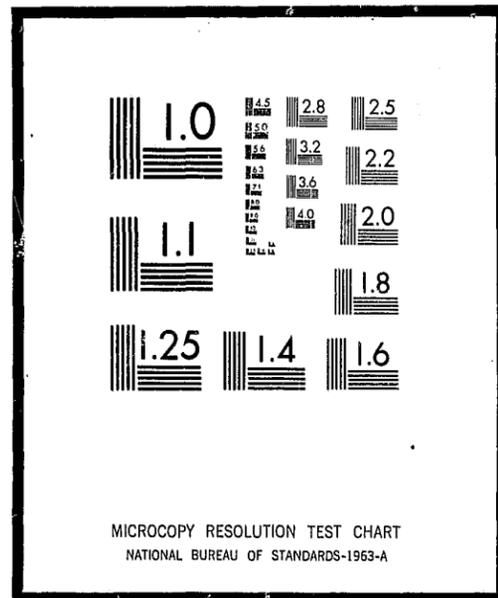


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 STREET SOLICITATION
 SAN FRANCISCO

ANNOTATION:

SEVEN PRINCIPLES SHOULD BE APPLIED TO DETERMINE WHETHER CRIMINAL LAW IS PROPERLY USED TO CONTROL CONDUCT.

ABSTRACT:

THE COMMITTEE BELIEVES SEVEN PRINCIPLES SHOULD BE APPLIED IN DETERMINING WHETHER CRIMINAL LAW IS PROPERLY USED TO CONTROL CONDUCT. (1) THE LAW CANNOT SUCCESSFULLY MAKE CRIMINAL WHAT THE PUBLIC DOES NOT WANT MADE CRIMINAL. (2) 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. (3) EVERY PERSON SHOULD BE LEFT FREE OF THE COERCION OF CRIMINAL LAW UNLESS HIS CONDUCT IMPINGES ON OTHERS AND INJURES OTHERS, OR IF IT DAMAGES SOCIETY. (4) WHEN GOVERNMENT ACTS, IT IS NOT INEVITABLY NECESSARY THAT IT DO SO BY MEANS OF CRIMINAL PROCESSES. (5) SOCIETY HAS AN OBLIGATION TO PROTECT THE YOUNG. (6) CRIMINAL LAW CANNOT LAG FAR BEHIND A STRONG SENSE OF PUBLIC OUTRAGE. (7) 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. THIS IS A MATTER OF PRIORITIES. THE REPORTS OF THE COMMITTEE DEAL WITH THE QUALITATIVE ASPECTS OF NON-VICTIM CRIME AND ALSO CONSIDER THE COST-EFFECTIVENESS OF ENFORCING THE PRESENT LAWS. (AUTHOR ABSTRACT)

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July 13, 1971

FINAL REPORT OF THE SAN FRANCISCO COMMITTEE ON CRIME
TO THE UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF LAW ENFORCEMENT ASSISTANCE
GRANT NO. 374

Purpose of Project

The San Francisco Committee on Crime was created in February 1968 by a resolution of the Board of Supervisors of San Francisco. A short while later the Mayor appointed a number of citizens broadly representative of the San Francisco community to serve on the Committee.

The purpose of the Committee was to examine and explore a wide variety of subjects dealing with crime and the system of criminal justice in San Francisco. One of the charges to the Committee by the Mayor is stated in the grant application to the Department of Justice under the heading "Goals." In brief, what the Committee was charged to examine, among other things, were certain non-victim crimes such as alcoholism, the use of dangerous drugs and narcotics, prostitution, sexual activities between consenting adults, and pornography. The question asked of the Committee was "How far does wise government require that

- 2 -

these ills be condemned and handled as crimes or left to the private conscience, or for cure and handling in other ways?"

It was to seek an answer to this question and make recommendations on this subject that the Committee applied through the city for a \$25,000.00 grant from the Office of Law Enforcement Assistance of the Department of Justice.

The grant application was approved and the Committee was awarded \$25,000.00 for work in this area. The project duration was to begin on June 1, 1968 and terminate on July 30, 1969. Work on the project began almost immediately and within a short period of time it became apparent that neither the grant amount or the time schedule were realistic. A tremendous amount of work and resources were put into the project and it was finally completed on June 30, 1971. No additional funds were sought from the Department of Justice. Fortunately, in February 1969 the Committee received a grant of \$162,000.00 from the Ford Foundation to examine the various agencies of criminal justice in San Francisco and to make recommendations as to how these agencies and the criminal courts could function more effectively in controlling crime and improving the system of criminal justice. The Ford Foundation grant was renewed in March 1970 and the Committee was given an additional \$182,600.00. During the Committee's life it also received a total of \$50,000.00 in funding from the City and County of San

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Francisco. Because the Committee's study of the criminal justice system revealed that the entire system was swamped with so-called non-victim crimes and that something would have to be done about reducing the volume of these crimes if the various agencies were to be able to cope with crimes of a far more serious nature, the Committee felt it appropriate to expend city and Ford funds along with L.E.A.A. funds in resolving the problems that were the subject of the L.E.A.A. Grant.

The amount of time and money spent by the Committee as of February 18, 1970, the date when the grant was officially terminated after extensions had been granted by L.E.A.A., are shown in a letter dated January 19, 1971 to Mr. Fred W. Graffweg of the Audit and Inspection Division of the Department of Justice. Since that time the Committee has spent at least an additional \$10,000.00 in salaries and printing costs to complete its work.

The results of the Committee's work may be found in its final reports. These have been furnished to the Mayor, Board of Supervisors, to the Law Enforcement Assistance Administration and have been published and printed so that they can be made available to the community. Copies of the reports are being sent under separate cover.

The first report of the Committee was issued on April 26, 1971. This report, which was entitled Part I, contained two chapters,

one stating the basic principles that the Committee agreed must govern wise public policy in deciding what conduct should be made criminal, and the second chapter dealing with the subject of public drunkenness. The basic principles addressed themselves to the question of why certain laws should be enforced at all, or why they should even exist, particularly in view of the fact that public resources for law enforcement had limitations, and resources had to be directed to where they would do the most good.

On June 3, 1971 the Committee issued Part II of its Report on Non-Victim Crime. This report dealt with the subjects of prostitution, homosexuality, "statutory rape," gambling and pornography. The basic principles arrived at by the Committee were applied to these subjects and certain conclusions were reached.

On June 29th the Committee finally reached agreement on perhaps the most difficult of these "non-victim crimes," drug abuse. The Committee confined itself to the subjects of marijuana and heroin because neither time nor material resources allowed a detailed study in depth of the many other types of drugs and narcotics that are being abused in our modern society. The controversial nature of the subject matter and the strong emotional feelings which surround this subject are reflected by the sharp division in the Committee's vote. This division is shown in the first pages of the report. It was the first time in the eleven reports issued by

this Committee, reports which covered a wide range of subject matter, that more than one dissenting vote was cast.

The reports of the Committee on non-victim crime have received wide press and magazine coverage both in this country and abroad, as well as considerable local television and radio coverage. We do not expect that public consensus or reform of the laws will take place overnight, but we are convinced that within the next few years changes along the lines recommended by the Committee will and must take place if our criminal justice system is to survive. At least the Committee's reports have stimulated a great deal of controversy and public discussion and this is healthy. Public enlightenment and public concern over these problems have resulted and they should help bring about change.

How the Work Was Done

In the early months of the Committee's operation a subcommittee was formed to consider the subject of non-victim crime. The subcommittee was headed by Dr. Victor Eisner, a public health doctor with the University of California, and it made general recommendations to the Committee as to policies that should control law enforcement activities in the non-victim crime areas. Dr. Robert Carter of the University of California School of Criminology at Berkeley who was Acting Executive Director of the Committee was designated as the Project Director when the O.L.E.A. awarded the Committee a grant in June, 1968. He left the Committee in September, 1968 and Mr. William

Smith, a graduate student in criminology, who had been hired by Dr. Carter, was approved by O.L.E.A. as the Project Director. Mr. Smith in the course of his work gathered cost figures applicable to the processing of non-victim crimes in the criminal justice system. His work product was given to O.L.E.A. in January of this year.

Further work in assessing costs was subsequently done by Mr. William Frazier, who had a graduate degree in political science and was a former training sergeant of the Contra Costa County Sheriff's Office. Mr. Richard M. Sims, III, who subsequently became the Assistant Executive Director of the Committee and devoted many months to the non-victim crime reports, also did cost analysis work particularly in the field of public drunkenness. For a period of time the Committee also employed Mrs. Carolyn French, a professional researcher, who worked on the fields of sexual conduct and drug abuse. Miss Kathleen Thomas, a Stanford law student, also did research for the Committee on the subject of heroin.

A number of members of the Committee, particularly the Co-Chairmen and the medical members of the Committee (Dr. Leon J. Epstein, a psychiatrist with the Langley Porter Institute of the University of California School of Medicine, and Dr. David Hamburg, Chairman of the Department of Psychiatry of the Stanford School of Medicine, together with Dr. Victor Eisner) devoted great study to the contemporary literature and medical as well as legal reports on the subjects in which we were concerned. In addition, the members of the Committee spoke to and heard from a number of experts of

all types in this field and conversations were also had with pimps, prostitutes, narcotic users, law enforcement officers and others familiar with the variety of subjects that we examined. Numerous plenary sessions of the Committee were held in discussing the final recommendations and report before a consensus was arrived at.

Findings and Accomplishments

The detailed findings of the Committee are stated in each of its reports. A brief summary follows.

The Committee believes that the following seven principles should be applied in determining whether criminal law is properly used to control conduct:

1. The law cannot successfully make criminal what the public does not want made criminal.
2. 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.
3. Every person should be left free of the coercion of criminal law unless his conduct impinges on others and injures others, or if it damages society.
4. When government acts, it is not inevitably necessary that it do so by means of criminal processes.

5. Society has an obligation to protect the young.
6. Criminal law cannot lag far behind a strong sense of public outrage.
7. 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. This is a matter of priorities.

The reports of the Committee deal with the qualitative aspects of non-victim crime and also consider the cost-effectiveness of enforcing the present laws. The cost-studies by Mr. Smith and Mr. Frazier have previously been furnished to O.L.E.A. We call attention however to the following pages of the published reports themselves where costs are referred to:

1. Public Drunkenness: Part I of the Report, pages 17-20, 23-24, 29-38, Appendix: Pages A-1 to A-9.
2. Sexual Conduct: Part II, pages 19-21, Appendix B, A-7 to A-19.
3. Gambling: Part II, page 51.

Applying the Committee's seven basic principles to the various types of conduct we examined, we came to these conclusions:

1. Public Drunkenness

Handling public drunkenness by means of the criminal process is futile, inhumane and involves great costs without any benefits. We recommend that public intoxication should not be criminal and that the statutes that make it so should be repealed. We further recommend that public drunks should be picked up by people in the employ of the Public Health Department and taken to alcoholic residential centers where they can dry out, be given necessary medical attention and remain there indefinitely. When the alcoholic is ready and willing to seek rehabilitation and assistance, such assistance should be made available to him. We further recommend until such time drunks are taken out of the criminal justice system, those sent to the County Jail should, for their own protection, be separated and segregated from other inmates.

2. Sexual Conduct

(a) Homosexuality

The Committee recommends that homosexual activity carried on in private between consenting adults should not be illegal. For the criminal law to concern itself with such acts is unwarranted and is a needless deflection of the energies of law enforcement from controlling violent crime to matters of morals. The Committee recommends that street solicitation and other public solicitation by male prostitutes should be unlawful and should be controlled by the police in the same manner as heterosexual prostitution. We also recommend that the law continue to protect the young and make criminal any activities by adults which involve sexual conduct with

minors.

(b) Unlawful Sexual Intercourse (Statutory Rape)

The present California law makes it criminal for a male to have sexual intercourse with a female under the age of eighteen, even though she consents, or even when the male is a minor. We recommend that inasmuch as "a female of the age of eighteen is probably as adult sexually as a male of twenty-one or twenty-two," the adult should not be guilty of statutory rape unless he is at least three years older than the female.

(c) Prostitution

The Committee found no perfect solution to this age old problem. After giving great thought and study to various solutions, it concluded that the present law enforcement procedures and methods are completely unproductive and merely result in placing prostitutes in greater bondage to the pimps who enslave them. Because street prostitution constitutes an offense to public sensibility, we recommend that the police continue to enforce the laws against street solicitation. Although the Committee unanimously deplores prostitution, the members came to the conclusion that it cannot be eliminated. Inasmuch as present law enforcement practices do not work, we recommend that prostitution be legalized in the hope that this would at least allow those women who take up this form of existence to practice it off the streets and privately. We further recommend that

law enforcement activity against pimps should be increased and made more effective and that the police do a more professional job of obtaining proper evidence that will make convictions possible in cases of on-the-street solicitation.

(d) Gambling

The Committee saw gambling at two levels. First there is private social gambling. Second is commercialized gambling by professional gamblers. The Committee recommends that those laws which prohibit private social gambling should be repealed. They are an unnecessary intrusion into the private lives of people and the way that they are enforced results in harrassment of those that cannot afford to carry on this type of "social activity" in private clubs. We recommend that so long as the gambling laws remain on the books they should be enforced equally to all segments of our society which, in effect, means that the police should confine their efforts to the control of large games, games that are professionally organized, and the enticement of minors and solicitation.

(e) Pornography

Following its basic principles the Committee comes to very clear conclusions. It does not condone or approve of pornography but it believes so far as actual harm to society is concerned, the efforts of the criminal law and law enforcement to ban pornography is a waste of resources and an interference into private morals.

The Committee believes that there should be no prohibition of:

1. What adults choose to read, see, or do in private.
2. The discreet and private sale of pornography by one adult to another.
3. The display of pornography in the flesh, film, or stage to adults in an off-the-street reticent surrounding; that is to say, in such a way as to come to the attention only of those who seek it out.
4. Discreet commercial advertising that merely informs the public about the availability of sexual materials and is not vulgar, salacious, or lewd on its face.

There should be prohibition of:

5. Sale or display to minors.
6. Public display or exhibition whereby the pornography is thrown before or called to the attention of the general public, the passerby.
7. Commercial advertising or solicitation that is offensive, vulgar, lewd or obscene.

The reports of the Committee on these subjects have led to a great deal of controversy and criticism. They have also led to

considerable support by the more intelligent and intellectually honest members of the community. Attached to this report as an appendix is a letter addressed to the Mayor by the Barristers Club of San Francisco supporting the position of the Committee on its non-victim crime recommendations and offering their support to bring about the recommended changes. We should add that as a result of our Report on Public Drunkenness a bill has been introduced in the California Assembly by fifteen assemblymen and co-authored by four state senators which would make possible almost in toto the solution that we advocate.

The Committee's final report deals with the subjects of marijuana and heroin. No member of the Committee condones, supports or encourages the use of any mind-altering drug. However, a great majority of the Committee believes that the dangers of marijuana use, in the light of our present knowledge, are grossly over-exaggerated. We also think it to be clear that criminalization has been no more effective in controlling marijuana usage than the laws that once prohibited the use of alcohol. The use by millions of our youth of marijuana has resulted in criminalizing them, has increased their disrespect for "the establishment" and the law and is at least to some extent responsible for the creation of the so-called generation gap. We believe that society should exert every effort to discourage people from using marijuana because people would, we are certain,

be better off without it and we cannot approve any substance that artificially manipulates or alters the mind. We make the following recommendations:

1. Repeal the laws prohibiting the use by adults of marijuana or forbidding adults from visiting a place where marijuana is used.
2. Repeal the laws prohibiting possession by adults.
3. Repeal the laws prohibiting sale of marijuana to adults and regulate sale to them by laws on the general order of those regulating alcoholic beverages.
4. Continue to prohibit sale to minors and possession by minors.
5. Prohibit any advertising of marijuana.
6. Prohibit the importation of marijuana into California (probably would require federal action).
7. Regulate the production of marijuana in California for sale by laws similar to those regulating the commercial production of alcoholic beverages.
8. Devise and expand a vigorous educational campaign about marijuana.

In its report on heroin the Committee finds the following facts:

1. Heroin is unquestionably destructive both to the user and to society.
2. Efforts to date by criminal law to check heroin traffic have been singularly unsuccessful. Major arrests are few and do not visibly decrease the traffic.
3. Long-range solutions to the heroin problem must be found in efforts by the federal government to stop opium cultivation, heroin refining, and importation, and in massive educational programs aimed at the drug.
4. The cure rate of heroin addicts by conventional involuntary treatment is very low.
5. Heroin addicts are desperate and will get the drug one way or another. They will steal, and if necessary kill, to obtain heroin.
6. Under the present laws, the only way they can obtain heroin is by purchasing it from the underworld.
7. Heroin users rarely commit major crimes while under the influence of the drug. They do commit crimes in order to obtain money to buy their next fix or to keep themselves supplied.
8. A conservative estimate of the amount of property stolen by heroin addicts in San Francisco each year is 45 million dollars. (This sum exceeds the annual budget of the police department.)

9. If we cannot effectively reduce the harm that an addict does to himself, we can substantially reduce the harm the addict inflicts on society. At this time, there appear to be only two ways of having a substantial effect on the heroin-crime cycle. The first alternative is to place addicts permanently in institutions. This is punishment for illness. The second alternative is to establish government controlled medical clinics where, if nothing else succeeds, heroin could be administered, not handed out, to confirmed heroin addicts on the educated, experienced judgment of physicians. This would substantially reduce crime, the role of the commercial peddler, and the likelihood of peddlers attempting to hook our youth.

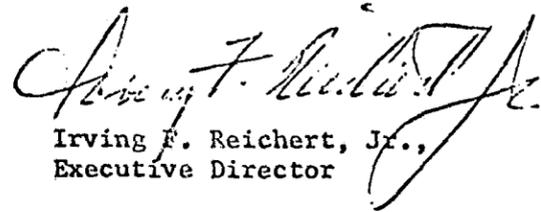
Historically the law has in effect prescribed treatment by sending heroin addicts to institutions, whether civil or criminal, in which treatment and rehabilitative facilities are meager. The cure rate of these institutions is very low. The Committee believes that the legal system should not "prescribe treatment" but devise ways to make it possible for medicine to bring all its talents and expertise to the problem of heroin and curb and cure addiction to the greatest extent possible. The Committee recommends that:

"The time has come for the federal government to make a thorough and objective analysis of the benefits and harms of a system of government controlled clinics that dispense, free or at nominal cost, methadone, heroin, or whatever other drug or treatment experts should conclude is even better."

Final Conclusions and Recommendations

The Committee believes that the work that it has done has been worth while and has stimulated national as well as local community discussion. During the course of its work the members of the Committee remained open-minded and many preconceptions held by members were changed. Copies of our reports have been furnished to all the local libraries and to libraries, universities and other agencies throughout the country that have requested them. The original printing was soon exhausted and funds other than those from the L.E.A.A. Grant were used to print 3,000 copies which were made available through local bookstores and news stands (the cost of this printing was almost completely returned by selling it only a couple of cents below printing cost to a local magazine and paper distributor).

We would recommend that wide dissemination be given our work and also that of other diligent researchers and analysts who have studied these problems and come to conclusions which may or may not agree with ours. The primary purpose of this recommendation is that the people of this country be given the opportunity to form intelligent judgments on undistorted data, albeit the conclusions of the authors may differ widely.


Irving F. Reichert, Jr.,
Executive Director

BARRISTERS CLUB
of San Francisco

June 28, 1971

The Honorable Joseph Alioto
City Hall
San Francisco, California 94102

Dear Mayor Alioto:

The Barristers Club of San Francisco consists of more than 1,700 lawyers under the age of 37 who practice in San Francisco. We are concerned with the substance and administration of criminal justice in this city. Because of that concern, we write this letter to convey our enthusiastic support for the recommendations of the San Francisco Committee on Crime regarding the non-enforcement of what it calls "non-victim" crimes.

We start from the premise that any community which seriously values personal freedom and the right of privacy should use the criminal process sparingly and only when necessary to control conduct which threatens the rights of its citizens or the rights of the public in general. Within this framework, we are hard put to justify the continued enforcement of laws against conduct which affects only willing adult participants. Such laws pose a serious threat to personal freedom and the right to privacy in at least three respects:

1. Because the only "victim" in a non-victim crime is one who willingly chooses to experience what the law forbids, the government necessarily assumes the ominous posture of coercing its citizens to act against their will in matters that concern only themselves.

2. Because there are no complaining victims in non-victim crimes, the discretion to enforce such crimes is subject to political abuse and corruption, as well as discriminatory enforcement along racial, cultural, and socio-economic lines.

3. Because, by definition, non-victim crimes are committed privately, beyond the public view, the enforcement of laws against such crimes necessarily requires use of police informants, undercover agents, and other serious intrusions upon individual privacy and personal trust.

Apart from the crucial question of freedom and privacy, the lessons of the Federal Alcohol Prohibition are applicable to all non-victim crimes. It is in the nature of human beings to desire maximum freedom; and the criminal law is simply ineffective to control what people read, consume, or do with themselves or to willing partners in private. Laws with real victims are enforceable and generally effective precisely because there are victims. Victimless crimes are unenforceable precisely because there are only consenting parties involved.

At a time when the police are so needed for the staggering number of crimes with victims, when it is unsafe to walk the streets, when the courts are backlogged to the breaking point, when the jails are seriously overcrowded and understaffed, when hundreds of worthwhile causes go unfunded by the city, and when the problems of urban financing have reached catastrophic proportions, it is for us impossible to justify the huge expenditures of public revenues to process and punish individuals for conduct which at worst harms only themselves; especially when we have chronic and overwhelming evidence that the criminal law simply does not deter such conduct. In short, we should stop wasting our money enforcing laws that define non-victim crimes and spend it where it can have a constructive effect.

The continued enforcement of laws against non-victim crimes is worse than merely an inexcusable waste of taxpayers' money; it is also a primary cause for growing disrespect for law and authority in our city. Those who participate in non-victim crimes generally do not accept the judgment of the law that they are criminals; nor, generally, do their families and friends. They see a clear difference between their activities, which harm no one, and crimes of violence, coercion and deceit. They witness the full force of the criminal process turned against them, while the resources of the courts, prosecutors and police are already inadequate to contend with real crime -- crimes of violence, coercion and fraud against persons and property. When segments of the public clamor for law and order, the perpetrators of victimless crimes

know that they are the targets of arrest because it is safer and surer to arrest them rather than the perpetrators of real crimes. They resent the fact that such laws are enforced at their expense to swell arrest records and satisfy political ambitions. Furthermore, they strenuously resent the police agents and informants who make friends with them, win their confidence, only to betray it. Society can ill afford the resulting alienation.

By regarding such activity as criminal, we force those who desire to engage in it into the same camp, the same circles, the same "black market," the "wrong" side of the law, and often into the same prison cells as those inhabited and dominated by hardened criminals. Further, attaching a criminal stigma to these activities seriously decreases the chances that such persons will seek the rehabilitative and therapeutic resources of our community in those cases where the conduct may include self-imposed harm.

It is apparent from the very existence for so many years of good reasons for ceasing to prosecute non-victim crimes that powerful forces of prejudice and ignorance continue to insist upon public vindication of private notions of morality and welfare. But we submit that these forces are more vocal than they are representative of the residents of San Francisco and that they are vocal precisely because the city government has responded so well to them in the past.

Their position is a highly destructive one. If their influence is great they must be persuaded of the detrimental effects of the policies they urge. The city must exercise a role of leadership to set the record straight. We cannot continue on our present course and still hope to reduce the problems of real crime to manageable proportions.

To implement the recommendations of the Committee, the Barristers Club of San Francisco suggests a four-step process:

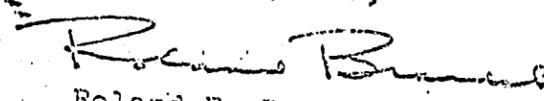
- 1) a program of public education regarding the substance of the report, its recommendations, and the probable effect of implementation;

June 28, 1971

- 2) a comprehensive revision of the Police Code;
- 3) a revision of the instructions and training for police on the question of non-victim crimes; and
- 4) a coordinated effort with enlightened representatives of other communities in California to secure reform on a statewide basis, with an emphasis on home rule on the question of non-victim crimes.

The Barristers offer their support and assistance in all phases of this program; it is too serious a problem to neglect.

Sincerely yours,


Roland E. Brandel
President

REB:cam

cc: Board of Supervisors

END