics sellers indicted for the violent felony of possession of a loaded gun? The Committee expressed its belief that a narcotics dealer would not regard a year in prison as unduly harsh. But many judges do, and that is a sure indicator of demoralization among the officials charged with

enforcing our narcotics laws.

The DCJS report contains one other indicator of demoralization implicit in the numbers in its tables. That indicator is found in the treatment of A-I sales arrests. An A-I sale would involve more than 2 ounces of a narcotic such as cocaine or heroin. There is no separate breakout of A-I sales arrests in the DCJS report but the data can be extracted by reading tables 5, 6, and 7 of the DCJS report. It appears there were approximately 125 life sentences handed down in New York City in 1985 on A-I felony indictments. An earlier DCJS report counted 197 A-I sales indictments disposed of in New York City in 1985 of which 175 were convictions.

Our narcotics laws mandate that an A-I drug seller get a life sentence even if he plea bargains. An A-I drug seller cannot plead below an A-II drug felony and that carries a mandatory sentence of three years to life. There is one exception. If the A-I narcotics seller cooperates with the police and prosecutor and provides information and evidence of substantial assistance, he can receive a sentence of lifetime probation. Some 13 defendants in New York City in 1985 received a probation sentence on their plea to an A-I indictment. Of the remaining 162 A-I sellers, 37 received other than the mandatory life

sentence. Thus, 21 percent of the top narcotics sellers convicted in New York City in 1985 received either an illegal sentence or an illegal plea bargain. In 1983, the Committee found that illegal plea bargaining occurred in 25 percent (54 out of 221) of all the A-I indictments (selling and possession) disposed of in New York City. The 1985 DCJS figures were only for A-I sales cases.

Thus, we see inexplicable attrition in the most serious narcotics cases processed through the system. Such attrition means the decision makers of the criminal justice system do not believe in the goals of narcotics enforcement sufficiently to enforce the law as enacted. They are turning loose the overwhelming majority of arrested narcotics sellers. Morale is gone, demoralization pervades the system. That lack of esprit de corps is daily communicated to the police who interact with the criminal justice system.

The gap between the statutes and their execution is emphasized for a number of reasons. First, two distinct and contradictory messages are being sent to the horde of drug sellers operating in New York City. (The term horde probably understates the situation. There were 11,895 narcotics sellers arrested within the boundaries of the City in 1985.) The first message from the state government is that punishment

and prison await the narcotics seller. As the Bar Association report observed, this message was initially effective in deterring traffickers. The second message from the criminal justice system is that punishment and prison for selling narcotics is quite remote. Narcotics sellers are realists and take their cue from the system which, after all, is the only one they have to fear. Governor Cuomo and the legislature do not make the decision to imprison. Prosecutors and judges do. The combination of profits to be realized and the absence of perceptible risk make narcotics selling irresistible to those so inclined.

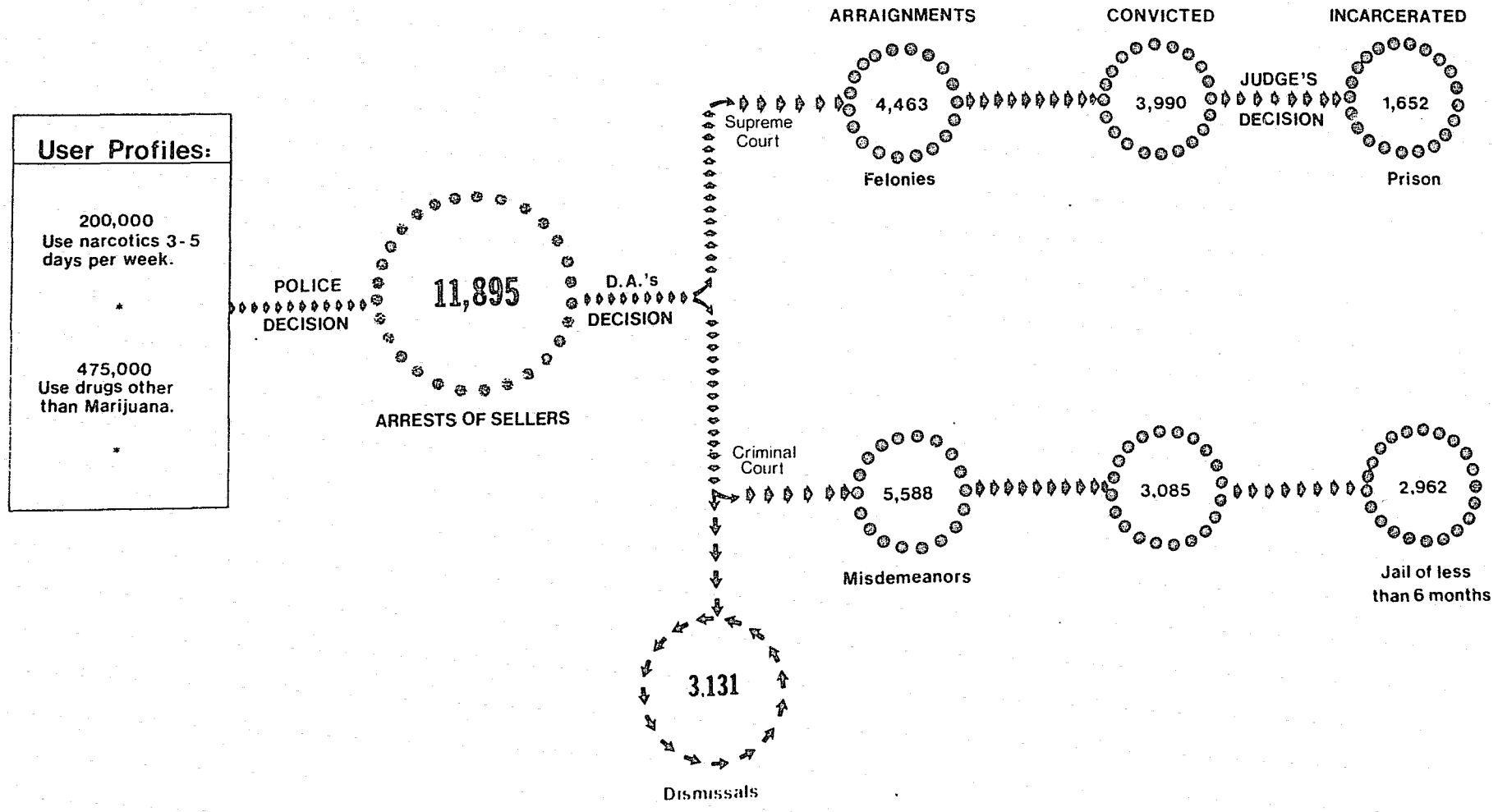
Something else happens when laws are not enforced in the criminal justice system. Authority is diminished with profound consequences. Authority is the expected and legitimate possession of power. When authority is ineffective and looses control, the loyalty of the public and the allegiance of officials is withdrawn. The consequences of this are that the practices of authority found in the body of laws such as govern police conduct and citizen action are abandoned in favor of non-authoritative but more effective practices such as vigilantism. When the police know that 5 out of 6 narcotics sellers are going to be released without significant punishment by

the criminal justice system, we should be surprised that so few police officers have resorted to harassment of narcotics traffickers by illegal seizures of drugs and cash proceeds.

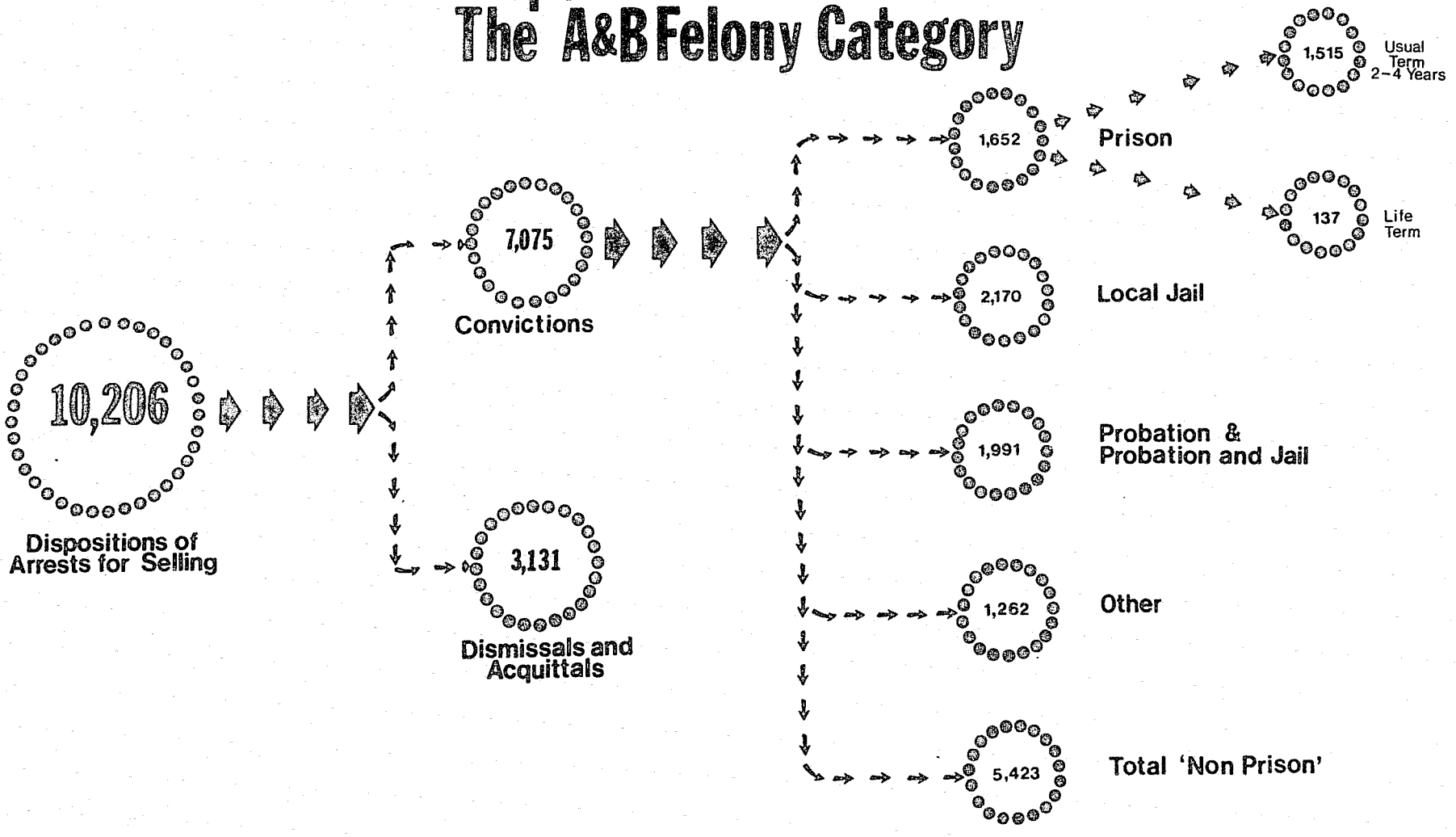
A functional law enforcement system is our best defense against corruption or illegal conduct by the police. When the demand is made on the police for strict adherence to the law, the same demand should be made on the other components of the system. Whether the reason for non-enforcement of the narcotics laws is corruption or demoralization, our citizens and neighborhoods suffer just the same. We note the situation in the 77th Precinct is being handled expeditiously by the Police Department itself and the Special Prosecutor. We ask who will restore morale to the rest of the narcotics enforcement system?

September 26, 1986

Battle Results of the War Against the Drug Dealers in New York City in 1985



Drugs in New York City, 1985
Dispositions Of Cases In The A&B Felony Category



DISPOSITIONS OF INDICTMENTS OF THE MAJOR DRUG DEALERS 1981-85 IN THE A-I CLASS FELONY CATEGORY

Year	Indictments # Disposed	Acquitted	Convicted Plea	Convicted Trial	Total Convicted	State Prison	Total Trials
1981	320	7	208	33	241	210	40
1982	273	15	177	29	206	171	44
1983	303	13	200	20	220	196	33
1984	342	9	228	25	253	221	34
1985	342	12	223	33	256	218	45
TOTAL	1,580	56	1,036	140	1,176	1,016	196

*A-1: Sale of more than two ounces, or possession with intent to sell of more than four ounces.

Source: New York State Felony Processing Quarterly Reports, Division of Criminal Justice Services

PUBLIC HEARINGS, 1986

A Hearing on Deferred Sentencing

Place: New York, New York Date: January 30, 1986

Present for the hearing were Senator Christopher J. Mega and Senator Martin J. Knorr.

In an opening statement, Senator Mega announced that the purpose of the hearing was to examine allegations of illegal sentencing particularly in New York City. He referred to the separation of powers, emphasizing the function of the legislature in establishing laws and the role of the judiciary in the application of criminal law. Senator Mega also pointed out the legislature's continuing responsibility to monitor the implementation of laws that it had enacted.

The subject under investigation at this hearing was "interim supervision," i.e. the practice by some judges of placing a person convicted of a crime under the supervision of the Probation Department before a sentence has been pronounced. The practice is also referred to by the generic term "deferred sentencing."

Senator Mega expressed the opinion that the Probation Department should not be expected to assume responsibility for any felon who has not yet been sentenced. He mentioned the fact that the Probation Department has initiated a civil suit in opposition to the judicial practice of assigning defendants to their interim supervision. He also reported that the Committee had issued subpoenas to certain judges to appear at the hearing but that the judges had filed suit to quash the subpoenas. The subpoenas were subsequently withdrawn.

The first witnesses called were Thomas E. Slade, First Deputy Commissioner, Department of Probation, New York City, and Howard Yagerman, General Counsel, Department of Probation, New York City.

Commissioner Slade said the Department of Probation supervises all adults sentenced to terms of probation by the Supreme Court and the Criminal Court, and all juveniles placed under probation by the Family Court. In addition, probation officers prepare pre-sentence reports to assist judges in deciding on appropriate sentences for convicted offenders. The Department's budget is currently $33 million and it employs about 1,275 people, 800 of whom are probation officers.

Commissioner Slade described the theory

underlying probation: Certain individuals do not need incarceration to protect society and can be rehabilitated by getting at the root causes of their problems.

On the subject of interim supervision, Commissioner Slade contended that the Department of Probation was legally responsible only for those offenders who had been formally sentenced to probation by the court. He estimated that the New York City Probation Department was required by the courts to accept about 1,000 cases each year for interim supervision. Commissioner Slade stated it was his belief that the Department had no legal control over convicted offenders on interim supervision. He said that both defendants and probation officers assigned to them felt an order of interim supervision left them in a legal limbo in which rights and obligations were not defined by law.

Commissioner Slade said that about 96 percent of those on interim supervision had been convicted for felonies, of which approximately 40 percent were robberies. The Probation Department's analysis concluded that those on interim supervision tended to be more assaultive than ordinary probationers, have greater psychological and social deficits, and if they were evaluated for a formal sentence of probation they

would fall into the highest risk category.

Senator Mega brought up the case of Larry Clifford, a.k.a. Hector Henry. Clifford was indicted in Manhattan in 1984 for robbery 2nd degree, a violent felony. Conviction for a violent felony normally requires a sentence of mandatory incarceration. However, on May 24, 1984, Clifford was assigned to interim supervision. On March 21, 1985, and on April 19, 1985, Clifford was again arrested for robbery in Brooklyn. Only on May 29, 1985, did Judge Berkman sentence Clifford to 2 1/2 to 7 years in prison. The police indicated that Clifford was a suspect in 8 to 10 more robberies.

Commissioner Slade stated that 26 percent of those given interim supervision are re-arrested for some crime. Approximately 33 percent are re-arrested for felonious assault; 10 percent, for robbery; and 10 percent, for burglary.

Jeremiah McKenna, General Counsel for the Committee, mentioned two cases in which homicides were committed by defendants while they were on interim supervision. He also raised the issue of New York City's liability for victims killed or injured by offenders on interim supervision.

Commissioner Slade stated that in regard to interim supervision cases in general, the Probation

Department's pre-sentence reports recommended incarceration about 75 percent of the time -- usually because the law mandates incarceration for the conviction charge. If an individual is formally sentenced to probation and he is not legally eligible for probation, there is a procedure for notifying the district attorney, who can then go back into court on the grounds that an illegal sentence has been imposed. However, this mechanism is not triggered by an assignment to interim supervision because the defendant has not been formally sentenced.

Asked how long the practice of interim supervision had been in place, Mr. Yagerman implied that it had been used at least as long as he had been with the Department, i.e. seven years.

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The next two witnesses called were Helen Sammet and Iris Hill. Mrs. Sammet identified herself as Branch Chief in the Probation Department assigned to Manhattan Adult Supervision. Mrs. Hill identified herself as a Probation Officer assigned to Manhattan Adult Supervision, Branch B.

Mrs. Sammet is a college graduate with social work experience. She has been with the Probation Department for 21 years, has been a Probation Officer, Senior Probation Officer, and supervisory Probation

Officer. Her Civil Service Title is Administrative Probation Officer.

Mrs. Hill is also a college graduate and had three years experience as a social worker in the criminal justice system prior to 1984 when she began working for the New York City Probation Department.

Asked by Senator Mega about the case of Damon Weldon, Mrs. Sammet said that he had been assigned to interim supervision on May 8, 1984. Weldon's original crime was manslaughter and he pled guilty to assault 2nd degree. His criminal history included a case of rape dismissed in Family Court. On May 10, 1982, he had been adjudicated a youthful offender in criminal court and received a one year probation sentence.

In the present case, Weldon and his brother-in-law caught a man stealing a tapedeck from his car. They beat him and Weldon went back to get a club to continue the assault. The man died five days later without ever recovering from a coma.

On May 8, 1984, Judge Haft assigned Weldon to interim supervision. The case was returnable on December 14, 1984, for a Probation report to the court. Probation Officer Rosenberg was the first officer assigned to the Weldon case.

From May 8, 1984, to December 14, 1984, Weldon reported to Probation very sporadically. He claimed

to be employed by a relative but submitted no proof of employment. Because Weldon did not appear to adjust to any kind of supervision and because the nature of his crime was extremely serious, the Probation Department recommended incarceration at the hearing on December 14, 1984. However, the court again placed Weldon on interim supervision with a report returnable on March 1, 1985.

In the meantime, Mrs. Hill replaced Miss Rosenberg on the Weldon case as assigned Probation Officer on approximately September 30, 1984. Mrs. Hill stated that Weldon's conduct did not improve during his second assignment to interim supervision between December 1984, and March, 1985. He continued to claim employment at his uncle's funeral parlor but was never there when Officer Hill called. The uncle was also out whenever Mrs. Hill called to verify employment. Weldon was never able to produce a pay stub.

Mr. Yagerman testified that an assistant general counsel, Leslie Brody, was assigned to represent the Probation Department in the Weldon case before Judge Haft on March 1, 1985. At that time, the judge requested that the Probation Department change the probation officer assigned to Damon Weldon, i.e. that Mrs. Hill be removed from the case and another officer

be assigned.

Mr. Yagerman stated for the Committee's record that the Probation Department in New York City is not part of the judicial system. It is an executive department under the Office of the Mayor and by statute has the prerogatives for the administration of the Department.

Mrs. Sammet said that Miss Brody was back in Judge Haft's court representing the Probation Department on April 29, 1985. The judge objected to the fact that the probation officer had not been changed. He ordered Mrs. Sammet and Mrs. Hill to appear before him the next day. At that time, Mrs. Sammet said, Judge Haft admonished her for not following his order. On advice of counsel, Mrs. Sammet said she was not obliged to obey and that her directions came from her superiors in the Probation Department.

Mrs. Sammet testified: "He asked me if I would change the probation officer. I said I would like to confer with my superiors. At that point he advised me I was in contempt of court and ordered me held."

Senator Mega asked: "He threatened to put you in jail?"

Mrs. Sammet replied: "Yes. The court officers were directed to take me from the courtroom." The

court officers did not actually put Mrs. Sammet into the holding pen with the prisoners awaiting their court appearances but held her outside that area.

According to Mr. Yagerman, while Mrs. Sammet was being led out of court, Miss Brody approached the bench and asked the judge not to put Mrs. Sammet in the pens but rather allow her to sit in the jury box awaiting further developments from the Probation Department. The judge relented and allowed her to sit in the jury box.

Mrs. Sammet said she waited in court while Miss Brody went across the street to get Mr. Yagerman and the Assistant Commissioner.

Mr. Yagerman then put the Department's objections to the judge's request on the court record. Judge Haft said he would continue the contempt citation of Mrs. Sammet until the Department changed Damon Weldon's probation officer.

Mr. Yagerman and the Assistant Commissioner then held a brief conference in court. Mr. Yagerman: "...in light of the fact that Mrs. Sammet suffers from a severe arthritic condition and other personal health problems, we felt that the health and safety of our employee at that point was far more important than the legal point that was being made...we did relent and assign another probation officer."

On June 26, 1985, Damon Weldon was arrested in the Bronx for burglary and possession of burglar's tools. The case was referred to the grand jury on July 1, 1985.

On July 12, 1985, Judge Haft sentenced Damon Weldon on the original conviction charge of assault in the 2nd degree. Weldon was given a prison term of 2 1/3 to 7 years.

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The next witness to testify was Archibald R. Murray, Executive Director and Attorney-in-Chief of the Legal Aid Society, New York City. Mr. Murray said he thought the term "interim supervision" was a misnomer and said "deferred sentence" was more appropriate. During the time between conviction and sentencing, the court attempts to familiarize itself with the defendant, his circumstances, and the potential for the defendant to function effectively and lawfully in society.

Mr. McKenna referred to Hogan v. Bohan, 305 New York 110. Bohan was a multiple offender. He pled guilty to a felony. He was required to be sentenced to prison. The judge instead put him on deferred sentence. The Court of Appeals said you can do anything you want but sentence you must. In the Damon Weldon case the District Attorney stood mute in court

during the proceedings between the court and the Probation Department. If the District Attorney agrees with an assignment to interim supervision and returning a Damon Weldon to the community, why does he agree to a plea that requires incarceration in prison?

Senator Mega said that what bothered him most about the practice of interim supervision was that the criminal justice system is being changed not by the legislature but by a group of judges who have decided that this is the way to go.

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A Hearing on Intravenous Drug Abuse

Place: Albany, New York Date: February 14, 1986

Present for the hearing were Senator Christopher J. Mega and Senator Joseph L. Bruno, Chairman of the Senate Committee on Insurance.

Senator Mega announced that the subject of the present hearing was the impact of intravenous drug abuse on the New York State criminal justice system. The first witness was U.S. Senator Alfonse D'Amato.

Senator D'Amato said that intravenous drug abuse combined with the threat of an AIDS epidemic could overwhelm our criminal justice and health care

systems. The only drug statistic that is going down is the age of the drug users. In New York State, 10 percent of high school students surveyed said they tried illicit drugs by the age of 9. The average age at which drug use begins is 13. While law enforcement can attack the supply of drugs, only education and treatment programs can limit drug demand.

So far we have lost the battle against drugs.

In response to a question from the Chairman, Senator D'Amato said that he would be in favor of capital punishment for major drug dealers.

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The next witness was Dr. David Axelrod, Commissioner of the N.Y.S. Health Department. He stated that New York City alone expects some 2,400 new cases of AIDS in 1987, of which about one-third will be in the intravenous drug user population. New York State will treat some 4,000 individuals with AIDS, one-third of whom are I.V. drug users. The treatment for one I.V. AIDS patient costs about $100,000 per year. For 800 new I.V. AIDS patients in 1987 in New York State, the cost will be about $80 million. Medicare coverage must be extended to those individuals.

Home care and hospice programs should be adapted for AIDS patients by easing current eligibility

restrictions and by raising the reimbursement ceiling which is too low to assure the amount of service needed by AIDS patients.

Institutions such as the Bellevue Hospital Center in New York find that virtually all of their intensive care units are filled with AIDS patients. This limits the hospital's ability to provide services to other patients.

Concerning the Department of Corrections, the Health Department has worked closely with Corrections on education for staff and inmates. The Health Department has conducted educational forums in two dozen facilities, distributing specially designed brochures in Spanish and English, and developing protocols for handling prisoners with AIDS.

Correctional Services now does isolate prisoners with AIDS. As the evidence continues to confirm that casual contact does not transmit AIDS, there is no health reason to screen inmates to determine their HTLV status.

Correctional systems throughout the country agree on the importance of providing education on AIDS to staff and inmates; 93 percent currently provide or are developing AIDS training or educational materials for staff; 83 percent provide or are developing such programs or materials for inmates. We have both in

New York State.

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The next witnesses were Dennis Whalen, executive assistant to the Commissioner of the Division of Substance Abuse Services and Dr. DesJarlais, assistant director of research for Substance Abuse Services. In response to a question from Senator D'Amato, Mr. Whalen said that a drug curriculum was first distributed to schools in New York State in 1979. It was redistributed in 1981 and at that time it was accompanied by an intensive program of teacher training. An updated program will be available in the fall. Mr. Whalen said that he believed teachers should be intensively trained in the implementation of the updated program.

In addition, non-traditional means of communication with drug addicts will be used, he said. We will be using storefront information centers, vans to facilitate mobility of street worker teams (which include former addicts) and we will also be providing HTLV-3 antibody screening.

Dr. DesJarlais reported that over the last six months there have been an average of about 200 new cases of AIDS per month in New York City. About 80 of the new cases have been I.V. drug users. Roughly 60 percent of I.V. drug users report some degree of

behavior change. About a third said that they are reducing the level of injection. Another third said they are attempting to use sterile needles, either cleaning them or purchasing sterile needles. The final third claim they are reducing the number they share needles with, usually limiting them to friends or lovers.

About 64 percent of the people arrested in New York City for serious crimes have illicit drugs in their system at the time of arrest.

On the question of distributing free sterile needles to addicts, Dr. Axelrod stated that he was opposed.

Jeremiah McKenna, General Counsel for the Committee, asked Dr. Axelrod to project beyond 1987 and estimate -- if the AIDS epidemic continues -- if the health and hospital systems would be up to the task.

Dr. Axelrod said that there was limited data on which to base projections. At the present time, it appeared the number of cases would double every 24 months but it would be inappropriate to suggest that particular doubling time to remain constant.

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The next witnesses were Marion Borum, Deputy Commissioner for Program Services, DOCS, and Dr.

Raymond Broaddus, Assistant Commissioner for Health Services, DOCS.

Dr. Broaddus stated that there are currently more than 16,000 confirmed cases of AIDS in the United States and nearly 50 percent are in New York State. The first confirmed AIDS case in N.Y.S. corrections surfaced in 1981. Since that time, there have been 259 confirmed cases in state prisons. Of that number, 168 have died. A total of 48 active cases remain in the prison system. Presently, 22 AIDS or ARC (AIDS related complex) cases are in community hospitals. The remaining AIDS cases are at Sing Sing or in specially designated facility infirmaries. Clearly, 95 percent of our AIDS or ARC cases are I.V. drug abusers.

We emphasize the following points:

- Extensive education on the means of transmission of the virus.
- Centralized medical evaluation and careful tracking of all inmates suspected of having AIDS or ARC.
- No medical segregation of ARC or seropositive inpatients but medical isolation of all confirmed AIDS cases.

For the last several months, the number of active cases in the system has fluctuated between 44 and 50

cases.

Mr. McKenna asked why the Department of Correctional Services decided against mass screening for antibodies. Dr. Broaddus replied that the Department primarily based its decision on the recommendation of the Department of Health. Personally, Dr. Broaddus said he believed such a policy would be unmanageable given the volume of inmates and the fact that if a large number of seropositives were found the Department could do nothing of any significance about it. Asked about AIDS inmates who are paroled, Dr. Broaddus said sometimes they simply remain in the community hospital under treatment. In other cases, the inmate's family is contacted.

CORRECTION ON CANVAS

"Correction on Canvas 20," the annual show and sale of art work by inmate artists, was sponsored jointly by the Committee and the Department of Correctional Services in the "well" of the Legislative Office Building in Albany from March 4 through March 14, 1986.

This year's show included hundreds of paintings, sculpture, wooden furniture and leather goods created by inmates from over twenty-five of the State's correctional facilities, as well as the New York City correctional system.

A volunteer panel of art professionals judged the sculpture entitled "Self Examination," by Pedro Hurtado, as "Best of Show." Prizes were also awarded to the three top works in six categories--crafts, graphics, mixed media, painting, sculpture, and watercolor.

For the third consecutive year, a special collection of work was donated by the inmates and offered for sale to benefit victims of crime. This sale resulted in the presentation of a check for

$880.00 to the Crime Victims Board, an increase of 20 percent over last year. "Airshaft" by Robert M. Malera was awarded "Best Donated Work."

In addition to the special sale category to benefit crime victims, a total of 264 individual works of art were sold for an all-time record sales total of $13,352.

At the opening ceremonies, a special presentation was made to Senator John R. Dunne who, as Chairman of the Committee, initiated the Correction on Canvas art show twenty years ago.

The Committee wishes to extend its gratitude to the New York Telephone Company for its generous donation of the prizes.

Special appreciation is extended to Thomas A. Coughlin, Commissioner of the Department of Correctional Services, and Rich Amyot, Project Coordinator, for their active participation in this annual event.