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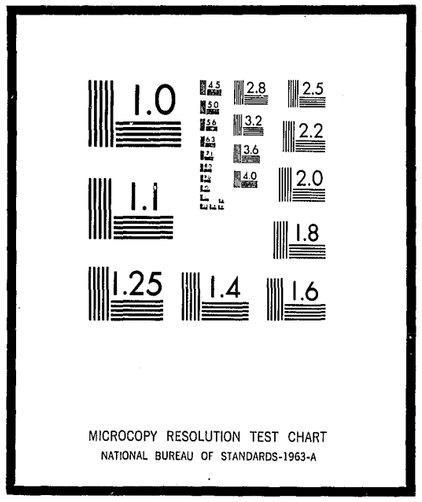

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ROBBERY
ASSAULT
BURGLARY
LARCENY
AUTO THEFT
SAN FRANCISCO

ANNOTATION:
THE SAN FRANCISCO COMMITTEE ON CRIME HAS THE DUTY OF REPORTING AND MAKING RECOMMENDATIONS FOR A MORE EFFECTIVE AND ECONOMICAL SYSTEM OF CRIMINAL LAW.

ABSTRACT:
PREVIOUS REPORTS OF THE COMMITTEE HAVE EXAMINED HOW LAWS ARE CURRENTLY ENFORCED AND WHAT IMPROVEMENTS CAN BE MADE IN ENFORCEMENT. THE PRESENT REPORT ASKS MORE BASIC QUESTIONS. IT ASKS WHY AND HOW FAR CERTAIN LAWS SHOULD BE ENFORCED, WHY THEY SHOULD EVEN EXIST. THIS REPORT TENDS TO BE PHILOSOPHICAL--BUT TO THE END OF BEING HIGHLY PRACTICAL. DRUNKENNESS IS CONSIDERED FIRST BECAUSE IT IS AN OBJECT LESSON. KNOWING OPINION HAS COME TO RECOGNIZE THAT DRUNKENNESS MUST NOT BE HANDLED AS IT HAS BEEN, ALTHOUGH THE METHOD OF HANDLING IT IS STILL IN A STATE OF TRANSITION. MANY PEOPLE DEAL WITH IT AS A PUBLIC HEALTH PROBLEM, AND THE CRIME COMMITTEE APPROVES THAT CONCEPT. WITHOUT THE EXPENSE OF ATTEMPTS AT COMPLETE MEDICAL REHABILITATION AND CURE, DRUNKENESS SHOULD BE TAKEN OUT OF THE CRIMINAL PROCESS ENTIRELY. NOT INCLUDED IN THE USE OF THE TERM

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DRUNKENNESS IS THE STATE OF BEING DRUNK IN AN AUTOMOBILE OR THE ACT OF DRIVING WHILE DRUNK. THOSE ARE CONDITIONS CONTAINING A STRONG PROBABILITY OF INJURING OTHER PEOPLE AND THEY OUGHT TO BE HELD CRIMINAL. (AUTHOR ABSTRACT)

THE SAN FRANCISCO COMMITTEE ON CRIME

A REPORT ON NON-VICTIM CRIME IN SAN FRANCISCO

PART I
BASIC PRINCIPLES
PUBLIC DRUNKENNESS

This project was supported by O.L.E.A. Grant No. 374 awarded by the Law Enforcement Assistance Administration, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Moses Lasky, Co-chairman
William H. Orrick, Jr., Co-chairman
Irving F. Reichert, Jr., Executive Director

THE SIXTH REPORT OF THE COMMITTEE

April 26, 1971

This Report is being submitted to the Law Enforcement Assistance Administration of the United States Department of Justice in partial satisfaction of the conditions of O.L.E.A. Grant #374.

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EXECUTIVE DIRECTOR

April 26, 1971

Honorable Joseph L. Alioto,
Mayor of the City and County
of San Francisco,
City Hall,
San Francisco, California 94102.

My dear Mr. Mayor:

With this letter the San Francisco Committee on Crime submits to you Part I of its report on non-victim crime, a subject in which you have evinced much interest. As the report states at the outset, previous reports of the Committee have examined how laws are enforced and what improvement can be made in enforcement, but the report on non-victim crime asks the more basic questions of why certain laws should be enforced at all, and why they should even exist. The importance of the subject is also delineated by that portion of the report which speaks of the capacity of criminal law, and the crisis of costs.

Part I covers two subjects, basic principles and their application to drunkenness. So many vagrant and emotional attitudes toward non-victim crimes are encountered

that it seemed important to think out and articulate basic principles. Without immodesty, we think that Chapter 1 does this. Chapter 2 applies these principles to drunkenness; stated as briefly as possible, the conclusion of Chapter 2 is that, apart from drunken driving, drunkenness should be taken out of the criminal system entirely, whether or not it is possible to handle drunkenness as a medical problem. We are confident that the conclusion of Chapter 2 will in no distant future be followed throughout the United States. We hope that San Francisco will have both the courage and intelligence to be the first to do so.

There will be a Part II and possibly a Part III of the report, to be issued within the next two months. They will deal with other so-called non-victim crimes.

Respectfully,

Moses Lasky

William H. Orrick, Jr.

Co-Chairmen.

ML:MD

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IRVING F. REICHERT, JR.
EXECUTIVE DIRECTOR

April 26, 1971.

Honorable Dianne Feinstein,
President of the Board of Supervisors
of the City and County of San
Francisco,
City Hall,
San Francisco, California 94102.

Dear Mrs. Feinstein:

The San Francisco Committee on Crime submits to you with this letter Part I of its report on non-victim crime. Sufficient copies are enclosed for all members of the Board of Supervisors. We also enclose a copy of the letter by which we are concurrently submitting the report to the Mayor.

Respectfully,

Moses Lasky

William H. Orrick, Jr.

Co-Chairmen.

ML:MD
Encs.

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PREFACE

The San Francisco Committee on Crime has been entrusted with the duty of reporting and making recommendations for a more effective and economical system of criminal law. Previous reports of the Committee have examined how laws are currently enforced and what improvements can be made in enforcement. In addition to these questions, the present Report asks questions more basic. It asks why and how far certain laws should be enforced, why they should even exist. This Report will therefore tend to be philosophical -- but to the end of being highly practical. Well-qualified scholars of law and society have explored these questions, and we have had the benefit of their views. The Committee's own membership includes men whose experience qualifies them to offer answers, and its staff has spent many hours seeking statistical and other data on the subject.

Reliable statistics are hard to come by. When assembled, they are not exact. Statistics about the same thing but from different sources do not concur; statistics from the same source are not always internally consistent; categories overlap, and the effort necessary to eliminate overlap would not be warranted by the enlightenment it would bring. No one can tell with precision what it costs to arrest, process, and jail one drunk or to "roust" one prostitute. But the statistics serve their

I. BASIC PRINCIPLES

This Report endeavors to make those who quite properly press for law enforcement in San Francisco aware of the meaning of what they [illegible]. They should know the enormous costs involved -- not only dollar costs to the burdened taxpayer, but intangible costs in the erosion of civic morality and respect for law when law tries to do what it is not well adapted to do or ought not to be trying to do at all or what other public effort can do better, when the innocent are swept up with the guilty, when sporadic enforcement based on deviant stereo-types undermines respect for enforcers, when police must constantly exercise the kind of superhuman discretion for which no training can prepare them.

The 1970-71 San Francisco budget for the police department is $31,428,713 and for all agencies of justice, mostly criminal, $47,253,182. The police made 59,100 arrests in 1969. Of this number 16,500 persons were arrested for drunkenness; 6,140 for drug offenses of whom about 4,900 were charged with nothing else; about 3,200 were arrested for prostitution (some under the guise of obstructing the sidewalks) and other non-violent sex offenses.[1] Forty-one percent (41%) of the inmates of the county jail at San Bruno are there as a result of drunk arrests. Yet, they and similar matters, consume roughly $3,000,000 or 7% of the

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[1] Not included in these figures are over 1,000,000 traffic citations.

budget for the administration of justice. In the same year the police reported 83,481 offenses of killings, forcible rapes, robbery, aggravated assaults, burglary, larcenies and auto thefts, and not 13% of these "cleared." In short, while unable to solve as much as 13% of the "crimes in the street," over 50% of the arrests and 54% of the jail occupancy went to non-violent "crimes."

These facts bring one up with a jolt. There is enormous slippage in the gears of the system. Law enforcement is costly. Not only does every arrest consume energies of the police; it may be the start of a train of processes and expenditures, as the case winds its way through the District Attorney's Office, possibly the Public Defender, the courts, the probation department, the jails, some cases peeling off and being dropped at stages on the way. More police, more prosecuting and defense attorneys, more judges, more courtrooms, more bailiffs and clerks, more equipment, more jails, more rehabilitation centers, more taxes -- but no less crime in the streets. This is the picture.

And so it becomes essential to inquire whether we, the public, are not asking the system of criminal law and justice to do too much. The inquiry goes to the very heart of what a governmental system should do; it involves citizens' liberties, citizens' protection and the taxpayer's dollar.

The subject of the present Report is, broadly speaking, what has come to be called "non-victim crime." This is a loose term. Read literally, it suggests that no one is a victim when two males copulate in private, or when a man chooses to lie with a prostitute or to destroy himself with the bottle, or to roll dice, or when a student chooses to smoke "grass." The term "non-victim crime" must therefore be re-read as "crimes without victims or with consenting victims." The terms further suggest that if no individual is a "victim," the public is not injured. It is, therefore, a question-begging term. But it is sufficiently suggestive to serve as an area of inquiry.

In approaching the problems dealt with by this Report, we believe that seven basic principles must be applied. We list them and explain why each is basic.

First principle: The law cannot successfully make criminal what the public does not want made criminal. The law cannot outrun the public conscience -- not simply the public conscience as professed from its pulpits and by its public figures, but the public conscience as demonstrated by how the public lives. At the risk of overstatement for the sake of emphasis, we state a paradox: Law can never be enforced when it becomes necessary to enforce it. We mean that unless the public, on the whole, is normally willing to obey the law without compulsion, the law cannot be enforced -- except in a police state. Hitler with a gestapo

might do so. But in a democratic society such as we treasure, a police force and courts seeking to apply even modest notions of civil rights and due process can enforce the law only if the vast bulk of the people quietly acquiesce and live in a law-abiding way. To take the simplest possible example: It is absurd for law to criminalize a church bingo game. Yet, as we shall see, laws like that are on the books, rarely enforced but lying at hand where they can be used as tools for harassment.

Second principle: Not all the ills or aberrancies of society are the concern of the government. Government is not the only human institution to handle the problems, hopes, fears or ambitions of people. There are still homes, families, churches, schools, unions, and the multitude of voluntary associations that characterize American life. If a breakdown in the system of law enforcement is to be avoided, it is necessary to stop loading upon the system of criminal law tasks that are unnecessary or for which it is not well fitted. And this second principle is the beginning of the answer to the question, "What is an unnecessary or unfitting task?"

Third principle: Every person should be free of the coercion of criminal law unless his conduct impinges on others and injures others, or if it damages society. Only in that event should the criminal law lay on its hand. Otherwise, a person should be left free to conduct his

life in his own way, to "go to hell in his own handbasket" or to heaven in his chariot, to act the fool as others see it. The proper sphere of Criminal Law is the relation of people to one another, not the relation of man to his conscience or to the conscience of others or to God. Stating the matter categorically, government should restrict only those actions of people that injure the community's peace, well-being, or dignity or contain a strong probability of doing so. No doubt it is often difficult to see where the line lies between what damages society and what does not. But failure to search for that line can only mean confusion and chaos. Our principle does not mean that society should refrain from trying to save people by persuasion or by education or that it ought not to offer them aid. It does not mean that society "write off the young" or any other group or person thought to be aberrant or self-destructive. It means only that government ought not to use coercion to prevent one from acting as he wishes so long as his conduct injures no one else or society itself. This leads to the next step in the chain of understanding.

Fourth principle: When government acts, it is not inevitably necessary that it do so by means of criminal processes. Even if conduct may be injurious to the rest of society, that is no necessary reason to make the conduct a crime, subject to prosecution and punishment. The methods of the criminal law may be ill suited, or there may be better

ways of achieving an end, better ways to deter or rehabilitate than to arrest, charge with crime, prosecute, convict and sentence. We must ask questions such as these: Why should a chronic drunk be scooped up, tried, sentenced and jailed in the filth of a county jail instead of being placed in a detoxification facility or even sobered up in a clean civic dormitory?

Fifth principle: Society has an obligation to protect the young, and it may be appropriate for government to intervene by imposing criminal controls on adult relations with the young although controls on similar relations between adults would not accord with our other principles.

Sixth principle: Criminal law cannot lag far behind a strong sense of public outrage. This is the other side of the coin from the first principle. Although criminal law cannot outrun the public conscience in condemning conduct, neither can it hold aloof entirely from a public sense of outrage. If the law suffers when it tries to do too much, it also suffers when it does not do what most people feel strongly that it ought to do. Because this sixth principle acts as a counterbalance to some of the others, it must be applied with great circumspection. Before applying it one must be certain that his personal sense of outrage -- his personal morals -- or that of his group is that of the public as a whole.

Broadly speaking, "non-victim" crime is a "morals" matter. It comprises those forms of aberrant behavior called "vice." The public

demand for "safe streets" is a demand for protection from violence. But the periodic demand that the police "clean up the streets" is something else; it is a demand to clean out vice. It is in response to this demand that the police round up the prostitutes, drunks, drug addicts, and others. It is well to review, briefly, what arguments are advanced to support denunciation of immoral behavior as criminal.

One reason assigned for making immoral conduct criminal is to avenge society. As no civilized man would publicly subscribe to that argument, regardless of what he might feel about a crime of brutal violence, it deserves no further comment.

Two other reasons often assigned for making immoral conduct criminal are to protect the deviant by imprisoning him and thereby keep him out of trouble and to deter further deviance by him or others. There may be a moral duty to protect the weak against temptation or from the consequences of his own sin, but except for the immature young this is not a task within the purview of the criminal law. Moreover, it is a task that criminal law performs badly. The consensus of those who have studied law enforcement is that imprisonment probably provides more education in criminality than in repentance. Prison is no threat to those who are there because a compulsive weakness has put them there, and the threat of prison appears to be little deterrent to those of the "now" generation who live in the present and will take any risk to "expand" their experiences now. Any kind of punishment may alienate the offender from society,

particularly if he thinks the law he has violated is unjust, unfair, or unnecessary or that punishment is a benighted way to go about curing the evil. Students of the subject say that the real deterrence offered by the criminal law to condemned conduct lies not in the severity of penalities but in (1) the quickness and certainty of imposition of any penalty and (2) the social condemnation flowing from accusation and conviction. Our system of courts and law enforcement is not conducive to speed and certainty, and social condemnation in a modern urban society grows increasingly attenuated.

While these first three reasons for making immoral conduct criminal have little, if any, merit, there are two others more deserving of careful consideration. The fourth reason given for making vice criminal is a prophylactic one. The argument runs that immoral behavior, although initially harmful only to the offender, will eventually breed true and serious crimes. Prostitutes may rob their clients or give them venereal disease. Homosexuals may corrupt minors or become victims of blackmail. Drunks are a public eyesore, and behind a wheel they may become murderers. Narcotics addicts may steal to obtain money for a "fix." Organized crime may organize a vice and gain political power. This argument cannot be swept aside out of hand. In part the answer is that the time to punish conduct as criminal is when it becomes criminal, not in anticipation. In part the answer may be that what makes it possible for organized

crime to organize the vice is the fact that the vice has been declared criminal. But these are serious questions, and we explore them in the later pages of this Report in the context of particular vices.

A fifth reason assigned for making vice criminal is to protect society from decadence and dissolution. It is argued that prevalence of deviation from the accepted norm tends to destroy the "moral fabric" of society and in this way leads to organized crime and the corruption of police and government officials. Unquestionably, the "moral fabric" of a community is essential to its health. If it could be shown that the use of marijuana threatens to reduce the next generation to a state of passive vegetation, devoid of the drive that made this nation the haven of all peoples, no stronger reason would be needed for seeking to eradicate the use of the weed by almost any means. But there are other ways to protect the moral fabric than by criminal law. Of all the institutions at hand, the system of criminal justice is, in our society, the one least capable of performing that task.

Moreover, <u>whose</u> morals make up the moral fabric of the community?

Our sixth principle tells us that if certain "morals" are indeed a sturdy part of the "moral fabric" of the whole community, law cannot ignore them. If the overwhelming bulk <u>of the</u> city is really outraged by prostitutes congesting the sidewalks and openly soliciting, criminal law must try to clean them out. By contrast, if substantial elements of

the community see nothing wrong with crap games, are we to try to stop them? Therefore: Whose morals make up the moral fabric? In a society of many roots such as the United States, and especially in a polyglot city like San Francisco, a city of so many different ethnic, religious and racial backgrounds, where a variety of sub-cultures exist and must continue to do so, where is the public consensus of what is immoral in the areas of conduct called "non-victim crime?" The population of this city is composed of Blacks, Mexican-Americans, all variety of Orientals, Italians, French, Indians, Catholics and Jews. Tourists and service men in large numbers visit us each year. There is, we trust, a consensus about crimes of violence -- rape, murder, robbery, and the like. We would be shocked to think that the consensus would not continue. It might not continue if efforts to enforce a missing consensus in other areas were to erode respect for law. But about drinking, gambling, prostitution, homosexuality, adultery, abortion, pornography, and the use of drugs, one may find various sub-cultures reacting differently, and each reaction further divided between young and old, rich and poor, educated and uneducated, those with strong religious convictions and those without. All the world loves San Francisco, but not because it is strait-laced. The concept of San Francisco as tolerant, free, with room for every taste, accustomed to the unusual pervades literature loved by tourists and is treasured by its citizens.

Seventh principle: Even where conduct may properly be condemned as criminal under the first six principles, it may be that the energies and resources of criminal law enforcement are better spent by concentrating

on more serious things. There is a matter of priorities. A community's resources are limited, and the demands on them grow fiercer. Not every violation of a criminal statute can be detected, not every offender punished, no matter how many resources are poured into the effort. More dangerous forms of behaviour should receive priority in law enforcement and have first call on available funds and manpower. It has been a habit in this country, whenever there is public dislike for a type of conduct, to "pass a law" and make the conduct a crime. Again, a simple example: Because sensible people believe that only a fool would ride a motorcycle without wearing a hard hat, the legislature makes it a crime to do so, although no one's head will be cracked but the fool's. In consequence, the statute books are bulky. We toss upon the police tasks that are not particularly adapted to what policemen should be trained to do. Look for example, at traffic control, more an engineering problem than a crime problem. And even where the police have learned how to do the task well, they should not be diverted from the tasks only they are trained to do to other tasks that others could do as well or better.

San Franciscans, whether white or colored, long-haired or short, rich or poor, must be able to walk on the streets and in the parks without fear, secure in knowledge, not necessarily that there are no prostitutes, addicts, drunks, or homosexuals, but that there will be no molestation or harassment by prostitutes, addicts, drunks, homosexuals

or anyone else. And San Franciscans should be able to walk the streets confident that there will be no molestation by police trying to protect us from ourselves.

The following chapters of this Report will propose the repeal of certain laws. Obviously, the City of San Francisco has no power to repeal State or Federal statutes. But until such time as Congress or the State Legislature sees eye to eye with San Francisco, this City can choose what it will enforce, for its coffers pay the bills. It can choose its priorities. If it should decide that it is poor policy to "bust" a small gambling game in the Fillmore, the police need not arrest and can preserve its manpower for more vital work. If an arrest is made, the District Attorney need not prosecute. However, lest there be misunderstanding, we emphasize two cautions. The first is that once a case reaches a court, no judge is free to ignore the law or make up his own rules. But matters need not reach the courts. Jurists have long recognized that a system of criminal law would break down were there no play in the hinges, points where the officers of justice can exercise discretion. Our second caution is that individual policemen cannot be let to decide what laws to enforce or when. What we say is that, pending repeal of legislation, all the agencies of justice, under strong central municipal leadership, can together lay down a policy to follow, open and above-board, and proudly declared to the State and Nation.

In the succeeding Parts of this Report, we apply our seven principles to several types of non-victim crime. Chapter II will discuss "Drunkenness." Other Parts of the Report to be released later will take up sexual conduct, gambling, pornography and drug abuse.

The statements in this first chapter are generalities, only dimly clarified by the simple examples already given. They must be brought down to earth by specific application to concrete situations. To do that is not an easy task. We have said that if conduct of a person is not "injurious" to society, law and government should leave it alone. But what is "injurious?" If use of certain drugs threatens to destroy a generation of youth, or any sizeable proportion, is that an injury to society? The answer would seem to be "yes." If sexual acts are performed in Union Square, the public's sense of decency is outraged. Is that an injury to the public? Everyone will answer "yes" to that. But if homosexuals overrun a city blatantly, engaging in no sexual acts publicly, but offending others by their presence and their mannerisms is the public injured? In Iowa the answer might well be "yes." What about in San Francisco? The correct answers are not easy to reach, but the attempt to find them will be simplified by applying, at each step of the inquiry, our basic principles enumerated above. We seek answers that will strengthen law enforcement, increase respect for the law and the system of justice or stop the decrease of respect, and at the same time reduce or retard the mounting costs of maintaining law and order, while providing better methods of handling some of the ills of society.

We can anticipate that at this point some concerned readers may ask, "Is the Crime Committee going to legalize homosexuality, prostitution, drug use, drunkenness?" Once more it is necessary to insist on sharp, clear thinking, and to that end we indulge in some repetition. To talk about "legalizing" crime is to put matters backwards. The proper way to phrase the question is not whether we should "legalize" this or that but whether the law should continue to illegalize it, that is, to make it criminal. Not everything we disapprove should be a crime. To refrain from making a particular act a crime is not to approve or even condone it. The Old Testament, and the law of other ancient societies like the Incas and the Mongols, looked with horror and revulsion on sodomy. Most of the public may continue to do so; others may view it with pity and compassion. Most of the public may ostracize homosexuals in social relationships if they choose to do so. As to all this the Crime Committee refrains from expressing any views one way or the other, for our purview is to ask the totally different question whether a given conduct should be made a crime.

II. PUBLIC DRUNKENNESS

We shall consider "drunkenness" first because it is an object lesson. It illustrates an easy application of the seven principles enumerated above. And knowing opinion has generally come around to recognizing that drunkenness must not be handled as it traditionally has been, although the method of handling it is still in a state of transition. Many people would deal with it as a public health problem, and the Crime Committee approves that concept. But we emphasize that drunkenness can be handled short of that. Without the expense of attempts at complete medical rehabilitation and cure, "drunkenness" should be taken out of the criminal process entirely.

We do not include in our use of the term "drunkenness" the state of being drunk in an automobile or the act of driving while drunk. Those are conditions containing so strong a probability of injuring other people that they ought to be held criminal. On that score we have no doubt whatever.

A. The Hazy Nature of the "Crime"

By "drunkenness" we mean conduct violating Penal Code Section 647f. That section makes criminal two types of relevant conduct: (1) Being under the influence of intoxicating liquor in a public place in such a condition that the person cannot exercise care "for his own safety or the safety of others," and (2) by reason of being under the influence of intoxicating liquors, interfering with, obstructing or

preventing free use of a street, sidewalk or other public way. There are thus three categories. In the first a man is subject to punishment for not being able to take care of himself! That is monstrous. In the second, he is subject to punishment, not for injuring others, but for not being able to "care for their safety." This, too, is monstrous. As for the third, blocking a public way, the offense should consist of blocking the way, whether drunk or sober. Injecting the element of drunkenness is simply to create hypocrisy, for in practice the offense becomes simply one of being drunk in public.

Because drunkenness on the street is easily associated with a stereo-typed physical appearance and living habits, it is sometimes not clear whether an offender is arrested for violating 647f or for "looking like a drunk." Few, if any, of those arrested are given a test to determine sobriety; few are even given the chance to explain their presence on the street. Arrest reports are not normally made. Officers explained that they wrote reports only when they thought "the guy was going to make trouble." Common arrest criteria in South of Market arrests are, "he looked drunk," or "he smelled of booze," or "he was an old customer."

About half of all drunk arrests are in the South of Market Skid Row area, where most of the visible alcoholics live when not in jail. To handle them, at least four policemen and a patrol wagon run a "sweep," in which people are arrested <u>en masse</u> and taken in the wagon to city prison. South of Market there are four "sweeps" a day.

B. <u>The Size of the Problem</u>

The peak year for drunk arrests in San Francisco in the past 30 years was 1950. In that year there were 45,913 drunk arrests. In 1967, out of a total of 58,540 arrests by the San Francisco Police, almost 35% or 20,240 were drunk arrests.[1] In 1969 total arrests were 59,104, and drunk arrests had dropped to 16,112, possibly because the police have given drunkenness a lower priority, possibly because drug use, not alcohol, is the current preference of the young, possibly because redevelopment has demolished Skid Row hotels and the Salvation Army has increased its activity South of Market. The figures do not include instances where middle and upper income inebriates are escorted home by officers or sent home by taxi.

Of the total arrests in 1969, almost one-fourth (3,548) -- virtually all repeaters -- resulted in sentences to the county jail, about the same number as in 1967 (3,801). County jail is still the chief dumping ground for drunks in San Francisco. Somewhere around 40% of the inmates

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[1] In the same year 36% of the reported arrests in Washington, D.C., 66% in Boston, and 2½% in St. Louis were drunk arrests. Comparisons cannot be drawn from these figures. Arrest statistics depend on (1) police interpretation of city ordinances; (2) whether there is a detoxification center; (3) whether arrests for drunkenness are made under some other charge, such as vagrancy; and (4) whether it is police policy to make drunk arrests regularly. Boston's figures on total arrests are probably incomplete and unreliable. St. Louis had a detoxification center and gave drunk arrests a low priority.

at San Bruno County Jail are drunkenness offenders,[2] serving an average of 27.5 days each, the highest average sentence for drunkenness in Bay Area counties. The Sheriff's Department reports that one quarter of the capacity of the county jail is regularly given over to drunks.

It is a satisfaction to report that drunkenness is not associated with any one racial or ethnic group. So far as available arrest records indicate, arrests in San Francisco for drunkenness among whites, non-whites and ethnic groups are in proportion close to their percentage of the population.[3]

Drunk arrests fall into two classes, the one-time offender and the "revolving door" type.

Of the persons arrested in San Francisco in 1969, 68.4% were first offenders, and according to an experienced observer[4] three-quarters of these were transients -- farmers, seamen, suburbanites out on a spree. They spend the night in the drunk tank until sober, and usually

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[2] During 1969, there were 3,548 individual sentences to county jail from Drunk Court. This accounted for about 41% of the 8,665 sentences to county jail handed down by the San Francisco courts during that year.

[3] American Indians are a curious exception. Although Indians represent around 14/100ths of one percent of the population of San Francisco, Indian drunk arrests have ranged from nearly 6% to 8%. These figures are based on total arrests, not on individuals arrested.

[4] Officer John Larsen.

get off with a fine, suspended sentence, or some combination of the two. First offenders who are city residents are usually required to attend four sessions of "drunk school" as a condition of probation;[5] sometimes the arrest itself is considered a sufficient lesson.

About 8.2% of the persons arrested comprise a core of about 620 chronic recidivist drunks, the "street drunks;" about 93 have been arrested more than 15 times in one year. Yet this figure under-represents the amount of time that the police, courts and jails devote to this population. In 1967 recidivist drunks, although but a small proportion of all those arrested, accounted for nearly one half of the arrests. There may or may not have been some reduction of this percentage in 1969.[6]

Ninety-five percent (95%) of the arrests South of Market are of males, and seventy-two percent (72%) are persons over the age of 35. Typically, the older they are the more frequently they are arrested, according to experienced observation.

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[5] An article on this school by Judge Gerald S. Levin of the Federal District Court for the Northern District of California, published in the American Bar Association Journal of November 1967, cites a study of those processed through the school 1964-1967 which indicated that almost 70% of "those who attended the four sessions of the school during the time period covered by the study did not suffer a subsequent drunk arrest in that period."

[6] Statistics for 1967 classified as recidivist those arrested four or more times in one year; statistics for 1969 changed the classification to five or more arrests. This produces an apparent reduction from 1/2 to 1/3.

C. How the Drunk Is "Processed" Through the Criminal System

Each person arrested is searched, booked and allowed to make one phone call if he is coherent. If not coherent, he is taken to sober up in the "tank," a group of three cells, containing no bedding or furniture aside from a steel sink and toilet. When filled to capacity (about 80), tank cells are so crowded that all prisoners cannot even find room to sleep on the floor.

Medical examinations are given at San Francisco General Hospital to those who are picked up unconcious, but there is no routine inspection of drunks who are brought to the "tank" at city prison. Efforts of the Crime Committee resulted in setting up a medical steward plan to handle emergency medical problems in the city prison, but there is still no routine inspection of drunks. Although a doctor is on hand five mornings a week to attend to the 300 to 400 city prisoners, a drunk must request an examination, and in many cases his condition precludes his being able to ask.[7] One morning in April 1970 Crime Committee staff observed an epileptic, who had been separated from his medication the night before, try to explain his need to the judge in a bad stutter. The eyes of another man in the same group were so badly swollen and infected that he had to be led in and out of the courtroom; he held a dirty rag to his face to keep his eyes from running.

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[7] The Police Department's Annual Report for 1969 indicates that 3,184 alcoholic prisoners were treated at city prison in 1969; alcoholics may have been part of 1807 prisoners sent to San Francisco General Hospital or part of 295 sent to emergency hospitals after arrival at city prison.

On weekday mornings, drunkenness offenders are arraigned in a department of the Municipal Court where they are brought from adjacent holding cells in groups of 25 to 50 at a session, like cattle to the dehorning chutes. Judges rotate in presiding at these sessions, and disposition of the accused often depends on who the judge is and what his mood is at the moment. Some judges are careful to explain to the accused their rights to counsel and the right to plead not guilty, all done en masse. Some judges tell them little or nothing. Whether told or not -- probably few understand -- they have no counsel. An experienced observer estimates that 96% to 97% plead guilty. Sitting next to the judge on the police bench is Officer John Larsen, court liaison officer for the Municipal Drunk Court. He has the defendants' records and advises the judge when he is asked. His job is a curious hybrid of prosecutor, defense counsel, and probation officer. He knows most of the repeaters, whom he calls rather affectionately "my drunks" or "my boys" -- which ones prey on others, which ones are candidates for rehabilitation.

Some judges may take some personal interest in each case. If the defendant's record is clear, he is given a suspended sentence. A repeater who pleaded "I haven't been here since August" was given "one more chance -- 30 days suspended." Another was cut short: "I gave you 30 days suspended yesterday, and here you are again -- 30 days." Some of the defendants asked to be sentenced ("I need some time to dry out, your Honor"). The judge, after consultation with Officer Larsen, then imposes sentence. Although there are normally no defense attorneys, public defenders, bail project personnel or district attorneys at these

hearings, Officer Larsen's role as advocate and prosecutor, while indefensible in theory, seemed effective in practice. Drunks who have money, friends or connections to raise $35 bail normally forfeit it and do not appear in Drunk Court.

Occasionally a judge, preoccupied with getting through the calendar, will rush through the explanation to the accused of his rights so that the befuddled prisoner can barely understand what is being said. On one such occasion members of the Crime Committee's staff observed an elderly man insisting that he be told what he was there for. The judge responded, "You know what you are here for." When the man said, "What do I do now?" the judge responded, "You have already done it." At that point the man seemed close to tears and said, "I want someone to help me." The judge responded, "We'll find someone to help you," and sentenced the man to county jail.

In most cases the defendant's past record and not the immediate arrest determines the judge's disposition of the case. Repeated offenders, especially those with multiple recent arrests, are commonly given a jail sentence, as if failure of prior imprisonment to accomplish any good for society or for the accused were a reason to continue the futility and -- in the hands of some judges -- the savagery.

The police seem compassionate enough; they claim and doubtless believe that a jail sentence is an act of kindness; -- it "keeps the drunks alive another 30 days" or whatever the term of the sentence may be.

For the period of his jailing, the drunk is at least fed, whereas on Skid Row he takes his calories in the form of alcohol and starves. And both police and social service workers say that street drunks are increasingly subject to savage beatings by roaming gangs of hoodlums in the streets, indeed by other drunks who are predators one day and prey the next, fighting over pennies or a few trifles of the world's goods.

Drunks are also beaten by their fellow prisoners in the county jail. As the Committee's Jail Report pointed out, there is no segregation in jail of prisoners by type. The helpless, physical wrecks from the Tenderloin provide the most convenient outlets for pent-up aggressions.

Judge Leo Friedman, formerly Presiding Judge of the Municipal Court, has described the present system:

> "All you're going to do is feed them and prolong their lives for a little while. I'm not hooked on sending drunks to jail but there is no other place for them."

That is an indictment of the system.

D. The Costs of Handling Drunkenness by Criminal Process

The futility and savagery of handling drunkenness through the criminal process is evident. The cost to the city of handling drunks in that way cannot be determined with exactness. Only approximation is possible. The Committee's staff has computed that in 1969 it cost

the city a minimum of $893,500.[8] The computation was that $267,196 was spent in making the arrests and processing the arrested person through sentence, and that roundly $626,300 was spent in keeping the drunks in county jail at San Bruno. And these figures do not include the costs to the city when a drunk is taken to San Francisco General Hospital from either the city prison or county jail. While our staff has concluded that it costs the city between $17 and $20 to process each drunk from arrest through sentencing, an estimate by a police officer assigned as liaison to the Drunk Court put the cost at $37 per man through the sentencing process. Thus, if anything, our cost estimates are low.

On a morning in the Drunk Court observed by one of the Co-Chairmen of the Crime Committee, 49 men were led into the courtroom for disposition of their cases. By this time, the city had spent at least $700 just to get them there. Twelve of the forty-nine men were given 30-day jail sentences without suspension, and it would cost the city at least another $1,800 to keep them at San Bruno. Thus, it cost the taxpayers about $2,500 to run one morning's "crop" of drunks through the criminal process. The split-second decision of a judge to dismiss, sentence or suspend, may cost the city anywhere from $125 to $150. If these expenditures achieved some social or public good, they should be gladly borne. But they do not.

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[8]See Appendix.

E. Necessity of Change

By no principle or criterion stated in Chapter I of this Report should drunkenness, unaccompanied by danger of violence, continue to be processed through the criminal system. If, while drunk, one commits some other crime, he can be prosecuted for that. As a drunk he hurts no one but himself. No enlightened social conscience is outraged. And the criminal system achieves nothing whatever by way of cure or deterrence. Only if a drunk is in an ugly mood where he may commit acts of violence should he be handled by the police. In simple truth, the police use the drunk statute, Penal Code Section 647f as a tool or excuse to achieve other ends, such as prettifying the streets or preventing other crime. That portion of Penal Code Section 647f which makes public alcoholic intoxication criminal should be repealed.

To test the validity of the conclusions of this Report on drunkenness a draft was submitted to a person of police background for criticism. His comment on rejecting the conclusion that the law prohibiting public drunkenness should be repealed is that Sec. 647f:

> "...is a useful police tool. Public drunk arrests are often made when a patrolman sees no other way to handle a dispute in which one or more persons have been drinking. As a result the disorder, disturbance, argument with the police, fight, etc. is broken up and yet no one involved has a charge more serious than plain drunk."

Example 1

Police are called to a disturbance in a Negro neighborhood. A crowd gathers. A drunk on the sidelines starts yelling insults at the police and agitating the crowd. Solution: Arrest the drunk for 647f P.C. before he gets the crowd angry. Result: Although the drunk was in fact inciting a riot he was arrested for drunk and will probably plead guilty to this charge. Alternative Solution: Arrest the drunk for inciting a riot (a felony). Result: He will most likely plead not guilty and an expensive trial and parade of witnesses will be required. Win or lose, the drunk ends up with a felony arrest on his record.

Example 2

Police are called to a fight in progress behind a "Western" bar on a Saturday night. A crowd of patrons are watching. Both participants are deadly serious and both are arrested for 415 P.C. (disturbing the peace). As police reinforcements arrive, friends of the two under arrest tell the police they aren't going anywhere with the prisoners. Solution: Either threaten to arrest or arrest the friends for drunk in public. Result: They either leave well enough alone or get arrested too. Most likely all concerned will plead guilty. Alternative Solution: Wait until they either make an overt move toward the prisoners or lay a hand on the officers then arrest them for obstructing an officer in his duties (misdemeanor), resisting an executive officer (felony), lynching (felony), or assault on a police officer (felony). Result: Those involved will have high bails set and will probably plead not guilty. Again higher court costs and the defendants, win or lose, will have more serious offenses on their records.

The police cannot avoid their responsibility for order maintenance. Unfortunately, much of the disorder in any city involves either drunks or people who have been drinking.

We have quoted these objections in full because they make the best case for not repealing those portions of Penal Code Section 647f which make public alcoholic intoxication criminal. And that case is not good enough. It confirms the conclusion expressed earlier in this Report that the drunk statute is used as a tool or excuse to achieve other ends, such as preventing other crime. The use of any statute as a tool to achieve

unexpressed purposes is hypocrisy. The use of statutes of vague contour as grants of discretion to police to arrest in order to prevent crime is intolerable and inconsistent with the fundamental American idea that people should be arrested for what they do, not because a police or other officer believes that they may commit a crime. It may be true that conduct containing a strong probability of injuring other people might well be prohibited as criminal, but it should be prohibited directly, not reached hypocritically. In Example 1 of the objection, the drunk on the sideline agitating the crowd is not being arrested because he is drunk. If not desirable to charge him with inciting a riot, he should be arrested for disturbing the peace (P.C. Sec. 415), a misdemeanor. If the facts warrant conviction on that charge, the accused will be convicted. If they do not, the police officer has made a mistake in judgment, and should not hide behind a "phony" drunk charge, to which the accused pleads guilty and places a stain on his record.

Our objector further criticized our proposal for repeal of parts of Penal Code Section 647f thus:

> As far as the skid row alcoholic goes, I suspect that repeal of 647f P.C. would only result in increased arrests for disturbing the peace, begging, trespassing, malicious mischief, indecent exposure, etc.
>
> The end result would be the same and although the drunk court would be eliminated the case load on other departments of the Municipal Court would increase, involve more prosecutors, and public defenders, require officers and witnesses to testify in court and otherwise increase expenses. Drunks in public, whether or not they are alcoholics, are individuals with lessened inhibitions. If you can see the need and necessity for arresting drunks in cars even though they have committed no violation because they represent a potential menace to society, then it would seem that it would also be clear that drunks that appear to be aggressive, or would appear likely to be the subject of

> a police report in the immediate future should also be taken into custody before they commit disorders, disturbances or violate other sections of the penal code. The police must be able to make the decision as to whether they represent a potential hazard to themselves or others. They shouldn't have to wait until potentially dangerous situations escalate.

If in fact repeal of 647f would result in increased arrests for other specific criminal acts, one or the other of two things will be true -- either those acts will have been committed, or they will not have been. If they have, it is better that people be honestly charged for what they do, not hypocritically under a catchall statute. If those acts have not been committed, the police will be guilty of harassment in making the arrests, but the abuse of process will not be cloaked and can more readily be reached.

The United States Supreme Court in Powell v. Texas, 392 U.S. 514 (1968) came close to holding it unconstitutional to treat chronic drunkenness as a crime. The court was deterred from doing so because five of the nine judges saw no clear promise, yet, of a better way of handling drunks. The Crime Committee thinks that a better way is at hand.

The "street drunks," the recurrent alcoholics, offer a more difficult problem than the one-time transient. But even they can be handled in a non-criminal manner either at less cost or not materially more, the treatment will be more humane, more efficient, and the police, prosecutors, defenders and courts will have their hands freed to attend to their true work. Government can also go even further to a public health or medical approach, but it need not do so to handle drunks better than they have been.

F. The Public Health or Medical Approach

Many have read the Supreme Court's decision in Powell v. Texas, supra, as a warning to cities and states. While the Court narrowly upheld the constitutionality of criminal statutes on public drunkenness, it did so on the ground that medical knowledge could not show a uniform consensus that alcoholism was a disease. However, most public health authorities have interpreted the decision as a time-biding device, a way to give local jurisdictions the chance to set up alternatives to the criminal justice system.

Over the past several years, many cities, including Atlanta, New York, Washington D.C., and St. Louis, have established various kinds of detoxification and treatment programs for handling skid-row alcoholics. A summary of many of these programs was prepared in August, 1969, by the staff of the Bay Area Social Planning Council,[9] and it would be pointless for us to duplicate their excellent work in this Report. These programs usually feature two components: a medical detoxification unit and varying kinds of follow-up rehabilitations techniques. While programs designed to rehabilitate the skid-row alcoholic are undoubtedly motivated by laudable and humane concerns for helping the skid-row alcoholic, these programs have uniformly suffered from two

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[9] Keldgord, Garrison & Wahl, Background Information on Chronic Drunkenness Offenders in Alameda County, B.A.S.P.C., (1969), Ch. V.

defects. First, even when one uses a broad and liberal test of success or failure, rehabilitation programs aimed at the skid-row population have not been able to demonstrate rehabilitative success with even 50% of their patients. Second, the costs of these kinds of rehabilitative programs have ranged generally from $38 to $100 per patient per day. In short, skid row rehabilitation costs a great deal and produces limited benefits. Some examples are:

(a) St. Louis[10]

A study of 200 male patients made through interviews conducted about four months after discharge from the St. Louis Detoxification and Diagnostic Evaluation Center revealed that:

(1) 19% of the study group had been abstinent from discharge for 120 days;

(2) 47% had shown "marked improvement" in drinking patterns;

(3) 49% had shown "marked improvement" in health;

(4) 15-18% had shown "significant improvement" in housing, income, and employment.

(b) New York Bowery Project[11]

The Bowery Project has not published any criteria of success. However, the Project's "First Annual Report" recommended as follows: "Finally there should be therapeutic programs whose goal is to help a

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[10]For a description of the St. Louis project, See the B.A.S.P.C. study (1969). The data quoted here is taken from St. Louis Detoxification and Diagnostic Evaluation Center, Addendum to the Final Project Report to the Law Enforcement Assistance Administration, United States Department of Justice (1969) p.3.

[11]See Manhattan Bowery Project, First Annual Report; April 1, 1969, p. 41.

a man re-enter society. A small proportion of the men treated at the Project seem amenable to such intensive rehabilitation efforts."

(c) Texas Involuntary Civil Commitment

Since 1958, Texas law has permitted involuntary civil commitment for persons suffering from seven categories of severe alcoholism. (See Tex. Rev. Civ. Stat. Ann. Art. 5561c, Sec. 9 (1958)). These patients are sent to Austin State Hospital. A note in the Texas Law Review reports that less than 30% of those treated at the hospital stay dry for more than six months following discharge. The author concluded: "With the present shortage of facilities in the Austin Rehabilitation Center, it is questionable whether the resources of the state are wisely expended on patients who offer such slight chances of success."[12]

(d) Boston Halfway House[13]

Peter Bent Brigham Hospital and the Harvard Medical School set up a halfway house rehabilitative program for skid row alcoholics, focusing on work skills. They defined "rehabilitation" as " ... a man who lives, for the most part, a sober life, works steadily and restores meaningful

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[12]Bannerot, Civil Commitment of Alcoholics in Texas, 48 Tex. L. Rev. 159, 197 (1969).

[13]Report on Alcoholism Clinic, Peter Bent Brigham Hospital, Boston, in Institute on Modern Trends in Handling the Chronic Alcoholic Offender, 19 So. Car. L. Rev. 303, 332 (1967).

family relations." Taking 106 follow-up cases, they reported:

22% successfully rehabilitated

24% partially rehabilitated

54% failures

Accurate cost figures are hard to come by. The Manhattan Bowery Project reports that it cost $38.20 per day per patient during 1968. The Committee staff has concluded that the St. Louis Project cost about $43 per patient per day during the same year.[14] The San Francisco Bureau of Alcoholism reports that it costs $80 - $110 per day to keep a patient in the acute detoxification ward at San Francisco General Hospital and from $36 to $38 per patient per day at the rehabilitation ward at Laguna Honda.

G. San Francisco Bureau of Alcoholism

These discouraging cost/benefit figures help explain why the San Francisco Bureau of Alcoholism has been reluctant to provide expensive resources for the rehabilitation of skid-row alcoholics. The medical profession would rather spend money and effort on more promising patients, i.e. working class or middle class alcoholics who outnumber street drunks in San Francisco by about 20 to 1. However, state funds for alcoholism

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[14] The St. Louis Project does not publish cost figures. Their reports to L.E.A.A. contain only estimates of police and court time saved by the Project, without any cost analysis. The staff cost figure is arrived at as follows:

(a) Total budget, 1968: $353,252.00
(b) Total admissions, 1968: 1,174
(c) Cost per admission: $300.00
(d) Since the St. Louis Project is based on a 7-day involuntary commitment, the cost per admission per day ($300/7) is roughly $43.00.

treatment were, until last year, directed toward attempts at rehabilitating the skid-row alcoholic. The McAteer Act of 1965 (Cal. Stat. 1965, Ch. 1431, replaced in 1969 by Chs. 8 and 9 of the Welfare and Institutions Code) entitles local county health departments to receive state money to set up programs for treatment and rehabilitation. In 1967-68, the California Assembly Interim Committee on Criminal Procedure, after hearings on chronic drunkenness, concluded that each county should be required to establish inebriate reception centers equipped and staffed to provide detoxification services, emergency medical care and diagnosis. It further recommended that the police take all persons in violation of the drunk statutes to this reception center where they could be detained for a limited period of time. Finally, it was proposed that each county be required to establish a comprehensive treatment and rehabilitation scheme, featuring a variety of services and facilities.

Following the 1965 McAteer Act, a Bureau of Alcoholism was established in the San Francisco Department of Public Health, but no comprehensive plan was developed. Dr. J. M. Stubblebine, Program Chief of Community Mental Health Services in the San Francisco Department of Public Health, has explained the inaction, both in writing and in testimony before the Health and Environment Committee of the Board of Supervisors, by stating that "There was not a clear, unambivalent charge for this program," that is, to create an alternative to jailing. Beginning with fiscal 1969-70, the San Francisco Board of Supervisors called for the creation of this alternative by approving a budget of $891,000 for the Bureau of Alcoholism. The Bureau designed a program for a 20-bed detoxification ward at San Francisco

General Hospital, a 45-bed convalescent hospital ward at Laguna Honda's Clarendon Hall, and one halfway house of unspecified capacity. Beginning July 1, 1969, additional state money became available to California counties on a ratio of 9 to 1 through passage of the Lanterman-Petris-Short Act (Welfare and Institutions Code, Section 5000, et seq.). One of the purposes of the legislation was to induce community mental health services to work on the problem of alcoholism, rather than continue to send chronic drinkers away to state hospital facilities, mainly at Mendocino.

Thus, since July of last year, the Bureau of Alcoholism has operated two facilities in San Francisco. One is an acute detoxification unit, located at San Francisco General Hospital. This is an intensive care unit which provides medical care and treatment for persons suffering from acute medical problems associated with alcoholism. Occasionally, the unit treats patients suffering from medical problems arising out of the use of drugs other than alcohol, but its emphasis is on the treatment of alcoholics who are seriously ill. It has 20 beds; the population fluctuates between 13 and 20. The average stay is 5 days, after which about two-thirds of all patients are referred to Laguna Honda for convalescence and attempts at rehabilitation. The per diem cost per patient in this unit varies from $80 to $110, depending on what kind of specialized services are provided. There is no liaison between the police, or the courts, and this unit at present. About 70% of the patients seen are derelict or "skid-row" alcoholics. The unit is concerned with emergency medical problems associated with detoxification and there are no attempts at rehabilitation.

Then, there is a convalescent and rehabilitative unit at Laguna Honda Hospital, with 45 beds, providing detoxification services for non-acute alcoholic withdrawal. The program first attempts to provide food and exercise for physical recovery, then encourages patients to join in a variety of rehabilitative techniques, ranging from encounter groups (including families) to direct psychiatric counseling. After an initial stay (7-30 days), patients are encouraged to return to the unit for out-patient counseling. The cost is $36 to $38 per day for in-patients, and about 70-80% of patients are derelict, skid-row alcoholics. This program is voluntary, and a patient may leave at any time. The Bureau has not released any data on their "success" rate.

Until very recently, there were only minimal connections between the Bureau's programs and the criminal justice system. In part, this could be explained by a reluctance on the part of those in the criminal justice system to cooperate with the Bureau. For example, in the past, the police refused to let Bureau doctors into City Prison, so that the doctors could simply make an evaluation of the medical needs of those in the drunk tank. Similarly, Bureau personnel have reported that among the judiciary, only Municipal Court Judge Charles Goff has been actively interested in cooperating with the Bureau. On the other hand, the Bureau has received a good deal of help from Officer John Larsen, the liaison officer in Drunk Court.

During the past couple of months, however, a sense of change has clearly emerged. After years of mutual aloofness, the police and public

health authorities have begun to meet regularly in order to design a workable alternative to the current methods of handling drunks in the criminal justice system. In part, this incentive for change has come from Bureau doctors, notably Dr. Richard Shore, the Bureau's Director, and Dr. Charles Becker, the Director of the Acute Detoxification Unit at San Francisco General. In part, the incentive has come from Chief of Police Nelder himself, from Judge Goff, and from this Committee. It is fair to say that a general agreement has been reached, that the police are not happy with the present system, and that changes along the lines suggested in this Report are likely to be forthcoming in the near future. The following small steps have already been taken:

(1) Since February, 1971, the police have been delivering one drunk arrestee per day directly to Laguna Honda.

(2) Every Wednesday, one of the Bureau's doctors goes to Drunk Court and picks up three men, convicted of drunkenness and screened by Officer Larsen. Their sentences are suspended on the condition that they go to the Single Men's Rehabilitation Center in Redwood City, administered by the San Francisco Department of Social Services.

Doctors in the Bureau of Alcoholism realize that present programs are not well suited for handling skid-row alcoholics. Physicians in charge of the acute detoxification ward at San Francisco General readily admit that the vast majority of skid-row drunks do not need the ward's extensive access to specialized medical services in order to "dry out" in a manner that is completely satisfactory by medical standards. For most

alcoholics, good food and oral medication is wholly adequate, and the doctors point out that nobody needs a hospital ward for this sort of treatment. Similarly, Bureau doctors who run the rehabilitation program at Laguna Honda know that their facilities and programs are largely wasted on hard-core skid-row alcoholics, even though the program concentrates over half of its resources on skid-row patients, possibly because they represent the most public (and therefore the most offensive) manifestations of alcoholism in the city.

This is not to say that the Bureau's programs are worthless, or even ill-advised. There is no doubt that the 20 beds in the detoxification unit are badly needed -- for emergency medical problems associated with alcoholic withdrawal and, possibly even more urgently, for emergency cases of drug overdose and withdrawal. And the Bureau knows that the vast majority of alcoholics in the City are not on skid row. The National Council on Alcoholism has estimated that, for every skid-row alcoholic there are fifteen to twenty working alcoholics, doing jobs as house painters, teamsters, secretaries, bankers and attorneys. The Bureau knows, too, that alcoholic rehabilitation stands a good chance with patients who have enough ties to family, church or work to want to make it back, and these patients are the ones that the Bureau would like to get at Laguna Honda. One Bureau doctor pointed out that, in all his professional practice, he had never encountered a case in which a skid-row alcoholic was arrested for drunk driving. "By far the most dangerous alcoholics are those who drive," he said, "yet criminal justice does no more to solve their problems than it does to solve the problems of the guy on the skids."

It would be wrong, also, to assume that the Bureau wants to give up on skid-row alcoholics, to pretend that Sixth Street doesn't exist. Rather, doctors in the Bureau are worried that the city, in its concern over the treatment of alcoholics by the criminal justice system, will simply transpose the handling of drunks from the courts to the Bureau's existing programs -- programs that are ill-designed for chronic drunkenness offenders. There is little purpose served in devoting the costly resources of current Bureau programs to skid-row alcoholics, especially when the effect of such a policy would be to deny those resources to patients who need them and can be helped by them. Thus, the Bureau, along with many other authorities in the treatment of alcoholism, has proposed a different approach, one that has already been tested in San Francisco.

H. An Alternative to the Criminal Justice System: Alcoholic Residential Centers

After a year and one-half of providing care and treatment for skid-row alcoholics, the staff of the Manhattan Bowery Project concluded that the most crucial priority in alcoholism treatment was as follows:[15]

> "First of all, congregate living facilities should be available to that proportion of homeless alcoholics who are probably incapable of re-entry into society as fully independent persons."

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[15] Manhattan Bowery Project, First Annual Report (1969) p. 40.

The Crime Committee has studied the possibilities for implementing such living facilities in San Francisco, is assured by workers in the field (including members of the staff of the Bureau of Alcoholism) of the practicality of such a plan and is convinced. Instead of elaborate detoxification arrays, or in addition to them, the community need simply furnish sparse municipal living quarters, a place for the drunk to dry out. They may be called "Alcoholic Residential Centers." But they would be clean, with medical attendants, and infinitely superior to a jail or prison. Surely there is no need for guards or bars, no need of a jail for the drunk, and no reason to toss him in with criminals. Instead of a police sweep and a wagon to take the drunk to the tank and thence to court, a small bus manned by a qualified attendant from the Department of Public Health and a civilian driver can tour the Skid Row area. They would pick up all drunks in need of care or shelter and take them to the Center. If a person is unwilling to go, the attendant from the Public Health Department will decide whether the drunk is in such condition that he should be involuntarily detained under Section 5170 of the Welfare and Institutions Code and taken to the Acute Detoxification Unit for 72 hours treatment or whether he can be safely left to wander the streets. When the drunk who is taken to the Alcoholic Residential Center sobers up, he can be offered further residence, payable out of his welfare check, and in some cases, rehabilitation. If he declines, he goes forth, uncoerced to stay. If he is picked up again, he sobers up again. There may still be a "revolving door," but it would be humane, it would be less expensive, it would give alcoholics a chance to regain self-respect.

In this connection the Crime Committee is much impressed with "New Start Center," located at Fourth and Howard Streets and its operation of nearby New Mars Hotel. New Start Center is sponsored and staffed by three agencies, the San Francisco Department of Public Health (not the Bureau of Alcoholism), the San Francisco Department of Social Services, and the San Francisco Redevelopment Agency. Over the past few years, New Start has seen more than 2,000 individuals, nearly all of whom suffer problems of excessive drinking. Mr. Earl Dombross, coordinator of the project, stated:

> "Frankly, we got tired of waiting for the Bureau of Alcoholism to get facilities set up where we could send patients for detoxification or custodial care, so we decided to go ahead and set up our own."

In October, 1969, the Center took over two floors of the Mars Hotel on Fourth Street, where five beds on the 5th floor were set aside for detoxification purposes and about 25 to 30 on the 6th floor were set aside for minimally supervised boarding. "We purposely avoided having any rehabilitation ambitions for the men we housed on the 6th floor," Dombross added. "All we wanted to do was give them a place to live and food to eat so that they would stay off the streets and out of jail. We've staffed the 6th floor with a couple of desk clerks, who are recovered alcoholics themselves, and kept the rules to a minimum -- drinking is allowed where it doesn't disturb the other boarders."

On the 5th floor, patients referred by the New Start Clinic physicians are detoxified for a period averaging about five days. For the most part, desk clerks are able to handle this drying-out process, giving milk, juice, medication and companionship. On the relatively few occasions when a

patient suffers convulsions or appears to exhibit serious symptoms of illness, the desk clerks call an ambulance from San Francisco General.

According to Mr. Dombross, New Start can run both the 5th floor and 6th floor operations, including salaries for desk clerks and food, but not rent or visits by physicians, for about $3.00 a day per person. The food is catered by Foster's because the Hotel does not have adequate cooking facilities.

The success of the 6th floor unit is perhaps best measured by the fact that its residents stay out of jail. Mr. Dombross reports that in the first seven months of operation, only two men out of the total of 140 who have lived in rooms on the 6th floor have been picked up on the streets for drinking, and the two were arrested and jailed only overnight. In other words, some of the city's worst recidivist alcoholics have been fed and sheltered in a workable, less expensive alternative to jail. A few have even gone on to more ambitious rehabilitation programs.

We do not believe that the Residential Centers would take drunks <u>entirely</u> out of the criminal system. For that, a center would need adequate security facilities, and trained security personnel, in order to handle a mean or fighting drunk. This would mean that the centers themselves would begin to resemble jails, and the costs of their operation would mount. Thus, where a drunk has been engaged in a fight, where he is still angry or dangerous, he should be taken to city prison and booked on the appropriate charge -- disturbing the peace, battery, or other applicable statutes. However, we think that the centers could accommodate

the vast majority of those now arrested for drunkenness in San Francisco -- the one-time transient offender and the "revolving door" drunk who is ordinarily discovered asleep on the sidewalk.

We think, too, that a person delivered to a center should be able to leave at will. Our first reason for proposing that a voluntary commitment be tried is that we think it unlikely that an involuntary commitment is necessary in order to keep skid-row men off the streets. The Mars Hotel project has demonstrated that most skid-row alcoholics will do their drinking indoors if permitted to do so. Indeed, it seems that one reason that "bottle groups" form on the streets, and that alcoholics end up asleep in doorways, is that drinking on the street provides a source of socialization and friendship (albeit transient) that cannot exist in many hotels that forbid drinking.

Furthermore, we think it unfair (and probably unconstitutional) that any person could be detained against his will in any facility -- whether it is called a "jail" or a "residential center" -- without a hearing in a court of law. Nor do we believe that such an involuntary commitment to a Residential Center is authorized by existing law. Although the Lanterman-Petris-Short Act[16] permits inebriates to be detained for 72 hours without a hearing, such an involuntary detention must be in a facility "... approved by the State Department of Mental Hygiene," for

[16] Sec. 5170 et seq. W. & I. Code.

medical care and treatment.[17] We think it likely that the purpose of the Act was to provide for involuntary commitment to intensive medical facilities, such as the Acute Detoxification Unit, and we think it very doubtful that the Act could be used to justify involuntary commitments to sparse residential facilities.

We can anticipate various objections to this proposal. Certainly very few residents of San Francisco want chronic alcoholics in their neighborhoods, and there is likely to be a good deal of public resistance no matter where the centers are located. This problem of location will undoubtedly become more acute as redevelopment projects transform areas of the city which have traditionally harbored homeless alcoholics. Yet changes in the physical make-up of the city do not get rid of skid-row drunks; rather, the population is re-located and dispersed. Even now, one can see more visible alcoholics in the Mission than there were only a year ago, and many of these have emigrated from the South-of-Market renewal area. Thus, citizens of San Francisco must realize that they face some hard choices. The people of skid row will not disappear. They can be arrested and jailed, time and again, at great expense. They can simply be left alone, to sleep on the streets of the city as beggars do in cities of the Far East. Or they can be provided with sparse and spare and frugal accommodations, and an opportunity to improve their condition and to become more self-sufficient. If the citizens of the city choose

[17] See Secs. 5172 and 5250 W. & I. Code, allowing a 14-day commitment where a person is "danger to others, or to himself, or gravely disabled as a result of mental disorder ..."

the latter alternative, as we have done, then the city, and we ourselves, must make room for residential centers.

If indeed, public opposition to the location of these centers in residential districts is enormous, the city should consider the conversion of smaller warehouses in essentially industrial districts. This suggestion may provoke some to say that we are in favor of "warehousing " drunks. We are not. Many artists in San Francisco (and in other cities) have proved that a warehouse can be transformed into a stylish residential facility at little cost. While we do not recommend that alcoholic residential centers become "stylish," we do think that smaller warehouses could, with imagination, be transformed into decent, humane and practical residential facilities, probably at less expense to the city than the cost of jailing our drunks for even a month or two.[18]

Another argument to be recognized and met is this: "By recommending that residential facilities be provided for drunks, aren't you guaranteeing a <u>better</u> source of essentially public housing than exists for some poor people in San Francisco who are <u>not</u> drunks?" We are prepared to grant the truth of this argument, so far as it goes, i.e. that alcoholics living in residential centers, no matter how sparsely furnished, would get better housing than some poor people in the city who have no alcoholic problems. Yet we find the establishment of residential centers still justified.

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[18]Our estimates indicate that the city spends about $66,500 per month in costs at city prison and county jail for drunks.

First, we should realize that the city now pays for housing many alcoholics, because they receive welfare assistance in one form or another or they are housed at the county jail. Thus, to some large extent, the city <u>now</u> provides alcoholics with housing, which, in some cases, may be better than housing provided for poor but sober citizens.

Second, we believe that the establishment of Alcoholic Residential Centers may possibly save the city money. No assurance can be given of this because the Bureau has not yet estimated the costs of setting up, staffing and operating them. But it is clear that the manpower and money presently being spent by the police, the courts and the Sheriff's Department to process drunks within the criminal justice system can be spent much more effectively in handling criminal cases of greater community concern. Also, we must consider that skid-row alcoholics suffering from exposure, malnutrition, hepatitis and related diseases constitute a substantial proportion of the patients now seen and treated at San Francisco General Hospital. By providing shelter, nutrition and early preventive medical care, the Centers should help to reduce hospital costs and enable the staff to give better service to other patients. Finally, funding for Residential Centers (and for expanded programs for those convicted of drunk driving) is available from various state and federal sources. The police and the Bureau of Alcoholism are aware of these funds and will probably be developing grant proposals.

Some will say that we want to reward drunks for becoming drunks. However, we have difficulty conceiving of anyone voluntarily choosing the road of alcoholism with the aim of ultimately residing in an Alcoholic Residential Center.

We believe that we are proposing the least expensive form of humane and quasi-medical treatment as a solution to a problem that is both medical and social in nature.

III. RECOMMENDATIONS

1. The Committee urges that alternatives to both jail and rehabilitation be adopted for the accommodation of those chronic alcoholics who by virtue of age, health, mental incapacity, or unwillingness to cooperate are truly beyond reclamation.

2. Inexpensive Alcoholic Residential Centers, modeled on the Mars Hotel project, should be established in lieu of jail for those inebriated persons who are found in a public place, unable to care for themselves. These Centers should provide minimal detoxification services, and essential bedding and food. They should serve both as detoxification centers for transient or "one-time" public drunks and as permanent residential facilities for derelict alcoholics. Public drunks should be recruited from the streets and taken to a Center by civilian teams (preferably ex-alcoholics) employed by the Department of Public Health. Continued residency in a Center should be voluntary.

<u>Recommendations:</u> (Cont'd)

3. Emergency medical cases should be taken to the Acute Detoxification Unit at San Francisco General Hospital.

4. The State Legislature should repeal those portions of Section 647f of the Penal Code which make public alcoholic intoxication criminal. The police should be called to handle only dangerous, unruly, or fighting drunks, and these drunks should be arrested and charged under appropriate penal code statutes such as disturbing the peace or battery.

5. The Courts and the Bureau of Alcoholism should cooperate and initiate a policy whereby defendants convicted of drunk driving should be required, as a condition of probation, to submit to an oral examination by Bureau staff, so that the defendant's possible alcoholism can be diagnosed. Where the Bureau so recommends, the defendant should be required to enter and participate in the Bureau's Clarendon Hall rehabilitation program at Laguna Honda Hospital as a condition of probation. This should be required even though the court, in its discretion, may <u>also</u> impose a jail sentence or fine.

6. Until such time as drunks can be taken out of the criminal justice system, those sent to county jail should be separated and segregated from other inmates.

APPENDIX

CRIMINAL JUSTICE COSTS OF PUBLIC DRUNKENNESS ARRESTS, SAN FRANCISCO, 1969

COST ANALYSIS: DRUNKENNESS ARRESTS AND PROCESSING, 1969

This analysis attempts to arrive at an estimate of the costs of processing through the criminal justice system those persons arrested for public drunkenness during 1969. Since our focus is on the cost of the routine "Drunk Court" operation, we have not included in this analysis the costs of processing persons who were arrested primarily for an offense other than public drunkenness but who were charged with drunkenness as an additional and secondary offense.

There is an inherent difficulty in computing the costs of criminal justice in San Francisco. The Police Department issues its Annual Report on a calendar-year basis, in this case calendar year 1969. All other agencies of criminal justice, however, issue reports on a fiscal year basis, and the city's budget is also compiled that way. Thus, in this analysis, all arrest and sentencing statistics are derived from the Police Department's Annual Report for calendar 1969. Police salaries are also taken from that Report. However, the salaries and costs of other agencies of criminal justice are taken from the City Budget for fiscal 1968-1969. Since most costs and salaries increased during fiscal 1969-1970 (a period which includes the latter half of calendar year 1969), it should be apparent that this cost analysis is somewhat low in estimating the costs of processing persons arrested for drunkenness during calendar year 1969.

I. Police Costs/Time:

Arrests for violations of 647f of the California Penal Code, drunk and disorderly, are most commonly made by the Patrol Division of the San Francisco Police Department. In order to determine the amount of time required for detention and arrest on drunkenness charges, an average arrest time was formulated.

Most arrests made by the Patrol Division of the San Francisco Police Department are made by the wagon crews, assigned to specific areas of downtown San Francisco.

Through a process of observation and analysis, we have estimated that the average time to effect an arrest for public drunkenness is approximately 15 minutes. This is from the time the officer's attention is focused upon an individual because of his behavior pattern until the individual is placed in a police patrol vehicle or police wagon to be transported to the Hall of Justice. There is no report writing required of the offense, merely a booking slip made at the scene. The total number of individuals detained by the Patrol Division of the San Francisco Police Department during the period under inquiry was 16,112.

A. 16,112 arrests X 15 minutes = 241,680 minutes or 4,028 hrs.

B. 4,028 hours X $5.67 per hour ('69 patrolman's hourly wage = $22,839.00

TOTAL $22,839.00

II. Transportation Costs:

Transportation to a district station or to the Hall of Justice for individuals who have been detained or arrested may be by either of two means. The defendant may be transported by the arresting officers in a police vehicle, or else the defendant may be transported to a district station or to the Hall of Justice by the police patrol wagon. Because of the potential danger involved, and the condition of most drunks, it is an infrequent situation in which the officer will transport the individual himself. Elapsed times, from the point at which the officer summons the patrol wagon to the arrival of the wagon, differ greatly, as to the time of the day, the day of the week and the availability of the wagon. Also, in large numbers of drunk arrests, the arrests themselves are made by patrol wagon personnel.

In most situations we have observed the average time to be 35 minutes from the time the officer summons the wagon until the wagon delivers the defendant to the booking area of city prison. Each patrol wagon has two uniformed officers assigned to it. There is an average of 6 men transported per trip.

A. 2685 trips X 35 minutes X 2 patrolmen = 187,970 minutes or 3116 hours

B. 3116 hours X $5.67 per hour X 2 patrolmen = $35,356.00

TOTAL $35,356.00

III. Other Police Personnel:

There are at present (and were during 1969) 2 patrolmen assigned as liaison with the court in the handling of 647f violations. These men are also responsible for the "drunk school" which is conducted by the court. This is their sole function within the police department.

A. Salary, 2 patrolmen (1969 avg.) @ $958 mo. = $22,992.00

TOTAL $22,992.00

IV. City Prison Costs:

The police department does not publish segregated cost figures for city prison. However, the department reports that the following personnel were assigned to the prison during 1969:

	Cost/year
1 Captain @ $1533/mo	$18,396.00
6 Sergeants @ $1116/mo	80,352.00
36 Patrolmen @ $958/mo (avg.)	413,856.00
5 Jail Matrons @ $760/mo (avg.) (full-time)	45,600.00
Total Personnel Salaries	$ 558,204.00

A. Total prisoners booked in City Prison, 1969 — 59,086

B. Prisoners booked in City Prison, 1969, for drunk — 16,660

Thus, 28% of all bookings were for drunk.

C. Personnel cost attributable to drunks ($558,204 X .28) — $156,297.00

D. Estimated cost of food per day: $.95

E. Cost of food per day ($.95) X 16,660 (assuming avg. one day incarceration) — $ 15,827.00

Costs of City Prison (Personnel and Food, not including costs of medical care or transportation to San Francisco General Hospital) attributable to drunks, 1969: $ 172,124.00

TOTAL $172,124.00

V. Records Index

Another clerk in the Criminal Records Division is responsible for indexing defendant and his disposition in the courts criminal records index. There is an average of at least 1.2 indices per arrest, including continuances, and each index requires approximately 2 minutes to record.

A. 16,112 arrests X 2 minutes X 1.2 indices = 38,670 minutes or 645 hours.

B. 645 hours X $4.10 (avg. hrly. clerk wage) = $2644.00

TOTAL $2,644.00

VI. Preparation of the Court Calendar:

A. 15,930 charged defendants + 25 lines on the court calendar per page = 637 calendar pages

B. 637 calendar pages X 1.2 average appearances = 764 calendar pages

C. 764 calendar pages X 15 minutes (avg. time to type a page) = 191 hours

D. 191 hours X $4.10 per hr. = $781.00

TOTAL $781.00

VII. Court Time/Costs (Drunk Court):

Costs of operation of Municipal Court Department No. 13g

A. Salary, Municipal Court Judge	$12.00 hr.
B. Salary, 2 Bailiffs	9.30 hr.
C. Salary, Courtroom Clerk	5.90 hr.
TOTAL	$ 27.20 per hour

Drunk Court holds session on the average of one hour per day every week of the year.

$27.20 X 5 days X 52 weeks = $7,072.00

TOTAL $7,072.00

VIII. Additional Costs/Court Trials:

Approximately 4% of those charged subsequently requested trials by a judge. The average length of such an appearance was approximately 7 minutes.

A. 637 defendants X 7 minutes = 74 hours

B. 74 hours X $44.00 (Municipal Court Costs)* = $3,388.00

TOTAL $3,388.00

IX. Jury Trials:

The District Attorney's Office reports that there are very few, if any, jury trials arising out of ordinary drunkenness charges (i.e. defendants initially processed in Drunk Court). A drunkenness charge may be at issue in a jury trial when that charge is joined with others, such as battery, assault on a police officer, or resisting arrest. For our purposes, however, it is safe to say that ordinary drunkenness offenders account for a negligible portion of those tried by juries in San Francisco.

*Where a court trial or a jury trial is held, both a Deputy District Attorney and a court reporter are present. Often, a Public Defender will be appointed.

X. TOTAL COSTS: ARREST THROUGH SENTENCING

Police Costs/ arrests	$ 22,839.00
Police Costs/ transportation	35,356.00
Police Costs/ Court liaison	22,992.00
Police Costs/ City Prison	172,124.00
Records Index	2,644.00
Calendar preparation	781.00
Court Costs/ Drunk Court	7,072.00
Court Costs/ Court trials	3,388.00
TOTAL	$ 267,196.00

XI. County Jail Costs

Although persons charged with 647f P.C. (drunk) accounted for about 41% of the sentences to County Jail by the San Francisco Courts during 1969 (3,548 out of 8,665), this does not provide an accurate basis for cost analysis, since it is likely that most sentences for other offenses, including felonies, exceed the average of 27.5 days for drunkenness offenders.

Thus, we base our analysis on the Sheriff Department's estimate that approximately 1/4 of all physical facilities at San Bruno have been devoted to drunkenness offenders over the past several years.

The budget for fiscal 1968-1969 for County Jails Nos. 2 and 4 (San Bruno) is as follows:

Salaries	$2,253,516.00
Admin. Costs	8,970.00
Equip./supplies etc.	53,685.00
Food/livestock	189,000.00
	$ 2,505,171.00

25% of $2,505,171.00 = $626,293.00

TOTAL	$626,293.00

TOTAL CRIMINAL JUSTICE COSTS

A. Costs:	Arrest Through Sentencing	$267,196.00
B. Costs:	County Jail	626,293.00
	TOTAL CRIMINAL JUSTICE COSTS	$893,489.00

END