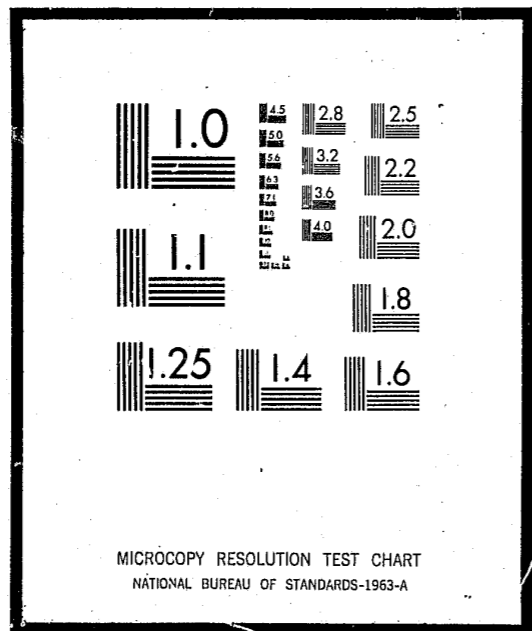


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# **NARCOTICS**

**LAW**

**ENFORCEMENT**

**In New York City**



**A Report by  
The New York State  
Commission of Investigation  
April 1972**



**TEMPORARY COMMISSION OF INVESTIGATION  
OF THE STATE OF NEW YORK**

*Commissioners*

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*Chairman*

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**NATHAN SKOLNIK**  
*Deputy Commissioner*

**JOSEPH FISCH**  
*Chief Counsel*

*Legal Staff*

**PAUL D. KELLY**  
*Assistant Chief Counsel*

**ROBERT A. McELLIOTT**  
*Assistant Counsel*

**RICHARD J. GOLDMAN**  
*Assistant Counsel*

**LOUIS N. SMIGEL**  
*Assistant Counsel*

**JOHN G. GUYET**  
*Assistant Counsel*

**PATRICK J. VETRANO**  
*Assistant Counsel*

**WARREN E. DOWNING**  
*Executive Assistant*

**EDWARD J. KIRK**  
*Chief Investigator*

**ALBERT SOHN**  
*Chief Accountant*

**“ . . . the law enforcement effort in curbing narcotics and narcotics addiction in this City must be of the highest order of integrity, of the highest quality of efficiency and of the highest degree of effectiveness.”\***

\* Excerpt from this Commission's statement at the conclusion of its public hearing on April 22, 1971 concerning its investigation of narcotics law enforcement and related problems in the New York City Metropolitan area.

270 Broadway  
New York, N. Y. 10007

**AN INVESTIGATION CONCERNING NARCOTICS  
LAW ENFORCEMENT AND RELATED  
PROBLEMS IN THE NEW YORK  
CITY METROPOLITAN AREA**

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**AN INVESTIGATION CONCERNING NARCOTICS  
LAW ENFORCEMENT AND RELATED  
PROBLEMS IN THE NEW YORK  
CITY METROPOLITAN AREA**

**I. BACKGROUND OF THE INVESTIGATION**

For some time, the problem of narcotics addiction has haunted the people of New York State. The consequences and implications of the problem were reflected in many ways. Newspapers reported more and more arrests for the sale and illegal possession of narcotics and the threat of personal danger became more real and immediate with the alarming rise of drug-related crimes such as burglaries, purse-snatching, robberies and assaults. The victims of narcotic crimes were no longer limited to those directly involved in its traffic, for as addiction grew, so did the senseless crimes by addicts needing money to sustain their drug habit. The press also reported the grim figures released by the Medical Examiner's Offices, which showed a steady and rapid acceleration in the number of overdose deaths due to drug abuse. The median age of overdose victims lowered from year to year, as more and more of our youth turned to hard drugs.

Understandably, the urban centers of New York State suffered most, and again understandably, the core of the contagion was New York City. The magnitude of the problem can be seen by the following statistics.\*

In 1966, it was estimated that there were 60,000 narcotic addicts in New York State. By 1970, the number of addicts in New York City alone was conservatively put at 100,000. In 1968, there were 9,626 narcotic felony arrests by the New York City Police Department. That number practically tripled over the following two years.\*\* The gruesome impact of drug abuse on youngsters was dramatically revealed with the startling disclosure by the Chief Medical Examiner that drug abuse was New York City's single largest cause of death among teenagers.

\* Cited by Commission Chairman Paul J. Curran in his statement on April 5, 1971, at the commencement of the Commission's public hearing.

\*\*In 1970, the figure was 26,799.

This was the background of the growing narcotics problem in early 1970.

### ***The Governor Requests an Investigation***

On February 24, 1970, Governor Nelson A. Rockefeller, Temporary President of the Senate and Majority Leader Earl W. Brydges and Assembly Speaker Perry B. Duryea issued publicly a Joint Statement announcing legislative and administrative support for a three-phased attack on the narcotics scourge. The three areas of concentration were education, treatment and rehabilitation, and law enforcement.

In the area of law enforcement, the Joint Statement declared:

"We are requesting the State Commission of Investigation to undertake a comprehensive inquiry and to conduct hearings, if appropriate, of all facets of the heroin and hard drug problem faced by law enforcement authorities, particularly in the New York City Metropolitan area.

Specifically, we are requesting the Commission to explore:

- a. The sources and channels of supply and distribution of heroin and other 'hard drugs';
- b. The role of organized crime in these activities;
- c. The effectiveness of law enforcement agencies and the courts;
- d. The adequacy of personnel and resources, and
- e. The adequacy of present criminal laws."

The Commission complied with the request of the Governor and Legislative leaders and undertook an investigation.

The Commission's investigation was far-reaching and involved a variety of investigative methods. Police and other records, documents and reports were reviewed and arrest statistics and cases were analyzed. Commission staff members conducted private hearings and interviews of persons involved in every aspect of the criminal justice system, including federal and state levels of responsibility, as well as local law enforcement officials. In addition, school authorities, hospital and health experts and treatment and correctional personnel were interviewed. Members of the Commission consulted with federal officials including members of Congress and Congressional committees, the United States Commissioner of Customs,

the Deputy Attorney General of the United States, the Regional Director of the Bureau of Narcotics and Dangerous Drugs, and others. We were also in touch with manufacturers and distributors of paraphernalia used in the narcotics traffic, such as glassine envelopes and quinine. Commission agents and attorneys went out on surveillance with city and state law enforcement officers and spoke to narcotics criminals and their victims. Present and former members of the New York City Police Department and its Narcotics Division were interviewed under oath. These police witnesses included men of every rank, from patrolmen, detectives and sergeants, through lieutenants, captains, deputy and assistant chief inspectors, up to and including the Police Commissioner himself. This detailed and comprehensive investigation culminated in a 10-day public hearing which began on April 5, 1971 and continued on April 6, 7, 8, 13, 14, 15, 19, 20 and 22nd.

## **II. AGENCIES RESPONSIBLE FOR ENFORCEMENT OF THE NARCOTICS LAWS**

At the outset, it should be noted that the term "law enforcement" means more than merely the arrest of persons charged with a crime. The law enforcement process begins with an arrest, and once that police function is properly performed, that case and the defendants involved are then matters for processing by the District Attorneys and the courts. The Commission's investigation also examined into these integral parts of the criminal justice system.

A number of "police" agencies may be involved in the arrest of persons for narcotics crimes. The first criminal act over which American officials can exercise jurisdiction is the smuggling or importation of narcotics into the United States from abroad. Since no heroin or cocaine is produced domestically, these drugs enter the United States illicitly from foreign countries. The federal agency responsible for guarding American borders and intercepting drugs is the United States Bureau of Customs.\* Those caught attempting to smuggle drugs into the United States are subject to arrest by Customs officials.

Besides the Bureau of Customs, the national agency having primary federal responsibility in this field is the Bureau of

\* From 1969 until most recently, the Commissioner of Customs was Myles J. Ambrose.

Narcotics and Dangerous Drugs (BNDD) of the United States Department of Justice. There are BNDD districts spread over the United States, and these districts concern themselves with the international drug traffic as well as with interstate narcotics traffic within their territories. These districts coordinate their activities with their Washington office and with each other, in recognition of the obvious fact that the drug traffic often traverses these arbitrary jurisdictional divisions. Federal agents of BNDD can, and do, make arrests within the fifty states for violation of the federal narcotics laws.

A person charged with a federal crime is often also in violation of the narcotics laws of the state in which he is apprehended. In order to avoid duplication of effort and interference with each other's work, it is necessary that effective liaison exist between BNDD and local police agencies. In New York City, a Joint Task Force was created, with representatives of BNDD, the New York State Police and the New York City Police Department. It is the job of the Joint Task Force to work together and fill the gap between the different areas these agencies would concentrate on when acting in their respective individual capacities. For example, it has been the traditional policy of the BNDD to select as targets of investigation, persons suspected of dealing in very large quantities of narcotics, or so-called "major violators."

The New York State Police, similarly, have attempted to concentrate their attention on the upper echelons in the narcotics traffic, as well as lending assistance to municipal police departments in meeting their local narcotics problems. The New York City Police Department, on the other hand, has devoted its major effort at the lowest narcotics violators, primarily the addict-pusher. As a result of these different approaches, it became clear that a major no-man's land was developing and persons operating at that level of criminal activity were being virtually ignored. The Federal-State-Local Joint Task Force was established to fill that gap.

Finally, the ultimate responsibility for enforcing the narcotics laws devolves on the police departments of each city. It is the job of such police departments to know what is happening in their own territories. In New York City, this law enforcement function is the responsibility of the New York City Police Department and its Narcotics Division.

### III. THE ROLE OF ORGANIZED CRIME IN THE ILLICIT NARCOTICS TRAFFIC

The Governor specifically asked the Commission to determine the role, if any, of organized crime in the illicit narcotics traffic. A definition of what constitutes "organized crime" is a necessary first step. The classic law enforcement concept of organized crime is the system described by Joseph Valachi—a confederation of crime "families." The existence of these families and the identity of their leaders have been well established by Federal, State and local law enforcement bodies. Over the years, changes have, of course, occurred within these particular groups, and others have evolved, but no one seriously disputes the fact that crime syndicates exist, that they are highly organized and play a major role in such illicit activities as narcotics, gambling and loan-sharking.

The criminal elements responsible for the importation and distribution of narcotics in this country have been identified by Federal, State and local law enforcement agencies as members of organized crime. An examination of the major narcotics cases made by federal authorities over the last twenty years reveals the direct role these figures exercise in the smuggling of narcotics into the United States, and its distribution within the country. Over the last few years, an increasing number of cases have been made against Latin-American defendants, primarily in the area of smuggling. The reasons behind this evolution are explored later.

#### A. Importation and Smuggling

One of the witnesses at the Commission's public hearing was Myles J. Ambrose, then United States Commissioner of Customs. The Bureau of Customs works closely with the Federal Bureau of Narcotics and Dangerous Drugs in its anti-narcotics efforts. Customs agents are permanently assigned to each of the five overseas Bureau of Narcotics and Dangerous Drugs offices, and BNDD agents work in Customs offices in Mexico and other locations. Simply stated, it is the responsibility of the Bureau of Customs to protect American borders and to prevent narcotic drugs from being smuggled into the country. The principal port of entry for heroin and hard drugs has traditionally been New York City (89).\*

cited, the page reference will be preceded by "Pr. H."

\* Page reference to the public hearing. Where private hearing testimony is



About 80% of the heroin imported into the United States comes from opium grown in Turkey. Members of the foreign underworld have always paid a higher price for the opium than the Turkish farmer received for his product from the government monopoly. Following its conversion to a morphine base, it is smuggled to France or Lebanon for refinement into heroin, and then smuggled into the United States.

The prime movers in the international heroin smuggling trade have traditionally been the French Corsicans, who operate in and around the port of Marseilles. It is in the illicit laboratories of Marseilles that the morphine base is converted into heroin. Mr. Ambrose attributed the success of the Corsicans in the illicit drug traffic in large part to the covert expertise they gained through underground activities during World War 2 and the Algerian conflict. Another factor in their success, he pointed out, are their close ethnic ties over the last twenty years, to counterparts in France, Italy, Spain, Switzerland, Germany, and recently, South America. A large number of French Corsicans have settled in South America, and consequently, a significant percentage of the heroin entering the United States now comes from that area. South America, in addition, has always been the center for cocaine smuggling operations by virtue of the fact that cocaine is principally a South American product.

The methods of smuggling heroin into the United States and the routes used have undergone a number of changes in the last decade. Commissioner Ambrose described this evolution at the public hearing.

During the period 1962-1967, most of the heroin was smuggled into the United States from France by "body couriers" carrying about 3 kilograms of "pure" heroin\* (104). These couriers utilized such devices as false-bottom suitcases. Although they knew what they were doing, these couriers were merely used to make deliveries and were paid just for performing these mechanical tasks. From 1966-1968, more Corsican smugglers were living in South America and began operating their narcotics activities from there. South Americans with false documents but no heroin were frequently used to probe and test American defenses and to locate the easiest entry routes into the United States (107). These South Americans were sent to Europe for the heroin, brought it back to

\* A kilogram, or "kilo," equals 2.2 pounds. The "purity" was in the neighborhood of 95% pure.

South America, and from there it was smuggled into the United States. Another change in operation was the shift to a cargo type of smuggling. By 1968, most of the heroin was being shipped from Europe to South America, and the couriers used to smuggle it into the United States were no longer mere "bodies" but individuals who had "a piece of the action" (108).

The smuggling operation of cocaine was basically conducted independently of the heroin importation. As noted earlier, cocaine originates in South America where the drug is refined from the coca leaf in South American laboratories and shipped by various routes into this country. An indication of the increased use of this drug in the United States is shown by the fact that the total seizure of almost one-half ton of cocaine during 1970 represented an increase of almost 500% over 1969 (137).

Commissioner Ambrose commented on the role of organized crime in the international smuggling of narcotics into the United States:

"Q. What role have you found organized crime—as we know it traditionally—to play in the importation and distribution of these hard drugs?

A. Organized crime begs a definition, I think. I think that organized crime always plays a part in the smuggling of commercial quantities of narcotic drugs in the United States.

You need someone in Europe, you need couriers, you need financing people, you need somebody that knows something about traveling, how to get United States documentation, who the buyers would be in the United States. Only this can be known by someone, and not by some clown who decides all of a sudden to do it in some European capital.

It requires a lot of people, a lot of effort, and it is criminal, so it is organized. So, therefore, it is organized crime." (117-8)

Commissioner Ambrose noted that the international character of the heroin smuggling conspiracy is also evidenced by the common thread which runs through most major heroin cases made during the past nine years. The group involved in the

conspiracy, according to Commissioner Ambrose, is one of the largest and most significant of the heroin smuggling operations.

### **B. Distribution Within the United States**

Andrew C. Tartaglino, Assistant Director for Enforcement of the Bureau of Narcotics and Dangerous Drugs, and William J. Durkin, Regional Director of the New York office of BNDD, followed Mr. Ambrose as witnesses. They confirmed the earlier testimony concerning the direct role of organized crime in the illicit hard drug traffic. Mr. Tartaglino also noted that within the preceding three years,\* three organizations have been responsible for bringing upwards of between  $\frac{1}{4}$  and  $\frac{1}{2}$  ton of heroin from the Far East into the United States (136). Both Ambrose and Tartaglino expressed concern over the emergence of the Far East as another menacing source of narcotics.

New York City plays a key role as a traffic center for hard drugs. Most of the heroin entering the United States finds its way to drug distribution systems here in New York City and for further distribution throughout the country (147). Drugs smuggled into other parts of the United States wind up in New York and are then sent elsewhere (147-8).

The BNDD has systematically identified ten major distribution organizations. In June 1970, the BNDD concluded "Operation Eagle" which was the largest national round-up of major drug traffickers ever consummated. The violators were all members of one of the distribution networks identified by BNDD. There were 177 defendants arrested in five cities and the drugs were absolutely pure and available in unlimited quantities (140). Mr. Tartaglino described another successful investigation and what it also revealed about the role of organized crime in narcotics traffic—not only within the United States, but stretching overseas to the French Corsican dealers:

"Q. May I get back to the organized crime question?

A. Yes.

Q. Can you tell us what role they are playing in the distribution of heroin within the United States, to what extent you see New York City members of these distribution systems controlling or effecting this distribution?

\* The events reported herein are as of the time of the Commission's public hearing.

A. We see little lessening of organized crime involvement in the national heroin or cocaine traffic. They are deeply involved.

Our most recent Operation Flanker concluded at the end of February. It had some 163, 165 defendants. On our best available intelligence, some 42 to 44 of them were identified with organized crime families.

Here in the New York area, those that were identified with families, had been identified with three of the traditional families that we all know, in Chicago with one, and the other cities involved had the ramifications into these families.

Q. So here they are very much still involved in the dope traffic?

A. They are very much involved.

Q. Have you seen any relationship between French organized criminal figures and those in the United States?

A. There is a direct relationship between the French Corsican sellers and organized crime elements in the United States." (158-9)

Mr. Durkin, whose Regional Office is the largest of the BNDD, compared the overseas suppliers to Chairmen of the Board of Directors. They deal with importers who must have large amounts of capital and must be well recommended by trusted associates:

"Now the importers of heroin are for the most part located here in New York, and in Canada and in Mexico.

Mr. Tartaglino mentioned that our bureau has identified nine major drug distributors.

Actually I must correct Mr. Tartaglino, it has grown to ten major drug distributing organizations.

The best part, four of them are located here in New York City, and significant parts of others are located here in New York City.

The importer will bring in heroin in quantities of one or more kilos at a time.

By Mr. FISCH:

Q. Can I interrupt you for a moment?

A. Yes.

Q. The four in New York City, are these organized crime family controlled?

A. Well, I am going to qualify it, Mr. Fisch.

In order to get a true picture, and to understand the organizational structure of the heroin distribution, it would be wrong to imply that there is one individual in that importer box.

There frequently will be three or four or five individuals who, through past business experiences, have formed some interrelationship with each other, and they will band together and collectively be the importer, so there may be actually three or four or even more people acting as importers, financing this operation.

They may not individually sell the drugs that are imported, but they have a financial interest in arranging the importation of these large amount of drugs. Yes, Mr. Fisch, the importers that we have identified, a significant number of them are people who have previously been identified in the organized crime structures.

Q. When you say they may be lending the finances, they are making it possible, isn't that correct?

A. Yes, sir. There is very little that is done in the illicit trafficking of drugs on a trust basis. Cash frequently has to be advanced, or at least a partial payment must be advanced, in order to provide the impetus for the heroin to start its trip to the United States, be it by South America or through Mexico or through Canada.

Q. So their involvement is direct and real and significant?

A. Yes, sir." (180-2)

The fight against narcotics and the organized criminal figures responsible for its importation and distribution within the

United States is a difficult one. Mr. Tartaglino testified that the most effective law enforcement tool in this effort is court-authorization to intercept telephonic communication, commonly known as "wiretapping." As a result of new federal legislation, BNDD began wiretapping in 1968 and Mr. Tartaglino was asked what results were achieved:

"Q. Mr. Tartaglino, can you tell us what you have found to be your most effective law enforcement tool in fighting this dope traffic?

A. Well, I would hate to do it without any—we have got, certainly,—certainly an increase in funds have enabled us to do a lot of things, wire tapping or wire intercepts. We started in 1968.

I would say that in both of these operations, Flanker and Operation Eagle, some 40 percent of the defendants, particularly the more important defendants, could not have been implicated without utilization of the wire intercepts.

Q. Would you say it was certainly one of the, if not the most effective, tools that law enforcement has in fighting dope traffic?

A. It's the most effective we had last year. We had forty-eight of them installed.

Q. How many were productive of the forty-eight?

A. One was not productive.

Q. Forty-seven out of forty-eight were productive?

A. Yes, sir.

Q. And we are talking about major high ranking criminal figures, is that correct?

A. Yes. We are talking about multi kilo dealers in cocaine and heroin, nothing less than individuals who can deal in kilograms. . . ." (162-3)

The need to utilize, to the fullest extent permissible, every law enforcement tool, can be seen by the following observation made by Mr. Tartaglino concerning the virtually unlimited availability of these narcotic drugs:

"Q. In your vast experience in drug enforcement, have you ever seen a seizure or seizures which significantly affected the price of heroin in the United States?

A. No, sir.

Q. No?

A. No.

Q. Does that mean that for all practical purposes, the source appears to be unlimited?

A. The availability.

Q. And the availability?

A. The availability appears to be—I have seen seizures—Mr. Durkin who follows me, I think will be able to talk on a regional level here.

I have seen seizures upwards to 100 kilos. One hundred kilos represents probably over a million dollar investment by organized crime. That's a real big figure. That's not street level. Somebody invested. Someone lost a million dollars when that was seized. I have never seen a panic—that's the street term—for heroin that has lasted any more than the normal publicity that comes out of something. Everyone lays low for a little while, that's on Wednesday, and on Friday, they come back.

The availability appears to be unlimited." (172)

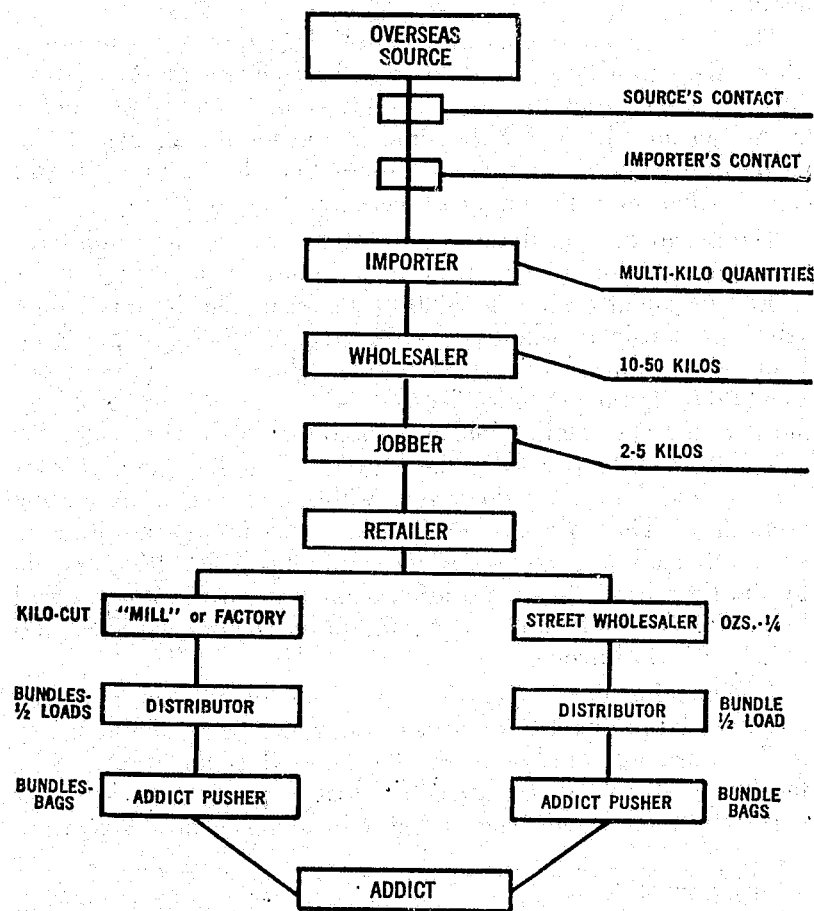
Much has been said about the enormous profits being made in the illicit narcotics trade. Mr. Tartaglino cited four or five instances of organized crime figures who were discovered to be utilizing Swiss bank accounts. One particular case which was vivid in his mind also involved a former "high police official" of another country who was arrested with 93 pounds of pure heroin in his possession (160). In his pocket were two bank deposit slips to a secret Swiss account. The two deposits, which had been made only eleven days apart, shortly before his arrest, totalled over \$900,000. It was learned that the balance of his account was \$1.4 million. This individual was a relative newcomer and had been involved in the heroin traffic for only 18 months (161).

### C. Activities Within New York

Mr. Durkin described what happens to the narcotics after it enters the United States and what prices are paid at the various stages of distribution and sale. The following chart\* illustrates this process:

\* Commission Exhibit #8 at the public hearing.

## HEROIN DISTRIBUTION ORGANIZATION



After the various importers have smuggled the heroin into the United States, they provide it to wholesalers. The latter are persons capable of, and in fact, dealing in quantities of 10 to 50 kilos of heroin. The heroin at this stage is still "pure"\* (183).

The wholesaler sells it to jobbers, who deal in quantities of two to five kilos or more. When the jobber gets the heroin, it is pure, and it is the jobber who starts to adulterate it. The jobber, by adding an adulterant or dilutant of some kind, stretches three kilos, for example, to five. He then sells it to retailers who deal in kilos. The heroin is still relatively pure at this retail level, with an average purity of between 50% to 65% (184). It is at the next step where adulteration really begins.

The retailer sells kilos or one-half kilo quantities to street wholesalers who "cut" it at least in half. From there it is cut into "bundles" and "loads" or "half-loads"† and then down to the pusher (184). By the time it reaches the addict, it has been adulterated so many more times that the average \$5 bag contains heroin with purity of between 4% to 12%.

The prices paid at these various stages of sale and adulteration are as follows: The American importer pays his source in Europe about \$3,500 to \$5,000 per kilo. The importer then sells this heroin to wholesalers for \$10,000-\$12,000 per kilo. From the wholesaler it goes to the jobber who pays about \$16,000-\$18,000 per kilo. Now it is "stretched" and sold by the retailer. The retailer jobber sells to the street wholesaler for \$22,000-\$25,000 per kilo, depending upon the quantity purchased, and how long the street wholesaler has been buying from him. The kilo broken up into the highly adulterated street "bags," will cost between \$200,000-\$220,000 per kilo by the time it reaches the addict. That is what the addicts will be paying for what started out to be pure heroin costing \$3,500 at its source in Europe.

In financing these operations, it is customary for a person buying a large quantity of drugs to advance some of the money to the source of supply because the latter does not want to take the financial risk all by himself. Thus, a portion of the funds necessary to buy the drugs is paid in advance of delivery. In

\* "Pure" heroin generally refers to a purity of between 85 to 100%.

† "Bundles" and "loads" refer to 25 bags of heroin. A "half-load" generally means a quantity of 15 bags.

that way, if the shipment is lost, the financial loss is absorbed to some extent by both sides of the operation. If shipment is safely made, the balance is then paid.

Organized crime figures financing narcotics transactions do not rely on a debtor's credit rating when they advance funds. Narcotics dealers know that these loans have to be repaid, or else. Dramatic testimony on this point was given by the District Attorney of Queens County, Thomas Mackell, who described a "contract" for murder on a pusher who fell behind in his payments to organized crime narcotics financiers:

"By MR. FISCH:

Q. Mr. Mackell, one area that this Commission has been looking into has been the role of organized crime in the field of narcotics.

Can you tell us what your experience has found? Is organized crime very much involved in the narcotics traffic, based upon what you have seen in your own County?

A. Yes, in our own County.

We have one particular case where a contract for a hit was put out, because a pusher in one of the areas of Queens has failed to repay certain loans that he made to people on a higher level in organized crime, and because of his failure to repay these sums of money, we had a tap that indicated that somebody said, 'O. K., you can knock him off.'

And the two individuals actually went out looking for this lad, visiting pub after pub, trying to catch up, and finally when our people, who were tailing him, were made, they came up on the two people who were out on the trail and they were loaded for bear. We made the arrests.

Q. These were organized crime figures, is that right?

A. Yes, indeed they were. From another borough, too.

Q. So you found that very direct involvement—when you say 'a hit,' so we know what you are talking about,—you are talking about a contract for murder.

A. That is correct.

Q. And you have heard this during the course of a legal tap?

A. Yes, authorized tap." (1543-4)

The role and extent of organized crime's involvement in the narcotics traffic can be seen by reviewing narcotic cases made by federal law enforcement officials over the past decade. Prosecutions and convictions obtained in merely the Southern District of New York read like a "who's who" of organized crime and include members of virtually every crime family operating in the New York area. The "Boss of all Bosses," Vito Genovese, died in jail while serving time on a federal narcotics case. Other high-ranking crime family figures convicted of narcotic crimes in the Southern District include Natale Evola, "Caporegime" of the Bonanno Family (convicted January 30, 1960); John Ormento, "Caporegime" of the Lucchese Family (convicted June 25, 1960); Thomas Mancuso, "Caporegime" of the Gambino Family (convicted March 26, 1969); and a host of "soldiers," and "Family" members, including Sam Accardi (Genovese Family); Carmine Galante (Bonanno Family); Joseph Valachi (Genovese Family); Salvatore Maneri (Lucchese Family); Michael Sedotto (Gambino Family); Vincent Mauro (Genovese Family); Peter Barata (Gambino Family); Anthony Mancuso (Lucchese Family); Arnold Romano (Gambino Family); Steven Grammata (Gambino Family); Joseph Lopu (Genovese Family); Joseph Armone (Gambino Family); and many others.

#### IV. ARRESTS BY NEW YORK CITY POLICE FOR NARCOTIC CRIMES (1968-1970)

##### A. Narcotic Crimes Defined

As indicated above, the New York City Police Department is the local police agency enforcing the state narcotic laws in New York City. It is the police department's function to conduct investigations, respond to complaints of violations and arrest the perpetrators. After a defendant is arrested, the arresting officer executes a complaint and testifies during the various stages of prosecution.

Under state law,\* narcotic crimes basically fall into two major categories: sale and/or possession of narcotics. Every sale, regardless of the quantity involved, is a felony. The rationale behind this is a simple one: an individual trafficking in drugs is doing so in a calculated, business-like way in order to make a profit. The sale of up to eight ounces of narcotics is a Class C Felony, punishable by a maximum jail term of fifteen years. If the quantity sold is more than eight but less than sixteen ounces, the crime is a Class B Felony, carrying a 25-year maximum term. Finally, the sale of sixteen ounces or more is a Class A Felony, punishable by life imprisonment.

With regard to possession of narcotics, the same philosophy applies. The quantity involved is deemed to reveal the defendant's criminal intent and importance. Possession of less than 1/8 ounce is a misdemeanor, on the theory that such an amount may be designed for the individual's own use. By the same token, one found in possession of over 1/8 ounce is presumed to possess such for the purpose of sale, and hence is held by the law to be committing a felony (Class D). As in the case of sales, the quantity of drugs possessed determines the grade of the felony and possible maximum sentence.

In addition to these two basic crimes (sale and possession),\*\* the Penal Law prohibits the possession of hypodermic needles and syringes and makes such possession (without a prescription) a misdemeanor. Another misdemeanor is the crime of loitering for the purpose of using drugs. This last charge is typically lodged against a group of addicts who might be found, for example, congregating in a park or the hallway of a building. It is the lowest type of narcotics misdemeanor and usually follows police action against persons found in a "shooting gallery"† when addicts, often in response to complaints by storekeepers or other citizens, are "scooped up" by the police in order to get them off the streets.

\* Unless noted otherwise, the facts stated herein are as of the time of the Commission's public hearing. Following the Commission's investigation and public hearing, legislation, drafted and proposed by the Commission was enacted which expanded the criminal laws dealing with narcotics. This is dealt with at p. 295 *infra*.

\*\*The definition of narcotic crimes cited above was that involving heroin, cocaine and morphine, commonly called "hard drugs." Although the terms "narcotics" and "hard drugs" are used synonymously throughout this report, they refer only to heroin and such other narcotics.

† Places where addicts inject themselves with narcotics.

### B. Arrests by the New York City Police Department (1968-1970)

The following chart\* lists the number of narcotic arrests made by the New York City Police Department during the three-year period of 1968 through 1970. These figures, supplied by the Police Department, cover arrests by the entire Department, not only the Narcotics Division.

NARCOTICS ARRESTS			
BY			
NEW YORK CITY POLICE			
(1968-1970)			
	1968	1969	1970
<b>FELONY ARRESTS</b>			
Possession .....	6,088	9,741	16,219
Sale .....	3,528	5,690	10,580
Total Felonies .....	9,626	15,431	26,799
<b>MISDEMEANOR ARRESTS</b>			
Possession .....	12,802	19,747	25,680
Drug Loitering .....	1,719	4,864	20,369
	** 3,145	13,304	46,049
Total Misdemeanors ..	17,666	33,051	46,049
<b>TOTALS</b> .....	<u>27,292</u>	<u>48,482</u>	<u>72,848</u>

The arrest figures on this chart are broken down into Felony and Misdemeanor categories, and then further subdivided to indicate the type of crime (sale or possession) involved.

The first impression one gets from these figures is one of tremendous activity, growing at an enormous pace from year to year. Thus, the number of felony arrests for narcotic crimes

\* Commission Exhibit #4 at the public hearing.

\*\*Drug loitering was classified as a violation until Oct. 1, 1968 when it was changed to a misdemeanor.

**NOTE:**

- (1) Misdemeanors accounted for 64.7% (1968), 68.2% (1969) and 63.2% (1970) of all narcotics arrests.
- (2) Drug loitering cases accounted for 40.3% (1969) and 44.2% (1970) of all misdemeanor arrests.
- (3) Arrests for sale of narcotics accounted for 26.8% (1968), 36.9% (1969) and 39.5% (1970) of all felony arrests.

rose from 9,626 in 1968 to 15,431 the next year, and then leaped to 26,799.

The total number of misdemeanor narcotic arrests also skyrocketed annually from 17,666 (1968) to 33,051 (1969) to 46,049 (1970).

The number of all narcotic arrests, felony and misdemeanors, showed an increase from 27,292 in 1968 to 48,482 in 1969, and 72,848 in 1970.

These figures are the statistics which appear in the newspapers and are usually accompanied by a press release from the public relations office of the Police Department or Mayor's office, proudly publicizing the city's fight against the drug traffic. However, as impressive as these burgeoning arrest figures appear, they are quite misleading if presented to portray effective law enforcement work in narcotics. For arrests are only the beginning of the process and the disposition of these arrests clearly evidence how badly the city police have failed in their battle against the narcotics traffic. However, before turning to the disposition of these cases, an analysis of the type of cases represented by these figures shows some very basic deficiencies in this police effort.

In 1968, 64.7% of all narcotics arrests were misdemeanor arrests, for the possession of small quantities of drugs or hypodermic needles, and drug loitering. This percentage remained fairly consistent over the next two years, rising to 68.2% in 1969 and then back to 63.2% in 1970. Furthermore, these misdemeanor arrests included a large number of drug loitering cases, which are the lowest type of narcotics arrest and which are almost always blown out of court. In 1969, 40.3% of all misdemeanor arrests were drug loitering cases and this percentage rose to 44.2% in 1970.\*

Turning to felony narcotic arrests, the chart reveals an interesting and steady rise in the number and percentage of arrests for sales of narcotics. Whereas 26.8% of felony arrests in 1968 consisted of arrests for selling drugs, this percentage was almost 40% of all felonies in 1970. The significance of this fact is that any sale, regardless of the quantity of drugs involved, is a felony under state law. Therefore, an arrest of an addict "selling"† a \$5 bag of heroin to another addict is

\* No percentage is given for 1968 because in that year, drug loitering was classified as a violation until October 1, when it was changed to a misdemeanor.

† One need not even sell the drug to be in violation of the Penal Law section which also prohibits giving it to a second party.

a felony arrest even though the amount of narcotics contained in that glassine envelope is infinitesimal. Indeed, as will be shown later, the Narcotics Division was doing exactly that, arresting addicts and charging them with the felony charge of sale of drugs even though the average such sale consisted of one glassine envelope containing one or perhaps two grains of the most highly adulterated heroin (626). The average purity of this heroin ranged from 4% to 12%, and when one further considers that there are 437 grains in one ounce, arrests for selling one grain of this type of heroin can hardly be expected to have any impact on the illicit narcotics traffic.

Having discussed the low level type of narcotic arrests being made, a look at what happened after arrest is perhaps even more shocking. A review of court records was made by Commission staff members to determine how these cases fared in court.

With regard to the misdemeanor of possession, the following chart reveals the story for 1968 and 1969, the last two years for which complete figures were available.

**DISPOSITION OF MISDEMEANOR—POSSESSION ARRESTS  
NEW YORK CRIMINAL COURT  
1968 and 1969**

	<i>Total Dispositions</i>	<i>Dismissals By On Motion Judge of DA (Domada)</i>		<i>Acquittals</i>	<i>Dismissals and Acquittals</i>
1968 . . . . .	11,264	3,296	3,527	458	7,281
		6,823 (61%)			(64.6%)
1969 . . . . .	15,876	5,789	3,761	679	10,229
		9,550 (61%)			(64.4%)

(The discrepancy between the number of arrests listed in the chart on p. 40, and these figures is due to the lag in court dispositions, since arrests in one year may not be disposed of the same year.)

In both 1968 and 1969, 61% of all misdemeanor arrests for possession of small quantities of drugs (or hypodermic needles) were dismissed by the judge upon motion of the assistant district attorney or by defense counsel. This indicates that these cases were so poorly made by the police as to be lacking the necessary legal and evidentiary requirements to be deemed sufficient in law to even present for trial. If one also takes into account the acquittals after trial, the figure of "lost" cases in these misdemeanor possession arrests was 64.6% in 1968 and 64.4% in 1969.

The dismissal rate of arrests for drug loitering was even more startling. Based upon the Commission's review of court records and conversations with District Attorneys, members of their staff and court personnel, the dismissal rate of drug loitering cases was found to be approximately 90% or more. As a matter of fact, the waste of time and manpower in processing these cases so disturbed one District Attorney, Frank S. Hogan of New York County, that he contacted other prosecutors in New York City and arranged for a conference in mid-1970 with police officials to discuss this very matter. In spite of their promise to review the police policy of making these meaningless bulk arrests, drug loitering cases continued to clog court calendars and add to the congestion of the courts.

A graphic illustration of the history of such cases in one county can be seen from the following chart, labeled "Disposition of Drug Loitering Arrests (New York County—1970)." This chart\* contains the exact number of such cases arraigned in Criminal Court during every month of 1970, and what happened to these cases. In a significant number of these arrests, the Assistant District Attorney in the complaint room, on examination of what the police produced, did not even order a complaint drawn. Further, in a large number of those cases where complaints were ordered, they were dismissed on motion of the Assistant District Attorney assigned to the trial part.

\* Commission Exhibit #6 at the public hearing.



DISPOSITION OF DRUG LOITERING ARRESTS  
(NEW YORK COUNTY—1970)

	<i>Arraigned</i>	<i>NCO (No complaint Ordered)</i>	<i>DOMADA (Dismissed on Motion of Asst. DA)</i>	<i>NCO &amp; DOMADA</i>
1970				
Jan. ....	744	406	227	633
Feb. ....	836	773	52	825
March ....	913	572	301	873
April ....	971	622	228	850
May ....	597	470	100	570
June ....	605	472	97	569
Totals (1st 6 months)	4,666	3,315	1,005	4,320 (92.6%)
July ....	571	431	103	534
Aug. ....	715	528	162	690
Sept. ....	626	456	161	617
Oct. ....	463	316	116	432
Nov. ....	512	392	99	491
Dec. ....	525	390	120	510
Totals (2d 6 months)	3,412	2,513	761	3,274 (95.9%)
Totals 1970	8,078	5,828	1,766	7,594 (94%)

Thus, out of 8,078 such cases arraigned during the twelve months of 1970 in New York County, 7,594 or 94% were dismissed either on motion of the Assistant District Attorney, or without a complaint being drawn. The history of drug loitering cases in other counties was basically the same as the experience in Manhattan. The District Attorneys of the Bronx and Queens testified that in their counties, about 90% of such arrests are dismissed at arraignment (1252; 1570), a figure which also held true for Kings County, and the District Attorney of Richmond stated that as far as he knew, he never had a conviction in his county for drug loitering (1294).

Thus, drug loitering cases certainly represented an extraordinary waste of time on the part of everyone concerned.

The low level type of arrests effected by the Police Department initially, plus the high rate of dismissals, is sufficient evidence of the futility of the entire law enforcement effort.

Yet this still does not show the entire dire picture. The Commission also examined what sentences were imposed in those small percentage of cases which resulted in convictions.

Still sticking to the misdemeanor arrests, the Commission found that in 1968 and 1969, approximately 31% of all misdemeanor convictions resulted in non-jail sentences (54). These were sentences of fines, probation, conditional and unconditional discharges. The Commission then reviewed the jail sentences which were imposed in misdemeanor cases and found that for both 1968 and 1969, between 88%-90% of the jail sentences were for less than six months. In 1968, 62% received sentences of up to 90 days, while the figure in 1969 was 67% (54).

Turning to felony narcotic arrests, the Commission found similar results. It should be noted that felonies are the most serious of crimes theoretically involving the more important criminal defendants.

Felony dispositions were reviewed by the Commission in the following three ways:

(a) A review was made of felony narcotic cases which were brought into the Criminal Courts of New York City. This examination revealed that in 1968, over one-third of all felony narcotic cases were dismissed in Criminal Court on motion of the District Attorney or the defendant, and in 1969, that figure rose to over 36%. These did not include cases held over for consideration by Grand Juries.

(b) The Commission requested the Narcotics Division (NARCO) of the New York City Police Department to prepare a summary of felony arrests they made, together with the dispositions. We made this request to determine how well this special branch of the Police Department, whose efforts are devoted exclusively to narcotics, succeeded in their law enforcement efforts. The other figures cited above included arrests made by all members of the Police Department as well as NARCO, and we wanted to see if the record of this special narcotics division was any better.

The summary submitted by NARCO contained the results of 2,899 cases disposed of during the period June 1969 to March 26, 1971. These cases were selected by NARCO as representative of their over-all record. The summary showed that 1,069 of these 2,899 dispositions resulted in dismissal, a dismissal rate of 36.9%. It should be further noted that there

exists within NARCO, a Special Unit known as the Special Investigation Unit. These men are ostensibly hand-picked by NARCO commanders for assignment to this "elite" unit, which is charged with concentrating on the upper echelons in the narcotics traffic, i.e. organized crime figures and other "major violators." The Commission also requested that SIU submit figures showing their record of felony arrests and dispositions. The figures they submitted showed that there was a total of 473 arrests during 1969 and 1970 combined, of which 262 cases were pending. With regard to the completed cases for which they were able to furnish dispositions, there were 78 convictions and 134 dismissals, i.e. 63.2% of the arrests by SIU during this period resulted in dismissals.

(c) The Commission also examined felony arrests which were disposed of through reduction to lesser charges by the prosecutors. This process is known as "plea bargaining," and is dealt with in greater detail in the section "The Prosecutors and the Courts" at page 221 *infra*. However, some mention of this procedure is appropriate in this section since it relates to the overall law enforcement result.

The Commission found that a high number of felony arrests were reduced to misdemeanors as a result of agreement between the prosecutors and defendants. In 1968, 90% of narcotic felony indictments resulted in "convictions" and in 1969, the figure was 88%. However, these "convictions" were for the most part the result of pleas, and a high percentage were pleas to misdemeanors. Thus, in both 1968 and 1969, 99% of these "convictions" were obtained by plea. With respect to the ultimate crime to which these felony defendants entered pleas, the records of Supreme Court disclose that in 1968, 1645 of 2493 defendants were sentenced for misdemeanors, or 66%. This figure was the average for all five counties. In 1969, the percentage of felony defendants who pleaded to misdemeanors was 52.2%.

Based upon the statistics standing alone, the Commission could only conclude that the narcotics law enforcement effort by the police of New York City was a failure, and a monumental waste of time, money and manpower. The evidence was clear and compelling that the police effort was directed at the lowest type of street violator, the addict, and that this police work was having no appreciable effect upon the narcotics traffic in New York City. The quantity of narcotics and hard

drugs available on the streets of New York City was practically unlimited, and the illicit heroin traffic appeared to be running rampant. Those who were arrested were often back on the street before the arresting officer got there. This "revolving door" of narcotics law enforcement was demoralizing the police, flooding the streets with pushers and narcotics, and terrifying the citizens of the city.

The reasons for this breakdown in law enforcement were disclosed at the Commission's public hearing, and are discussed in the following chapters.

## V. THE NARCOTICS DIVISION (NARCO) OF THE NEW YORK CITY POLICE DEPARTMENT

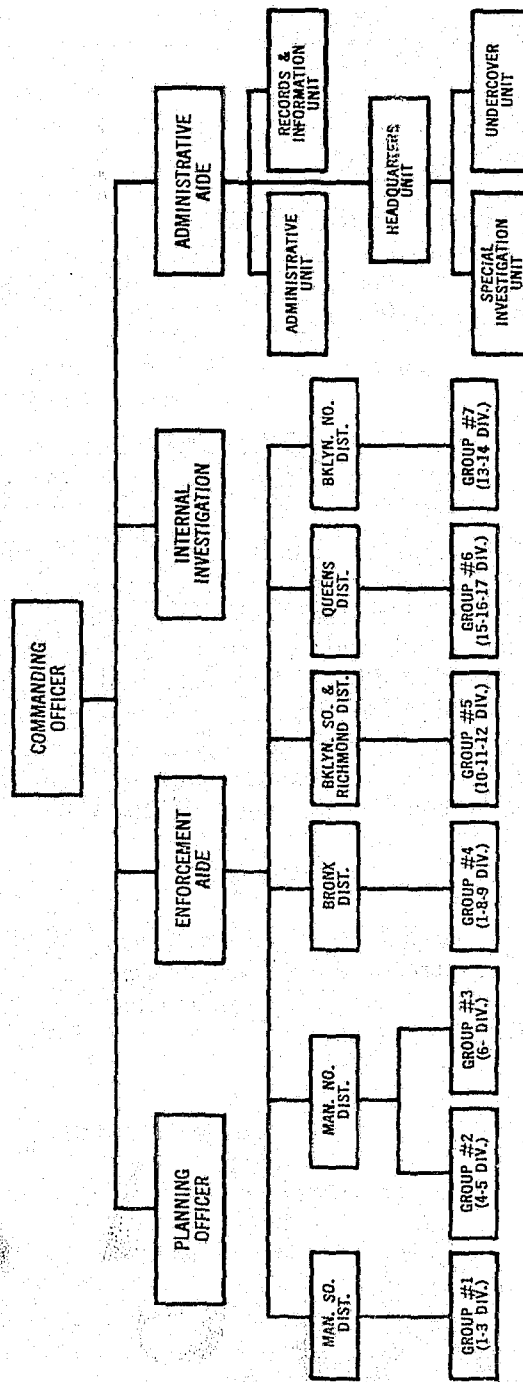
The major local police responsibility for enforcing the narcotics laws in New York City resides with the New York City Police Department. While theoretically every police officer is charged with making arrests for drug violations he observes, the bulk of this effort is exercised by the Narcotics Division (NARCO). This Division is a separate unit within the Detective Division, and specializes in narcotics investigations and enforcement. The men assigned to NARCO devote their exclusive attention to this very difficult and important police work.

### A. Organization

At the time of the Commission's public hearing in April 1971, there were 782 men assigned to the Narcotics Division. Following is a chart depicting the organizational structure of NARCO as of that time:

# ORGANIZATIONAL CHART NARCOTICS DIVISION N.Y.C. POLICE DEPT.

## 1971



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NARCO is commanded by a Deputy Chief Inspector.\* The position of Planning Officer is a new one, created in early 1971. It is the Planning Officer's function to assess the programs and operations of the Division and make appropriate recommendations for improvements. Another new development in NARCO was the establishment, in August of 1970, of an "Internal Investigation" Section which was charged with internal corruption investigations involving NARCO personnel (1582). The Enforcement Aide is the link between the Commanding Officer and the field units and coordinates the activities of the latter. The Administrative Aide, as the name implies, handles clerical and other administrative duties. Finally, the Headquarters Unit, which oversees the activities of men assigned to the Special Investigation Unit (SIU) and the Undercover Unit.

As noted on the chart, the City of New York is divided into six geographical Narcotics Districts, each commanded by a NARCO Captain: (1) Manhattan South, (2) Manhattan North, (3) Bronx, (4) Brooklyn South and Richmond, (5) Queens and (6) Brooklyn North. With the exception of Manhattan North, which has two, each Narcotics District has one "field group" assigned to it. This decentralization is designed to distribute experienced and highly trained narcotics police officers throughout all five boroughs of the city. The Field Groups consist of numerous teams of patrolmen and detectives, under the supervision of superior officers, i.e., sergeants and lieutenants. These field men are the battlefield troops, who are out every day in the streets of the city, making arrests for drug crimes and investigating citizen complaints about illicit narcotics activity.

The Undercover Unit consists of officers whose duties are performed in an undercover capacity and whose identities are not revealed. When NARCO field officers wish to investigate allegations of individuals selling narcotics, they will turn to the Undercover Unit for assistance. An undercover agent will be assigned to them and will attempt to purchase drugs from the alleged drug pusher. If the undercover agent, posing as an addict, is successful in making one or two "buys" from the pusher, the latter will then be arrested by the officers of the field team to whom the undercover agent is assigned, and under

\* John P. McCahey was Commanding Officer at the time of the Commission's public hearing.

whose observation the sale was made. These undercover agents will generally make no arrests themselves in order not to expose their identities.

The Special Investigation Unit (SIU) is the most specialized unit within NARCO. The men come from the field groups and are ostensibly selected on the basis of superior performance and exceptional skills. The function of SIU is to concentrate on the upper echelon narcotics criminals, the organized crime figures and major violators. SIU is therefore the most important unit performing narcotics police work in the entire Police Department.

### **B. The History of NARCO**

In 1914, a "Narcotics Squad" was organized within the New York City Police Department as a specialized unit assigned to the enforcement of the narcotic drug laws. At its inception, it consisted of 16 Detectives under the command of a Lieutenant. This "Narcotics Squad" was the genesis of the Narcotics Division (NARCO).

When the Commission commenced its public hearing on April 5, 1971, NARCO had developed into the largest single component of the Detective Division, with a total force of 782 men.

The growth of this highly important police unit proceeded at a modest pace and in an orderly fashion until June of 1969. From January 1, 1965 to June 1, 1969, a period of four and one-half years, NARCO grew slowly from 212 to 273 men. During the month of June 1969, however, there was an enormous infusion of over 200 new men into this unit. Thus, by July 1, 1969, NARCO had 475 men.

In June 1969, over 200 police officers were suddenly thrown into the Narcotics Division in an indiscriminate and frantic fashion. These men were taken out of individual precincts and other commands, including TPF (Tactical Patrol Force), Plainclothes Identification Unit and the Photo Section. Some of the men involved were notified by telephone message in the early hours of the morning that they were to report at 8 A.M. to the Narcotics Division. Such assignments came to be known within the Department as "the midnight transfers." The Lieutenant who commanded SIU recalled the transfers:

"Q. Did you ever hear of the midnight transfers?"

A. That's right. That's part of the same thing, where I'm talking here, of course. When I'm talking and say 200 and 400, you'll have to go by—

Q. You are just giving figures?

A. But that is the midnight transfer.

\* \* \*

A. Somebody did mention it once, later on. There was a transfer at midnight.

Q. Men were called up at one, two, three o'clock in the morning—tomorrow report to Narcotics?

A. Right.

Q. This was very unusual, wasn't it?

A. Right.

Q. Did you ever see it done before, in all your experience in the Police Department?

A. Never." (Pr. H. 1131-2)

The men selected in this fashion were not only denied the normal advance notice of such an important change of assignment, but, more significantly, received no special training for this new work. The speed with which these transfers were made left no time for assigning sufficient sergeants to NARCO to supervise these new men. The ratio of patrolmen to sergeants became as large as 40 to 1 in some NARCO commands.

This quick inflation of NARCO was also reflected in a doubling of its most sensitive unit, the Special Investigation Unit (SIU) which went from 43 men on June 1, 1969 to 88 men by July 1, 1969.

As noted earlier, SIU is the most important and most sensitive narcotics unit in the entire New York City Police Department. Its men are the "crack" troops, who are theoretically hand-picked after close and careful analysis of past performance, integrity, aptitude and special talents. SIU work requires a different type of expertise than work in the field groups and, for that reason, the process for selecting men for SIU has traditionally been more painstaking.

Therefore, the doubling of SIU from 43 to 83 men in June 1969 was particularly disturbing. The head of SIU, Lieutenant John Egan, testified at the public hearing that he and his immediate superior, Captain Daniel Tange, who commanded the Headquarters Unit of NARCO\*, both were opposed to this action (689). Lieutenant Egan testified that for men to be put into SIU in such great numbers and at one time "with no knowledge of their capabilities" was "an evil" (Pr. H. 1133-4). Although his superior agreed, the increase in SIU was ordered and took place:

"Q. Has its [SIU] growth been a regular steady evolutionary process, with men normally selected from the field units and placed in there, as the need arises?

A. When you say 'a steady process,' no. I wouldn't say that, no. There was a time when it was increased.

Q. Can you tell us at what time it was increased?

A. Some time prior to, or about June of 1969.

Q. Under what circumstances was it increased, sir?

A. The circumstances of the increase, at that time there was a different Commanding Officer and going back again, taking it to the full context,—remember I am talking now, when I came in that was in September of 1968, and when I am talking about June, or prior to that time, I might be talking into maybe April or May of 1969,—there came a time when the Commanding Officer just in a conversation to me said that they are looking to expand this unit.

'They' were never identified to me.

I had my own impressions, but there was a period then when it was no longer talked about, and then prior to that, say, maybe a month or two later—maybe a month—I'm not sure of the exact time—it came up at a discussion, and there was an increase in it, the unit was started to be increased in June of 1969." (682-3)

Lieutenant Egan testified that he was informed by Captain Tange that SIU was going to be increased to about 100 men

\* See Organizational Chart, p. 48 *supra*. The Headquarters Unit supervises the work of SIU and the Undercover Unit.

(681), but that Captain Tange said he wanted to keep the number down to 75-85 men.

Egan testified that he warned Tange that the proposed increase was dangerous, and although all NARCO Commanders agreed, they had no choice:

"Q. Is there any reason why you had to increase it in one large bulk?

A. Not that I know of. No.

Q. Apparently he said that it had to be done.

A. That's right.

Q. Is that right?

A. That's right.

Q. And he was the headquarters unit Commander? Is that right?

A. That's right. (686)

\* \* \*

Q. Was it clear to you that this increase had to take place quickly and around this period of time in June?

A. Yes.

Q. Around June of 1969?

A. Yes, sir.

Q. And so you had to take the best that you could get within a short period of time?

A. Yes, sir.

Q. All right. I think this meant, did it not, that you had no true knowledge of the men's capabilities, since you were limited as to time?

A. Yes, sir." (691)

Captain Tange confirmed these events when he testified at a private hearing:

"A. For the majority of my time there, I was working with twenty to thirty-three men. Now, shortly before

I left, I did increase it to fifty and I worked with fifty. However,—I don't know the dates. SIU was expanded. I was told to expand SIU. They wanted initially for me to expand it to one hundred men. I said this is not workable. I originally asked to have it work with fifty. I felt fifty was a good compact unit to work with where we could get maximum value out of the men. But I was told, well, we got to increase it to seventy-five and now we are going to increase it up to one hundred. I fought this. I didn't think there were one hundred good men there. There is one thing to have good informers and have good information in going out in the street and grabbing a junkie selling junk on the street or loitering, but I didn't feel that there were that many good men left. I felt there was a tremendous turnover in Narcotics and the men there that had the knowledge to work on the higher level of narcotics were not there and I didn't feel there was enough talent in the field squads any more. They were all new men and they didn't have the sources of information. I tried—

\* \* \*

Let me just bring this point up: Later on the size of the Narcotics Bureau was increased or, rather, SIU was brought up to about eighty men, and at this time, with eighty men signed up there, there was an emphasis and a pressure put on to produce. And after I left, the men were told, as far as I know, that they had to make—you know, they wanted—like they wanted quarter ounce collars, they wanted half ounce collars, they wanted arrests made to justify the fact that there was that amount of men up there because the Narcotics Bureau expanded to like, I think, about seven hundred men or something like that.

So from what I can see, there was, you know, an emphasis placed on getting on the sheet, so to speak. Now, they did continue to make good cases up there, but the cases that were made were made by the men that I brought up there, and these were a handful of

men that continued to make the cases, and these men were there when I was there. These are the men that I was able to retain, that had the source of information.

From what I could see, there is just a half a dozen guys or so that carried SIU for the whole time, even after I left when there was eighty men there. And the rest of the men never should have been up there to begin with because they didn't have that kind of mind, the information nor ambition to make the arrests." (Pr. H. 1241-2; 1245)

Captain Tange, therefore, confirmed that both he, as Commander of the Headquarters Unit, as well as Lieutenant Egan, the Commander of SIU, were opposed to what happened in June 1969. He was then asked whether his superior, the Commanding Officer of the entire Narcotics Division, differed with him and Lieutenant Egan and felt that SIU should be enlarged:

"A. No. He said, 'We are going to have to expand it.'

Q. Did he feel that it should be expanded?

A. No. He agreed with me. He asked me, you know,—in other words, he agreed that it should be expanded to whatever I thought it should be expanded to. I told him—as a matter of fact, I wrote a request myself requesting that SIU be expanded to fifty men. I explained why. I explained how it would operate with fifty men, but I never requested myself that it be expanded past fifty.

Q. Was it at the strength of fifty that he said they wanted to expand it to one hundred or in the neighborhood of one hundred?

A. Yes.

Q. At that point it was about fifty?

A. I think it was about fifty at that point.

Q. At that point, when it was fifty, how many men did you feel it should have?

A. Fifty." (Pr. H. 1251)

Captain Tange was then asked why this expansion took place if he, Lieutenant Egan and the NARCO Commander all opposed it. He stated that he was present at meetings with a representative of the Mayor's office who felt that NARCO's "effectiveness" might be improved with additional men (Pr. H. 1254).

Captain Tange was asked whether, at such meeting, he had pointed out that SIU needed equipment in order to do a better job and how serious these equipment shortages were:

"A. Yes. This was the whole—right. Now I remember. I told him that, you know, we are operating with antiquated equipment. We had to depend on the Federal Bureau of Narcotics every time we needed a radio. We needed equipment. We were in desperate shape equipment-wise. I think we gave him a list. Probably Renahan signed it, but I made up a list of equipment that I needed of—you know, I can't—I don't remember the figure, but it was probably like \$100,000 worth of stuff. I don't remember what it was, but it was mainly radios, you know, radios, a base station to operate out of, things like that, right.

\* \* \*

Q: Do a better job. Now, in your judgment, at that time, what did the Narcotics Division need most, equipment?

A. Equipment.

\* \* \*

Q. So there was no doubt in anyone's mind when that meeting was over that the Narcotics Division's number one need was equipment, correct?

A. Right, right, right." (Pr. H. 1255-7)

Captain Tange was asked how the meeting ended, and what the results were:

"Q. How did you leave it after that meeting?

A. That he would do everything he could. I do remember—the equipment was primary. He said he would do everything he could to get the money to get us equipment, something to this effect, that this was the first

thing he would do, he would get the money to get us the equipment.

Q. Did you ever get the equipment while you were there?

A. No, sir, I never did.

Q. Were any more men put into the squad after these events you have described, the meeting?

A. Yes, they were.

Q. How many more men?

A. Well, upwards of fifty men, I guess, were added eventually, and an additional fifty men.

\* \* \*

Q. Did the increase of SIU exceed by number the increase you felt was most desirable?

A. Yes.

Q. In other words, did they enlarge it beyond what you felt would be an effective operating unit?

A. Yes." (Pr. H. 1264; 1266)

At the time of the Commission's public hearing in April 1971, SIU had not received the equipment but still needed it desperately, and was still operating with antiquated equipment. This is discussed at pp. . . *infra*.

What SIU did get was what it did not need, a large influx of men who were not suited for assignment to this highly sensitive unit. The fears of the SIU head, Lieutenant Egan, and his own superiors, unfortunately, proved correct.

Prior to his appearance at the public hearing, Lieutenant Egan furnished the Commission a list of the forty-four men who were thrown into SIU in June 1969, and what happened to them. He was questioned about this when he testified on April 8, 1971:

"By MR. FISCH:

Q. I have a copy, Lieutenant, so that if you will perhaps look at it while I look at my copy—

A. Right.

- Q. —and see whether my arithmetic is correct.  
You have men coming in at two periods of time:  
The first assignment date into SIU was June 4, 1969?
- A. Yes, sir.
- Q. And, sir, will you add the total number of men who came in during that period?
- A. Seventeen, sir.
- Q. Do you also have on it, right alongside there is an assignment date to SIU, a column marked 'Present Status,' which indicates where they are today?
- A. Yes, sir.
- Q. And can you tell me, sir, how many of the seventeen who came in on June 4, 1969 are still in SIU?
- A. Nine, sir.
- Q. So nine remained and eight went out, is that right?
- A. That's right, sir.
- Q. About half?
- A. Right, sir.
- Q. Now do you have after a little space another group of men who were assigned to SIU on June 26th of the same year?
- A. Yes, sir.
- Q. Would you do the same thing for me, Lieutenant? Will you add how many went in and then let us see what happens to them?
- A. Yes, twenty-seven.
- Q. How many are still in SIU, Lieutenant?
- A. Fourteen, is that right?
- Q. That is what I have; those are my figures.  
So you have a total, Lieutenant, of forty-four men coming in in June of 1969, and twenty-one being removed subsequently to that?
- A. Right.

\* \* \*

- Q. Why did you get rid of these men?
- A. Because they were given an opportunity to prove themselves up there, and, as I say, the purpose up there is to be able to carry out long term investigations on major violators, not only long term, short term—whatever amount it was—and they didn't feel they had the capability, so I recommended on an evaluation, when it came time for some of them to be—not that there was—they could have been good men, good detectives—
- Q. They were not cut out for SIU?
- A. Exactly. I felt it. Right.
- Q. What you and your superior officer tried to avoid happened,—in fact, that men came in who had no business coming in and you got rid of them.
- A. Yes. I would agree with you. That's right." (693-5)

In addition to the lack of ability these men demonstrated, a number of these forty-four men were subjects of investigation involving corruption; one was arrested for extortion and upon conviction was sentenced to a prison term.

### *C. The Field Units*

As noted above, the strict enforcement of the narcotics laws is the prime responsibility of the NARCO field units which are spread out throughout the city. These are the "front-line troops" who make the arrests of narcotics violators for the illegal possession and sale of drugs. Members of these Field Units comprise approximately 70% of NARCO, and if an officer does well in a field group, he will be recommended by his commander for transfer to SIU. Being selected for SIU is a desirable assignment for such men because it not only means a better chance for promotion, but also an escape from the oppression of "the numbers game."

### *The Quota System, or "Numbers Game"*

Men in the field units are evaluated on a regular basis by their superior officers. Since the greatest number of NARCO officers are patrolmen, they are in competition with each other



in striving to become Detectives. Within the New York City Police Department, the measure of an officer's performance is, to a great extent, the number of arrests or "collars" that he has made. While an officer's "productivity" is certainly one valid criterion for gauging his efforts and work, it should not, however, be the sole or governing test. It would appear obvious that arrests should be examined and evaluated by the importance of the defendants and whether the arrests lead to convictions. Thus, the NARCO police officer with a record of 25 arrests of addict-pushers, whose 25 cases result in 25 dismissals, should not be regarded as a shining example of effective police work. Furthermore, he should not receive a higher evaluation than his fellow NARCO officer who made only 10 arrests during the same period, but whose arrests resulted in convictions and involved significant drug traffickers. While these points seem elementary, this was not NARCO's policy. The policy that prevailed was to require a certain number of felony "collars" per month from each member of the field units. These arrests were not followed up to see whether they led to convictions, nor was the "quality" of the arrests examined insofar as the identity and importance of the defendant was concerned. Men were required to meet this quota so religiously that they were not excused when on vacation or even while on special assignment. One NARCO patrolman who testified at the public hearing explained what this meant to him:

"Q. Now, while you were in the Narcotics Division, Patrolman M, were you told anything about the number of arrests you were required to make per month?

A. Yes.

Q. Can you tell us what that requirement was?

A. Four felony collars.

Q. Four felony collars?

A. That's correct.

Q. Was this the minimum, in other words?

A. Yes, sir.

Q. Who told you about that and how was it expressed to you?

A. The bosses in the office meetings, and so forth.

Q. When you say bosses, you are talking about your superior officers?

A. That's correct.

Q. Was it said more than once and regularly, as a matter of fact?

A. Yes, sir.

Q. Openly?

A. Yes.

Q. Now, did you particularly have any problems in meeting that minimum or that quota?

A. I did, yes.

Q. Can you explain why?

A. I was on several special assignments, vacation and so forth, and naturally my arrests dropped off.

Q. When you say special assignments, can you tell us what they were?

A. I was in the Hippie Squad for a couple of months checking—this is a separate thing, checking on a major violator for about a month, vacations, schooling for narcotics for three weeks.

Q. While you were away you were away on official police duty, were you not?

A. That's correct.

Q. During this time you were on other assignments are you saying that you were still somehow required to make that same number of arrests?

A. You would be expected to make it up in future months. They took a calendar every six months and at the end of the six months you were required to have four collars a month.

Q. So if you were away, for example, for three months on a special assignment, performing police functions, in a sense, you owed them twelve felony collars, is that right?

A. Yes.

Q. While you were on vacation were you also accumulating this debt of four felony arrests per month?

A. Yes, you are expected to make it up either before you went on vacation or when you came back.

Q. Are you talking about four convictions per month?

A. No, four arrests.

Q. Was any consideration given or shown or demonstrated to convictions, or was it purely arrests and numbers?

A. Just arrests.

\* \* \*

Q. Were you ever told what would happen if you did not keep up this quota of four arrests per month?

A. They would send us back to uniform or patrol.

Q. Were you specifically told that?

A. Yes." (535-7)

Many other witnesses described the "numbers game" or quota system at both private and public hearings. (Pr. H. 202; Pr. H. 399; Pr. H. 619; Pr. H. 993; 741). They testified that they were told of this requirement by Sergeants, as well as officers of higher rank including Captains (470; Pr. H. 1736). They also testified that they were threatened with transfer if this quota was not met (470; 229; 260; Pr. H. 1738).

It was clear that the imposed quota related solely to arrests, and that the disposition of the arrests was irrelevant:

"Q. When we speak of the quota system, are we talking of arrests or arrests followed by convictions?

A. We are speaking only of arrests, not convictions.

Q. In other words, a man will get credit for his arrest regardless of whether the case is dismissed?

A. Yes, sir, that is correct.

Q. Will he get credit for a felony arrest regardless of whether or not it is reduced to a misdemeanor?

A. That is also correct." (470)

This "numbers game" is not a recent phenomenon. One NARCO Lieutenant with 28 years of experience in the New York City Police Department, testified that the Department has traditionally cited arrest figures as evidence of its activity in a particular law enforcement field. Thus, if a public outcry were to be made about gambling and the police were questioned about their anti-gambling efforts, the Department would show that they've made more gambling arrests this year than last, twice as many as three years ago, etc. As described in an earlier section of this report however, the arrest is only the start of the criminal justice system, and arrests not leading to convictions and subsequently to meaningful sentences, by themselves, accomplish nothing.

In narcotics law enforcement, the New York City Police Department once paid a "bounty" to its NARCO officers for narcotics arrests. The practice was described at the public hearing by a former NARCO officer, who served in the Narcotics Division during 1967:

"Q. So you say your expense account was related to the arrests?

A. Yes.

Q. Was it a regular dollar—

A. Yes. Ten dollars for a felony and \$5 for a misdemeanor.

Q. Was there a limit per month?

A. No, there wasn't. No, there wasn't, but the highest you can go was \$100 for your expenses.

Q. This is what I mean, you can make arrests totalling up to \$100 a month?

A. You can make X amount of arrests, but your expense account would come to \$100.

Q. Was this something you were informed of officially, and was this official Police Department policy of the Narcotics Division while you were in the Narcotics Division?

A. It was a regular practice. (226-7)

\* \* \*

Q. Now did this expense allowance relate purely to arrests regardless of dispositions?

A. It did.

Q. In other words, if you made a felony arrest you received X number of dollars regardless of whether or not that felony was reduced to a misdemeanor?

A. Yes, that is correct.

Q. And regardless of whether that case was thrown out of court?

A. Yes, that is correct.

Q. Was it a numbers game?

A. A quota game is what it was.

Q. Can you explain what that quota game was?

A. They would post the amount of arrests that each patrolman had for a month. It was like a psychological thing, to keep right in there pitching.

Q. Were you right in there pitching?

A. You wanted to stay with the squad, make your expenses, and you wanted to make your arrests.

The Chairman: When you say keep right in there pitching, you mean keep right in there pitching, making arrests?

The Witness: Yes.

Q. Was anything ever said that if men did not keep up with the average of fellow officers they may be transferred out?

A. That was the policy.

Q. That was the policy?

A. Yes." (228-9)

The effect of the "numbers game" upon the men attempting to enforce the narcotics laws was disastrous. Although the quota varied slightly from one NARCO group to another, depending upon the incidence of the illicit traffic in the par-

ticular geographical jurisdictions, it was a factor very much in the minds of every NARCO officer. In practical terms, it meant they had to watch the calendar as well as the streets, because by the end of every month they had to have the required number of "collars."

"Q. Does this numbers game affect the type of arrests that men make?

A. Yes, it certainly does.

Q. Explain that, please.

A. It means that someone has to go to jail, an addict is the one that goes to jail and not the main pusher.

Q. Is this because the men feel they don't have time to work on the major pushers?

A. Yes, they certainly don't have the time to work on the major pushers." (471)

Other NARCO officers expressed the same bitterness over not being able to do an adequate job because they had to produce a stated number of arrests per month, regardless of the low level of the violator. As one officer put it, "So far as the Department is concerned, they just want you to go out there and make as many arrests as you can" (Pr. H. 178). When the Commission asked the men for their recommendations, the following was a typical response:

"A. Yes, I do. I think they should stop playing the numbers game with the arrests and that if you are going to investigate narcotics, then you should have a free hand and you should be able to spend more time on a particular investigation.

If this investigation requires three months, I think you should spend three months on it and not have the pressure of still having to come in with four, five arrests, whatever it is.

I think you should devote your time to this one investigation, clear it up, make a good case out of it, a case that will stick whereby you'll have a conviction, no doubt about it, follow the thing right through.

Q. Cases that would require large scale investigation, I take it, would be of higher level distributors?

A. Yes. I say you start with someone small and keep on working on the same thing. Any information that you get, you follow it through. You get one lead, you follow it, you get another lead, you follow it. Some will die, some might go right on through. You don't know unless you follow the whole thing to the end.

Q. As the climate in Narco exists right now, would you say that large scale or long time investigations of this nature are not encouraged?

A. Not on our level. . . ." (Pr. H. 506)

Another NARCO officer, Patrolman M, testified about the frustration he and his fellow officers experienced, and how the defendants they were arresting viewed this police effort:

"Q. Did you find while you were in the Narcotics Division for fifteen months that you were making a dent in the narcotics traffic? Did you feel that you were accomplishing anything?

A. No, not really.

Q. Can you explain why?

A. Mostly because the people you come in contact with to arrest are mostly street pushers or apartment pushers who are junkies themselves, and you arrest them, take them to court, there is always two or three other junkies that would be willing to take their place on the street.

Q. During the fifteen months that you were making arrests, are you saying that most of the arrests were junkies?

A. Yes.

\* \* \*

By MR. FISCH:

Q. Were they in a sense almost laughing at you and your fellow officers for what you were doing?

A. Yes, I would say so, yes.

Q. Now is there any reason why you were making this type of low level arrest and why you were not making better arrests?

A. I think this reverts back to the number of arrests that we had to do each month, it was fairly easy to pick these people up off the street or get a search warrant and go to their apartments.

Q. In other words this was the—first of all, you had no time to do any better. Is that a fair statement?

A. Yes. I would say so, yes.

Q. These were the easiest arrests that you could make?

A. Yes.

Q. If you did not make this type of arrest, as you indicated earlier, the threat was that you would be back in uniform?

A. If you didn't get four collars a month, yes.

Q. Would it be fair to describe, as has been done before, this entire operation as a revolving door process?

A. I would say so, yes." (538-41)

One witness at the public hearing was a NARCO Sergeant in charge of a Brooklyn Group. This witness, who has since been promoted to Lieutenant, was quite candid when questioned about the deficiencies of the narcotics police effort in his own command, and the factors behind some of the shortcomings:

"Q. Do you find your men or the men under your command making what you would consider a sufficient amount of large seizures?

A. No, sir. I don't.

Q. Is there any reason why they don't?

A. Quite frankly, they are probably trying to keep abreast of one another in the numbers game. At the end of the year or twice a year they get evaluated on the amount of arrests they make.

Q. Do they also get evaluated on the type of arrests they make?

A. Yes, they do, but I think the main factor is the amount of arrests.

\* \* \*

- Q. When you evaluate do you consider the number of arrests, type of arrests or both?
- A. If it were up to me I would strictly put more emphasis on the quality of the arrests rather than the quantity.
- Q. Other than the pressure the men may feel among themselves to compete in number of arrests is there any deterring factor which inhibits them from making more seizures or making seizures from people further up on hierarchy of narcotic distribution?
- A. The type of arrest you are referring to requires quite a lot of time and effort which these men are not about to put in if they are about to keep up a fairly substantial arrest record in numbers. They don't have the time to do it." (Pr. H. 1677-8)

The witness went on to say that if the men were relieved of the pressure of their monthly quotas, they could make "quality" arrests (Pr. H. 1678-9).

Patrolman Frank Serpico, who has since been promoted to Detective, stated the problem quite succinctly when he testified at a private hearing:

"... I would like to explain an atmosphere that I feel exists.

- Q. Go ahead.
- A. That is, among the men.  
The attitude is that they want us to make four felony collars a month. How do they expect us to make quality arrests if they put a number over our heads? And so the attitude is they just grab anything that they can, to get it on the record, and actually don't put in the time that it requires to develop an investigation that would lead to a sort of an arrest of consequence." (Pr. H. 601)

Serpico also explained how the quota system prevents men from getting to the higher-ups in the narcotics trade:

- "Q. Is not the theory, or should not the theory of arrests, and then having your defendant turn, be that he is going to lead you to the next level of violator? Should

that not be the way that works? In other words, if you arrest a man—

- A. Yes, I follow you. This is the theory they gave you in the Police Academy, as you start at the bottom leading up to the top.
- Q. Has it worked that way?
- A. No.
- Q. Why not?
- A. As I said, this is the general attitude of the narcotics officers is that how can you possibly do this, when they want quantity. And, therefore, you are not allowed the time to develop these arrests.
- Q. So that you're leading to more arrests of the same level?
- A. Yes." (Pr. H. 618)

On this point of NARCO officers making the easiest felony arrests possible, it will be recalled that the sale of any quantity of heroin constitutes a felony. Thus, the arrest of an addict selling a single bag of heroin containing a single grain of highly adulterated heroin will count towards the quota of felony arrests. And this is exactly what has happened: NARCO officers have arrested the easy targets, the addicts. This is graphically described in Section E, *infra*.

In addition to the futility of police effort and waste of time and manpower which this numbers game has meant, it has also led to the corruption of NARCO officers, and the planting of narcotics on persons in order to effect arrests. This is discussed in detail at pages 122-207, *infra*.

### **Training and Supervision**

Over the last several years, many of the men assigned to NARCO came from Plainclothes Units of the Detective Division. This was particularly so with the extraordinary infusion of men in and around June 1969, as well as in other years. Although work in plainclothes does not preclude arrests for violations of the narcotic laws, most of that unit's work is in the fields of gambling and other vice violations, including

prostitution and violations of the alcoholic beverage control laws.

The Commission found that men assigned to NARCO were not sufficiently trained in narcotics work. Generally, whatever narcotics training they did receive lasted for a short period of time and often dated back to their original Police Academy training. A number of NARCO officers admitted that they did not feel adequate to the job because of insufficient training (230; Pr. H. 191).

In addition to shortcomings in training, the supervision of NARCO officers was woefully deficient. Not only was there an acute shortage of sergeants to supervise the 800 NARCO men, but the few sergeants assigned to NARCO were themselves without any experience in narcotics work. There were similar shortages of experienced lieutenants and captains.

As of February 1, 1971, there was a total of 36 sergeants in the Narcotics Division, eight of whom were assigned to NARCO after the Commission commenced its investigation. Of these 36, only four men had any prior experience in narcotics work.

With regard to other commanding personnel, there was a total of seven lieutenants and seven captains in NARCO as of February 1, 1971. None of the lieutenants or captains had ever worked in narcotics law enforcement prior to being assigned to command responsibilities in NARCO. One example of the background of such command personnel was the lieutenant who, in September of 1968, was assigned to head the highly sensitive and important SIU. This lieutenant was questioned at the public hearing about the make-up of SIU and his own background in the Police Department:

"Q. Then the men in SIU, of course, are, therefore, supposed to be the best trained and most experienced narcotic officers, isn't that correct?

A. That is what they are picked for, right. On their merits.

Q. In other words, experts among the experts?

A. They are the best of the best, right.

Q. And normally would you select, sir, for SIU, men who have proven their talents and experience in the field?

A. Exactly.

Q. All right. Sir, can you tell us prior to heading SIU, what was your assignment in the Department?

A. I was in the Statistical and Records Bureau, Commanding Officer of the Statistical and Records Bureau.

Q. All right. Sir, had you had any prior experience in narcotics law enforcement before being put in charge of SIU?

A. No, sir." (681)

The lack of sergeants was particularly serious because it meant that men were not under effective control or supervision. One sergeant, who was assigned to NARCO from the Tactical Patrol Force in May 1970, had no prior experience in narcotics, and only a 3-day narcotics instruction course at the Police Academy about four or five years after joining the Department (Pr. H. 2600). He received no special training in narcotics before being asked to supervise NARCO officers (Pr. H. 2600). In his field unit, there were four sergeants regularly assigned:

"Q. So, in terms of practical, realistic assignments, would you say that you had four rather than five men who were there regularly?

A. Yes, sir.

Q. And how many men, during the time that there were four sergeants, did you have under your supervision?

A. Well, during that period, there were from 110 to 115, 120 men, somewhere in that area.

Q. What do you consider to be an efficient, effective number of men under one sergeant?

A. Effective span of control?

Q. Yes.

A. It varies with different factors.

Q. Well, in Narcotics?

A. In this particular area an effective span of control I don't think would be any more than ten." (2602-3)

Although he felt that the maximum number of men under one sergeant should not exceed ten, in his own command, each sergeant was responsible for the supervision of between 27 to 30 officers. What this meant to the officers was explained by one of the patrolmen assigned to this unit:

"Q. All right. Patrolman M, can you tell us whether in the group in which you operated there was any requirement that a Sergeant supervisor accompany you and officers during the execution of a search warrant?

A. Yes, there was.

Q. Did that create any problems within your group?

A. Only the fact that you had to more or less make an appointment with them, with the Sergeants to go and get a search warrant.

Q. You said you more or less had to make an appointment.

A. Yes.

Q. Why was that?

A. There was only three or four Sergeants, and there was 115 different men working, and, according to the manpower, if several teams took a search warrant you couldn't be in more than one place at one time.

Q. You said there were 115 officers?

A. Yes, I believe so.

Q. And about three Sergeants?

A. Yes.

Q. I think you described it basically as an appointment system almost, is that right?

A. Yes.

Q. Is that an efficient way to operate, if you have a warrant and you are sitting on a place, you cannot always accurately predict when the narcotics are going to be in the apartment, or when the defendant you are looking for is going to be there with the narcotics, is that right?

A. That is correct. You have to base it upon information that you receive." (548-50)

The Sergeant was asked about this "appointment system" and how it affects the police effort:

"Q. Now, you have a requirement within the Department, or at least within your unit, that a sergeant accompany men during the execution of a search warrant.

A. Yes. That's the house rules we apply.

Q. Does that mean that for a man who wanted to execute a warrant that, basically, he had to make an appointment with the sergeant to be available at a certain time?

A. Yes, he would because there are so many people and we do work extensively with warrants so that the sergeant must be present and see which warrants are ripe for the picking at that particular point. You would have to make an appointment in order to meet the requirements of the unit, which calls for a sergeant being present.

Q. Do you think that is realistic, if a man has a warrant and he is sitting on a place and he has an appointment with a sergeant at 8:00 o'clock at night and he sees some very heavy action at 5:00 o'clock in the afternoon?

A. Do I think it is realistic? No. I think it inhibits the investigative ability of the officer and the team. Perhaps you could eliminate that with additional sergeants, supervisory personnel." (Pr. H. 2604-5)

Another obvious danger created by inadequate supervision and control is the problem of corruption. If a man is confident that his work is not being watched nor his arrests monitored, it is an invitation to possible wrongdoing. One example of how gross this inadequate control proved to be was described at the public hearing. It involved three arrests made by members of the field group to which the sergeant quoted above was assigned. Indeed, the sergeant accompanied six other police officers on the execution of a search warrant which led to these three arrests, and the seizure of 14 oz. of heroin. The arresting officer's police report reflected that he had charged the three defendants with Felonious Possession of Heroin. Because the quantity of heroin exceeded 8 oz., the crime lodged against

these defendants was for violation of §220.22 of the Penal Law, a Class B Felony, punishable by a possible term of up to 25 years in jail. This charge is the second highest felony possession case under state law, and the arrests and seizure of such a huge quantity of narcotics were considered quite a feather in the cap of the arresting officer. Needless to say, he also was credited with three felony "collars" towards his required monthly quota of four.

On March 15, 1971, almost two months after these arrests and the seizure of 14 oz. of heroin, the sergeant referred to above was questioned at a private hearing. He was asked, among other things, the disposition of these three arrests. The sergeant did not know. He did not know what in fact did happen—that the case of one of the three defendants had been transferred to Family Court because of his youth. Moreover, the day after the raid, the arresting officer went to court and filed an affidavit charging the remaining two defendants with drug loitering, the lowest type of misdemeanor. Both cases were dismissed. The arresting officer's explanation, when questioned at a private hearing, was that he could not connect any of the defendants with the narcotics which he claimed was found on the floor under a dresser. He further stated that he did not expect the felony charges to stick, but he wanted credit for felony arrests because of the quota system. Furthermore, he was confident that because of the lack of supervision, his superior officers would not discover the discrepancy. The officer's private hearing testimony was read into the record at the public hearing:

"Q. Can you tell me why they were booked on drug loitering?

A. Because, I guess, I could not prove the felonious possession charge. As I said before, even I knew the charge would definitely not stick because of the reasons I stated and the DA felt the same way. So they were charged with drug loitering instead of 230.22.

Q. I was surprised when I saw this because I see in that unusual—mentioning the police report—you report one crime and in court I see the complaint charges them with a different crime.

A. Well, this is quite normal. You will find this quite a number of times.

Q. According to the scheme of things in the department, you would have credit for three felonies, is that right?

A. Yes.

Q. Even though they were arraigned on misdemeanors which were dismissed?

A. Yes.

Q. Did this affect their being booked for felonies when you booked them at the station house?

A. No.

Q. Frankly, now?

A. No. Excuse me. You mean the fact that I get credit for three felonies?

Q. Yes.

A. I would have to say yes.

Q. In all honesty, the police in the field units in narcotics are playing a numbers game, isn't that right, where they want to remain in the detail without going into uniform and they have to justify their presence?

A. Yes. You definitely have to justify your existence there.

Q. And this is something that the superior officers are aware of?

A. Definitely.

Q. . . . And I think this is very significant.

Q. Do you think that at any time you would be asked about this particular case? Do you think your sergeant or supervisor would be likely to call you in, you booked three defendants on three felonies and two were dismissed as misdemeanors on the spot?

A. No." (72-4)

Such shocking ignorance on the part of supervising officers concerning what their own men were doing was not limited



to the Field Groups. As officers testified at private hearings, another area of potential wrongdoing because of inadequate supervision and control began to emerge. This area involved seizures of narcotics by NARCO officers.

During the Commission's investigation, evidence began to accumulate indicating significant discrepancies between the amount of narcotics reported to have been seized by arresting officers in their original police reports, and the final results reported by the police laboratory. A certain amount of mathematical error was to be expected, and even some exaggeration in arrest reports might be understood, but the size of the discrepancies and the regularity with which they appeared were disturbing. The Commission decided to look further into this matter.

Since it was not practical to do an in-depth study of all seizures, the Commission limited its inquiry to seizures of one pound or more made by the SIU, which was the only NARCO unit engaged in that level of narcotics seizures. A request was made to the SIU for a summary of all such seizures of heroin and cocaine made during 1970, with the dates, names of the defendants, addresses where the narcotics was found and the amount of narcotics originally reported by the arresting officers and the final laboratory findings. The results of this survey reached the Commission just days before the commencement of its public hearing on April 5, 1971 and were startling, to say the least. Most incredible of all, perhaps, was the fact that these fantastic discrepancies, which appeared on the face of their own records, were never even noticed by SIU supervisors or anyone within the Police Department. No one looked, no one investigated, no one seemed to care. A few examples, without identifying the defendants or listing the dates of the seizures are as follows:

	<i>Amount of Narcotics listed in Original Report</i>	<i>Amount Found By Laboratory</i>
(a) ...	5½ kilos cocaine	16 oz. cocaine
(b) ...	2½ kilos heroin	2 oz. & 108 gr. heroin 10 1/16 oz. & 75 gr. cocaine ¾ oz. & 47 gr. marijuana
(c) ...	8 kilos heroin	13½ oz. heroin 9½ oz. cocaine
(d) ...	28 kilos heroin	17 kilos heroin
(e) ...	1 kilo heroin 8 oz. cocaine	30 grains heroin 5/8 oz. & 64 gr. marijuana

In just eight cases where there were huge differences between the amount reported by the arresting officer and the laboratory findings, the total discrepancy came to 68¼ pounds of heroin and cocaine. It should also be noted that these discrepancies represented only seizures by the SIU of one pound or more, and did not cover any of the seizures made by the field groups.

### *Morale*

The morale of the men serving in NARCO was generally found to be low. There were a number of reasons for this condition. One factor contributing to this poor morale was that many of the patrolmen came to NARCO after a number of years in plainclothes, and had expected a promotion to the rank of detective. They regarded their assignment to NARCO as a demotion and felt almost a sense of betrayal or "double cross" by the Department. These men stated that they had been given to understand that if they performed in plainclothes and "kept their noses clean" they would get their "gold shield," i.e., become Detectives.\* One such officer stated that when he was notified of his transfer to NARCO, he felt he had "gotten screwed."

Being a Detective means more than additional pay to police officers. The "gold shield" represents recognition for past work, and is a symbol of enhanced status both within the Department as well as the community. A number of patrolmen, when asked for recommendations, suggested that all men who performed meritorious duty in NARCO should receive the gold shield rank even without the concomitant pay.

Another financial factor causing this poor morale is that NARCO patrolmen perform the work of Detectives but are paid as patrolmen. As one officer described it, they are neither "fish nor fowl," but in a state of "limbo":

"By MR. FISCH:

Q. From what you have seen in the Narcotics Division, do you consider the morale among the men to be good?

A. No.

\* It was put rather succinctly in these terms by a NARCO patrolman: "... I want to be a detective, and the way to be a detective is to make an arrest record, keep your nose clean, don't bother anybody and do what you are told." (Pr. H. 136)

Q. Can you tell me why it is not good?

A. One of the main things, one of the main beliefs is really not connected with narcotics at all. It's connected with promotion and money. Aside from the money that the patrolmen aren't getting, anyway, it's the detective money. And you asked me a question before about being promised anything. I was never promised anything, and I was never told in a certain amount of time I would be a detective. I was happy to become a Narcotics cop because, personally, that's what I wanted.

Some of the men have been in plain clothes as many as four years, whereupon they were promised indirectly they would be a detective, and they were sent to Narcotics. The time and the trust that is given to us by our superiors and the amount of power that is given to me as a Narcotics cop is enough for me temporarily, not forever. But I am not yearning to get that extra money where I am going to walk up and down the street with a sign.

The shield is a big thing. If you don't study to be a Sergeant, you have to go the other way. If you want to study, you are on your own.

Mr. Eliasberg:\* There is a quota system. Under the charter, there can only be a certain number of detectives in the Police Department.

Q. I heard a patrolman in Narco say,—you tell me whether you understand this and whether you agree with it—we are neither fish nor fowl, and by that he meant that you are doing detective work.

A. Right.

\* \* \*

Q. Number one, what is your reaction or comment about that?

A. About overtime?

Q. About the remarks I have just made, which I have heard from other officers.

\* M. Eliasberg was the P.B.A. attorney representing the witness.

A. Your first statement was an exact picture of what we are like, in a little bit of a limbo. . . ." (Pr. H. 132-4)

Another factor adversely affecting morale is the frustration over not being able to do a meaningful job in this very vital area of law enforcement. The reasons include the quota system, the lack of resources available to the men, and the leniency of the courts when good cases are made. Many officers decried their inability to follow up leads because they didn't have the time to devote to investigations. It was a hit and run operation, consisting of arrests, and more arrests, and always at the lowest level of the ladder. Men realized they were accomplishing nothing, but they had to compete to stay in the unit. When opportunities existed to work up the ladder from a street level narcotics violator to a more important heroin distributor, NARCO men had to make an important decision, and the decision was invariably to make the quick arrest and not invest too much time:

"Q. Have you ever come across any situation or circumstances where you made an arrest which while it may not have been premature that you did feel that if you sat on the suspect for awhile you could have traced him further up and gotten either larger seizures or men or distributors on a higher level?

A. Very definitely, yes.

Q. Any reason you didn't do that?

A. My case load. I have so much work that it's impossible to devote a great deal of attention to any one individual case or defendant.

\* \* \*

Q. Do you feel that if more emphasis were placed on a detailed investigation and surveillance that it would cut down the street level?

A. Yes." (Pr. H. 1714-5)

With regard to the resources and tools which the men needed to do effective work, the Commission discovered serious deficiencies in the amount of "buy money" available, and major shortages of equipment. The "buy money," as its name sug-

gests, is money for the purchase of narcotics, so that the seller could be arrested for violation of those sections of the penal law which make any sale of heroin, cocaine and similar opiate drugs a felony. It is elementary that a man selling 5 oz. of heroin is a more important figure than the individual selling one glassine bag, and that efforts should be concentrated at the "ounce men" rather than the street pushers who deal in bags. However, in order for an undercover NARCO agent to make such "buys" he has to have the purchase price. The men in NARCO learned very soon that the Department was not going to make any such money available, and they therefore were restricted to dealing with addict-pushers from whom they could buy \$5 bags. The extent of this deficiency is described in depth in a later section, but it is appropriate here to cite this problem as it relates to the attitude and morale of the NARCO personnel. It is not difficult to understand the feeling of frustration of the following men who testified on this point:

"... there are times when we were held up because the undercover did not have the money at the time. Like we called down the office and they said, no, we don't have our buy money, so we would cancel the meet and we would go out and make some observations for something else." (Pr. H. 178) (Emphasis added)

Also,

"... The biggest sale is usually a bundle or two. We don't have the money to go out and buy ounces.

Q. Does that present a problem for you?

A. Of course. Where am I going to get \$1,000 to go out and buy some stuff? I don't have that kind of money, neither do my partners. And in order to go through the Police Department, it's a big deal. They just don't give it to you, they have no funds for it." (Pr. H. 1025)

The other resources, besides money, which were not available to the men were primarily equipment items. This was particularly felt by the SIU which engaged in surveillances and lengthy investigations. Their "antiquated" equipment and unbelievable shortages of the most basic tools were a shocking

disclosure of the Commission's public hearing. These shortages are discussed in the next section which is devoted to the SIU.

### *Lack of Coordination*

As noted earlier, the NARCO Division consists of seven Field Groups distributed throughout the city, plus the Undercover Unit and SIU. Although the field teams have geographical assignments, such jurisdictional divisions do not exist in the narcotics traffic, and it is recognized that a person purchasing narcotics in the Bronx may bring it to Brooklyn for adulteration and packaging. He may then sell it there or transport it to Manhattan or Queens or back to the Bronx for distribution or sale. The question then arises which of the NARCO Field Groups should work on the case, or whether it should be turned over to SIU. These are questions of coordination and team work, and it would appear that reasonable and workable ground rules could be established. The Commission's investigation, however, found that such coordination did not exist.

One NARCO officer stated that the competition between the men for "collars" was so fierce, that it produced a "dog eat dog" rivalry. Men raced with each other to try to beat the other to the punch. One officer working on narcotics cases described the condition, at a private hearing:

"Q. How would you prevent conducting an investigation which might interfere with an investigation of the same pusher by the Narcotics Division?

A. There is no way. It has happened before. We were on investigation.

In fact, we are on an investigation right now, and in the course of it, we have observed the Narcotics Division making the same observations as we are. I hope they haven't seen us. We have seen them.

Q. What do you do in a situation like that?

A. We try to beat them to the punch. . . ." (Pr. H. 449-50)

The Commission was also informed by Assistant District Attorneys heading Narcotics Sections in prosecutors' offices,

of cases involving more than one borough which were prejudiced because of a lack of coordination. Sometimes the NARCO officer in Borough A does not communicate with his counterparts in Borough B because he does not want to share his information with anyone else. Another reason may be his unwillingness to sacrifice a sure collar today for a lengthy investigation in another borough which may bring him no recognition in "bread and butter" terms: "collars" credited to his quota account. A lack of confidence in the integrity of unknown fellow officers in another NARCO Unit is still another factor.

This lack of coordination was not only on horizontal lines involving Field Groups in different boroughs, but was also evidenced by a lack of contact between Field Groups and SIU, which was a higher command at headquarters level. One NARCO field officer described what happened when he and his partners made an arrest and found an address book with information linking narcotics traffickers in three boroughs. They did not turn the information over to SIU, but concentrated on the narcotics violators in their own borough:

"... Once I think we got fifty phone numbers and we got all the names and addresses for the numbers. We knew this fifty were all connected with narcotics through Queens, Brooklyn and Manhattan. We are still working on it haphazardly. If we were to hand that over to SIU, they would spend approximately two years checking these numbers and we know this girl knows this guy personally, and they are not going to know that. They are going to check it out. If we explained this, it would take us months, because it took us months to get it all. We get this information in the street, little crumbs from informants that don't want to tell you.

Q. What happened with that?

A. We made about, I'd say, twenty arrests out of that beginning investigation, and it's gotten to the point where one of these men tried to contact my partner where he lives, went to the gas station where he buys gas and asked where he lived. Tried to get to him.

Of course he is not going to get to him. He didn't even physically get to him. They were so worried that we were getting close to this complete plan that we were holding back. They all moved, changed their phone numbers, changed their addresses. So it got to a point where we just stopped because these names and addresses were no good. Each one thought the other one was telling on them, so the operation shut down or moved to another area.

Q. What happened at that point?

A. Well, at that point we weren't going to give it to SIU because the names and addresses weren't any good any more, so we let it go. We made reports on the arrests we made. We mentioned to the bosses that each was connected to the other. We told them we were going to continue to observe certain places, but when everybody moves and you can't get that one key to let you know where the fellow is going, you can't continue with the investigation.

Q. Do you think the coordination is good between field units and SIU in other Narco Commands?

A. I've never had any coordination with SIU.

Q. Never what?

A. I've never had anything to do with SIU.

Q. You are not answering my question.

A. I don't know about anybody else. I never even spoke to anybody in SIU. I don't know what the other teams do. I don't know how often they speak to them or if they cooperate with each other.

Q. What is the feeling? SIU is an elite group?

A. They are all ghosts. I never saw anybody in SIU. ... (Pr. H. 147-9)

This lack of coordination and cooperation pervaded the entire Narcotics Division. Field Groups in one borough did not tell fellow officers in another Field Group what they were doing, and neither told SIU. At the SIU level, cases were not exchanged on a regular and well-coordinated basis with Fed-

eral authorities, and many an investigation was aborted because of this petty jealousy, mistrust and competition. The only time SIU went to the Federal authorities was when they needed Federal equipment and buy money which the New York City Police Department denied to its NARCO Division.

#### **D. The Special Investigations Unit (SIU) Equipment Shortages**

One of the most shocking disclosures of the Commission's investigation was the incredible lack of basic equipment, particularly for SIU. The level of enforcement of the Field Groups is the street violator; SIU exists to concentrate on organized crime figures involved in the distribution of large quantities of narcotics. It is obvious that it cannot do an effective job unless it has the proper tools.

SIU cases are generally difficult and time-consuming investigations. The targets are important and hence quite sophisticated and cagey. These suspects have to be kept under observation, followed, and pursued. A proper distance must be maintained during automobile surveillance in order to avoid detection, and credible "covers" must be used for the same reason. Automobiles capable of meeting these standards are an absolute must, and it follows that SIU agents following these criminals must be able to communicate with each other from car to car, and with their home base.

The Commission discovered that SIU was operating without these essential resources, and that its equipment was antiquated, ineffective and often useless. An analogy might be made to a Fire Department being asked to perform its fire-fighting functions without ladders or surgeons operating without scalpels.

With regard to automobiles, SIU agents had to use their own vehicles because the Department did not provide any. One SIU officer testified about this problem at a private hearing in January 1971. This testimony is quoted at some length because it is typical of the testimony given by other SIU officers:

"Q. [Officer], in surveillances that are conducted in connection with official investigations, what automobiles are available?

A. We use our own automobiles.

Q. What automobile do you use now, what do you own now?

A. A 1968 Chrysler.

Q. Prior to that, what type of automobile did you have?

A. A 1966 Fiat.

Q. And, generally, when you were conducting a surveillance of major violators, what type of automobile did they drive, generally?

A. Cadillacs or Buick Electras.

Q. High powered?

A. Yes.

Q. Fast cars?

A. Yes, sport cars, fast moving sports cars.

Q. So the success of a surveillance depends in part upon the—with all due credit to the imagination and ingenuity and determination of the police officers—it depends in part, too, upon the equipment they have and the automobiles they drive?

A. Yes.

Q. Did you find that with your Fiat you were unable to keep up with some of these cars?

A. Yes. I couldn't keep up with any of them.

Q. Is this so with other police officers, did they complain or at least report similar problems?

A. Well, we discussed the problems of Volkswagens keeping up with Cadillacs. (Pr. H. 1660-2)

\* \* \*

Q. Is there a gasoline allowance that is provided to SIU personnel?

A. Yes, there is.

You can use Police Department gas.

Q. What is the allowance and how much?

A. I don't use it myself, but I think it's 75 gallons a month. But I don't want to be quoted because I have never used it.

Q. Why do you not use it?

A. My car won't work on it.

It's regular gasoline and it would ruin my vehicle.

Q. What if you wanted 75 gallons of high test, any way of getting that and having the Department pay for it, or are you restricted to just what they have got, take it or leave it?

A. I'm assigned to receive gas in the . . . Precinct, and they don't have high octane gas, they have regular gasoline.

Q. What about things like insurance rates, you, of course, pay for your own insurance?

A. Yes, we do.

Q. Do you use the automobile in connection with your work, is that right?

A. Yes.

Q. Does that mean a higher premium is paid?

A. Yes. When I told the insurance company that I would be using my car at work, my rates were increased." (Pr. H. 1662-3)

It is obvious that regular use of their own automobiles by the same officers make them easily identified by the suspects as police vehicles. Their ineffectiveness from that point on is obvious.

Perhaps more startling was the discovery by the Commission of the communications deficiencies in SIU. As of April 1971, the date of the public hearing, SIU officers had no base or central radio communications system which permitted communication between car and car and with their home base. An SIU officer tailing a drug dealer had no 2-way radio in his car by which he could contact a fellow SIU agent in another vehicle assigned to the same surveillance. The only equipment they had were walkie-talkies which were old and which had serious limitations of range and fidelity. If contact

were lost, and they wished to report to their home base, these SIU agents had to find a workable pay telephone and attempt to reach NARCO headquarters in that fashion.

The head of SIU was questioned about this at the public hearing:

"Q. And do you follow them by automobile on occasion?

A. I would say ninety percent of the time.

Q. First of all, what type of automobiles do you have?

A. We don't have any departmental automobiles. Each member has his own car. He uses his own car.

Q. They have to use their own cars?

A. Yes.

Q. Now how do you communicate from car to car, and from car to base, while you are out trying to follow major drug violators?

A. Very poorly because we only have—we only have the hand—it is not even a hand talkie. It is a walkie-talkie. Approximately we have maybe thirty of them and they are of ancient vintage and in tailing—the men, on occasion, when they have—we will be lucky if we get two to a man, where it might be a four man team, one man might have it. It is not functioning because it is old.

Q. Do you find under certain adverse weather conditions they are useless?

A. Most definitely.

Q. Do you find—

A. Sometimes even without adverse weather conditions.

Q. Do you find where you have tall buildings and elevated structures you can't communicate with one another?

A. Then it goes down to completely zero, you might say.

Q. Isn't this a shocking statement of affairs for the City of New York, for the SIU unit?

A. I think that goes without doubt." (710-1)

This officer proceeded to describe one investigation where he was out on surveillance with three other men. They were in two cars, "sitting half a block away from each other." (711) He described what happened when they tried to use these walkie-talkies:

"... We could hear them; they couldn't hear us. Or vice versa, something else like that. It was raining a little bit. A little bit. It was more than a little bit.

And he couldn't hear us and he kept shouting, 'where are you, where are you?'

So we finally rolled down the window and yelled out 'Oh, over here' (indicating).

So that was the extent of our radios.

Q. This is today, New York City?

A. Yes, sir." (712)

A number of SIU officers described surveillances which were lost because of the lack of proper communications equipment. In one case it was the height of the building which rendered the equipment impotent, in another, it was an elevated train structure under which the suspect drove, in another, the drug pusher was lost because his car entered a tunnel and the surveilling officers couldn't contact their team members at the other end. Many hard months of investigation and difficult and long hours of work went down the drain and important cases were lost because SIU officers were not given the proper tools they so desperately needed.

An officer with two and one-half years of experience in SIU was asked about these walkie-talkies and the problems created:

"Q. The walkie-talkies?

A. Yes.

Q. What is the range of that equipment?

A. It's according to the building structures. If you get in downtown Manhattan where there are skyscrapers, I would say about a block. If you are in Queens, where you might have low buildings, you might get a radius of four blocks. Past that it's undistinguishable what the other person is saying.

Q. Have you found this to be a serious handicap to your investigative efforts?

A. Yes, I have. (Pr. H. 1648)

\* \* \*

Q. This is what I mean, have there been occasions where you lost contact because you did not have adequate communication?

A. Yes.

Q. About how many such instances?

A. I would say eight out of ten surveillances. (Pr. H. 1649)

\* \* \*

Q. In other words, eighty percent of the time where you do lose contact it is because of the equipment?

A. It's because of the equipment. Now, we may lose contact with each other in—maybe one car will end up taking the person that we have under surveillance to his destination and calling in the office on a land line, a telephone—

Q. Which means getting out of the car and finding a telephone, right?

A. Yes, if you can find one that works, and leaving a message in the mailbox where they are located and try and hope you get there before the person leaves. (Pr. H. 1650)

\* \* \*

Q. By not having this type of communication, does it not mean that you have to get closer to your suspect and run the risk of being spotted?

A. Very much so, yes.

Q. So as you indicated earlier, you do not know, even where you maintain contact, whether you might not have been observed?

A. Well, you would have to take chances that you wouldn't ordinarily. Your cars must stay in a close radius of each other. Where if you have a radio

where you could communicate maybe inter-borough or even from—even maintain yourself in one borough and to be able to communicate, the cars behind you, your brother officers, could stay as much as ten blocks and the person you have under surveillance would never see their car.” (Pr. H. 1651)

The SIU Commander confirmed this officer's charge that SIU surveillances and cases were being lost because SIU did not have the equipment it needed. He also was reminded of his private hearing testimony when he was asked whether SIU was getting any closer to obtaining such equipment it had requested for a long time:

“By MR. FISCH:

Q. I would like to read, if I may, Lieutenant, a quote, a question and answer of your private hearing on this subject.

Q. Do you know if there is any base radio system in the entire Police Department?

And I am talking about the City Police Department.

A. I heard there was, a rumor. I really don't know.

Q. That is the closest that you have come to it, a rumor?

A. Right.

Q. Do you recall that testimony?

A. Yes.

Q. All right. As a result of this antiquated equipment—and I believe at your private hearing you said you were living in the dark ages so far as equipment is concerned. Do you remember that?

A. Yes, sir.

Q. As a result of this antiquated equipment, have you had occasions regularly where your men in the field lost contact with one another, and lost their surveillances?

A. Yes, sir. Definitely.

Q. And lost cases?

A. As a result, I guess so, yes, sir. That is a proper inference.” (718-9)

During the Lieutenant's testimony, the Commission introduced into evidence copies of prior requests by SIU for this radio equipment as well as other items. The Commission's Chief Counsel read into the record equipment requisitions dating back to 1965:

“By MR. FISCH:

Q. I requested of Chief McCahey and Lieutenant Egan some background on this and some of the copies of their prior requests for equipment. I only asked them for requests going back to 1965 or 1966.

I don't know what I would have found if I had requested requisitions for twenty years ago or ten years ago.

But in 1965, February 9, 1965, from the Commanding Officer to the Chief of Detectives, and, of course, from the Chief of Detectives and we had Chief Lussen in before, it goes above him to someone else,—this is a supplemental report requesting equipment. And just let me read just the first paragraph. Again, it is dated February 9, 1965.

I quote: ‘On January 27, 1965 request was made by the undersigned for special equipment for conducting narcotics investigations. Of the material requested in the original report, the following equipment is urgently required by the Narcotics Bureau.’

And they list six items, automatic start tape recorders.

You needed that for what, wire tapping?

A. Right.

Q. Dial recorders?

A. Yes.

Q. For wire tapping.

A. Right, sir.

Q. Twenty two-way radios on confidential frequency in personal automobiles of SIU members.



You still don't have that, is that right?

A. No.

Q. Ten units, walkie-talkie radios, and one minifon. Do you remember that request?

Well, it is here.

A. That is back in February of—

Q. Of 1965.

A. Realize one thing there, too. The manpower was smaller in 1965.

Q. All right. I appreciate that.

In other words, your needs have increased since then?

A. Right.

Q. And the dope traffic in New York has certainly increased since then?

A. It goes without saying.

Q. Now in 1965—and I am not giving each report, each request—January 13, 1967. Again from the Commanding Officer, Narcotics Bureau to the Chief of Detectives, request for equipment, and then at the second page, under the category base radio, console and receivers, and it is broken down price-wise—I think the total price at that time I am not sure—but I think the price has gone up since—at that time \$36,100.

And let me read some very pertinent explanation as to why they needed it.

'A base radio console and receivers are absolutely necessary for the following reasons:

a. Coordination of an investigation as it progresses in all large-scale investigations, it is imperative that there be continuous unimpeded communication between car to car, car to base, base station to car, men on foot with walkie-talkies to car, et cetera.

b. Supplying of instant information such as auto license verifications, telephone listings, name checks, et cetera.

c. An immediate available source of manpower for emergency situations could be mobilized.

d. At present in order to effectively conduct a large-scale investigation requiring surveillance it is necessary for this command to call in the Federal Bureau of Narcotics in order to utilize their radio equipment. As a result, the Federal Bureau of Narcotics must be let in on the case. The installation of our own base radio on a confidential frequency would obviate this practice.'

And that, too, is signed by the then Commanding Officer of the Narcotics Division.

Let me ask you this: Do you still in 1971 find that when you have a big case and need this type of equipment that you have to go down to other agencies, the Federal Bureau of Narcotics?

A. Yes, sir." (713-6)

Also read into the record and admitted into evidence\* was a copy of the 1966 Annual Report of the New York City Police Department. In that year, the Department publicly and officially announced that NARCO was to get a car to car and car to base radio system. The caption of that section of the Annual Report was titled "Repressing the Narcotics Plague." It read as follows:

"A radio repeater relay system on ultra high frequency is being planned to provide narcotics detectives with communication from car to car, car to base, portable to base, and portable to car. This added equipment will greatly facilitate police operations against the upper echelons in the illicit narcotics trade."

When the Commission first heard that SIU lacked car radios, it was difficult to believe. We spoke to other law enforcement agencies and they were equally incredulous. They pointed out that such equipment has been used by police departments for decades and they just could not accept the notion that any major police force did not have such a communications system for use in narcotics investigations. They were particularly distressed to learn that such equipment was not available to

\* Commission Exhibit #13.

NARCO in view of the undisputed fact that New York City serves as the "hard-drug" capital of the United States, and the gravity of the city's narcotics problem therefore demanded a maximum police effort. In short, they felt that this deficiency was tantamount to handcuffing the police.

After listening to these comments from informed and objective law enforcement experts, the Commission decided to canvass police departments in other cities throughout the United States and ask them what type of communication system they were utilizing in their narcotics investigations. We chose the larger cities as well as smaller locales which were known to have a narcotics problem. A short questionnaire and letter were sent to 55 police departments on February 22, 1971, and by the time our public hearing commenced on April 5, replies had been received from all but four.

The following questions were asked, among others: does your Police Department have a separate "narcotics unit"; if not, how are narcotics investigations conducted; does the narcotics unit have its own base radio-auto communication system with 2-way radios; if not, does your Police Department have such a communications system and equipment and is such equipment utilized in narcotics investigation; for how long have you had this equipment; if not available, what type of communications do you have and what is the range of such equipment.

The replies from the 51 police departments, located throughout the United States, confirmed what the Commission had heard from NARCO officers and other local law enforcement groups—the Narcotics Division of the New York City Police Department was operating in the dark ages with regard to its communications equipment, and it was the worst-equipped narcotics police unit of all these departments. There were only five other departments of those to whom we wrote which did not have such radio equipment available for narcotics work. However, these five departments were smaller departments with an infinitely smaller narcotics problem. Moreover, their other equipment was generally sufficient for their limited needs. A breakdown of these five departments, without identifying them by name, illustrates this point:

(1) Department A.—The size of the entire police force is 275 officers; its Narcotics Squad numbers five men. Although neither the Narcotics Unit nor the Police Department have

such equipment, handie-talkies are utilized in narcotics investigations which have a range under ideal conditions of five to six miles.

(2) Department B.—Has 470 men, of whom four comprise the narcotics squad. Neither the narcotics unit nor the department have such 2-way radio equipment. The department's reply to the Commission's question concerning what other equipment is utilized in narcotics investigation was "portable radios are available." The department did not state the range of these radios.

(3) Department C.—With a 21-man narcotics squad and a 1525-man force utilized walkie-talkies in narcotics investigations. These walkie-talkies were reported to have a range of ten to fifteen miles.

(4) Department D.—Has a 30-man size Narcotics Unit and a 3800-man police force. It appears that the base-radio system which the department has is not used in narcotics work, but this is not clear from the completed questionnaire. No reply is given to the question concerning what equipment is utilized in narcotics investigations.

(5) Department E.—Has a separate 11-man narcotics unit. There is no base-radio system in the unit or in the 850-man department. The question about other equipment was answered as follows: "Pack set on same frequency as other cars—have three channels."

With regard to the remaining 46 police departments which returned completed questionnaires, the replies highlight the shortcomings of the New York City Police Department's NARCO Division.

Five departments have had such equipment for over thirty years; five others for over twenty years; and five more for over fifteen years. For example—Detroit, with a 37-man NARCO Unit and 5200-man police department (16 years); the 6-man NARCO unit of the 499-man\* Tucson, Arizona Police Department—(since 1948); Cleveland, Ohio's Police Department with 2450 men, 16 of whom comprise the NARCO Squad (15 years); Newark, New Jersey's 1400-man police force has had this equipment, which is used by its 35-man narcotics unit, since 1934; and the 259-man Greenboro, North Carolina Police

\* 99 are civilians.

Force which has no separate NARCO unit, has a vice squad which utilizes such equipment in narcotics cases. The department has had this equipment for 35 years.

In addition to this disastrous deficiency in radio-communications, SIU suffered other serious shortages of equipment, inadequate "buy" money and other resources. The SIU commander described other equipment problems:

"By MR. FISCH:

Q. We are not only talking about the base radio that you need, but there are many other problems of equipment within this SIU. Isn't that correct?

A. Yes. True.

Q. And are there occasions sometimes when you want to do surveillances and you want to have a car or truck that you can use to watch a place?

A. We have to go out and ingratiate ourselves with some truck rental place and maybe get it—as the fellows say—on the muscle. Look, can we use it for a few hours?

Q. Have you been using—

A. Now you know what that leads to?

Commissioner Silver: Yes.

Q. Have you been using one truck over the many, many years, so that it is well-known in the City?

A. Yes, sir.

Q. All right.

A. Definitely.

Q. Now what about binoculars and cameras? Do you have enough cameras?

A. At the last count we had two. I think they just gave us two here the other—within the last couple of months.

Q. Do you have enough cameras?

A. No, sir.

Q. Do you have enough film for the cameras that you do have?

A. For the cameras that we have now, we just got it.

Q. Just got it?

A. Yes.

Q. Do you mean while this hearing was in progress?

A. Well, I don't know—when did you start the hearing?

Q. You just got it. I think that answers the question.

Do you use infrared film? Are you able to use infrared film for taking pictures in the evening?

A. Like I said, we were just able to recently, yes.

Q. It is a pretty sad state of affairs, isn't it?

A. Yes. I would say so, yes." (726-8)

Inadequate tools to do an effective job must, and did, have a very harmful effect upon the men involved. One SIU member, questioned at a private hearing in March 1971, testified on this point:

"Q. Because of equipment problems, do the men feel that they are limited as to the type of investigations they would want to conduct?

A. Definitely, yes." (Pr. H. 2212)

This officer explained that with regard to organized crime figures and major narcotics violators, "with the equipment [SIU has] we can't get close to these people at all." (Pr. H. 2213) Other SIU members expressed similar views. One such officer was Sergeant M,\* who had served in NARCO for over six years, almost two of which were spent in SIU:

"The Chairman: Just in summary, Sergeant,—and I don't want to put words in your mouth, so if you don't agree with my summary statement, please say so: Would it be fair to say that based upon your experience, at least with SIU, that given this equipment and the other problems to which you have testified, that SIU can't do the job really that it is assigned to do in New York City, in narcotics enforcement?

The Witness: If they were given this equipment—

\* Not the same officer quoted earlier, who was *Patrolman M.*

The Chairman: No, given the problems and the failure of the equipment, am I right that in that posture SIU really cannot do the job that it is assigned to do effectively?

The Witness: That is correct.

\* \* \*

By MR. FISCH:

Q. Let me ask you this: Do the men in the field—and by that I mean the SIU and the field teams—do they feel that the City doesn't really mean business when they talk about fighting this plague of narcotics, because they are not given the sufficient tools to do it?

A. Well, it has always been my contention that although certain people are screaming about narcotics, what is going to be done, they don't really mean it because if they did they would have listened to our pleas for money and everything that we needed, and it is not that we didn't request it.

I, myself, have requested things in writing officially. There were occasions when I was in Narcotics that I didn't even get an answer.

Q. Would you say that the City has not been giving you the support that you need?

A. That is correct." (751-3)

### **"Buy and Bust"**

Members of all the various units of NARCO gave testimony before the Commission, both privately and at the public hearing, that there were severe limitations on the amount of "buy money" available to them. This meant that they were limited to making "buys" of drugs from the lowest level of narcotics violator. Opportunities to purchase larger quantities of narcotics were not followed up because of these dollar restrictions and where they were pursued, it often meant that NARCO had to enlist the support of the Federal Bureau of Narcotics and Dangerous Drugs. If an informant was involved, NARCO men were reluctant to introduce him to the "Feds" who were willing to spend the necessary money because this might mean the loss of the informant to this other agency.

Where NARCO was willing to come forth with a bit more of its own money, it was always a "buy and bust" operation. This meant that an arrest had to be made of the seller immediately, lest the money be lost. This type of police work immediately cuts off any chance of climbing higher up the ladder of narcotics traffickers. The Commander of the Headquarters Unit, under whose jurisdiction both SIU and the Undercover Unit falls, explained this at a private hearing:

"Q. The next question is the buy and bust operation. It means you are cutting off your investigation?

A. Yes, locking the man up as soon as you hand him the money.

Q. That's the end of it?

A. Right.

Q. That means you cannot go any further?

A. Frequently that's the end of that case.

Q. When you say letting the money down the drain, you mean letting the man keep the money? You make your buy and then just see where he goes?

A. In other words, he thinks he is cool and he continues and you follow him and you see who his source is and you are able to climb up the ladder." (Pr. H. 2205)

Another witness, the Commander of SIU, gave similar testimony when he appeared at the public hearing:

"Q. On those occasions, when you do buy narcotics, is it a buy and bust operation.

And we will explain that.

A. I would say they don't—I would say it is right, it would have to be done on that kind of occasion.

Q. In other words, on those rare occasions, when you might be able to get some money, it is on a buy and a bust?

A. Yes.

Q. Can you explain to the public and the Commission what that means?

A. It means that they don't want the money to be lost. In essence, that is what it means. In other words, when the Federal government does it on a large scale, they have no qualms to have money, to go out and buy a kilo, or \$12,000 and let it go. It is gone.

It is put into whatever judicial process or something else like that.

We haven't got the money for that type of operation.

Q. When you say 'they let it go,' they don't let it go because of indifference—

A. No, it is similar to your undercover sale, they know who the party is, and things of that sort.

Q. In other words, by letting it go, they hope to trace it to the next step, isn't that correct?

A. That is part of the operation.

Q. Isn't that the theory? You make a buy and then you try to find out where that person—who is he buying from?

A. Yes. His connection. Right.

Q. When you have a buy and bust operation, that means that you have got to arrest the man as soon as you make the buy and that cuts off any potential for climbing up that ladder. Am I correct?

A. Right, sir." (722-3)

One NARCO detective who was not willing to lose opportunities because he could not get "buy money" from his office, testified at the public hearing about the devices he and his partners resorted to. They created a phony "roll" of bills and tricked the seller into believing the bundle they were flashing was real. This scheme was not without danger, as this veteran of three years of service with SIU explained:

"A. I don't remember seeing one buy in my time in SIU.

Q. Is this because of the lack of money?

A. Yes.

Q. Did this lack of money ever present any danger to a police officer because of the devices that he had to resort?

A. Yes, sir.

Q. I am talking of the phony roll that you described to me one day.

A. Yes.

Q. Can you describe that to the public and to the Commission?

A. Yes. Well, the officer wanted to buy 100 pounds of marijuana and he had—he had to front about \$4,000. And there was no money available.

So what we did, we used—we took about \$100 and we put it on top of a roll, X money and on the bottom of the roll X money, and we made one big bundle.

The undercover agent came in and flashed the money, and when the seller wanted to count the money, he said, no good. You are not going to see the money until I see the stuff.

So you had to actually see the stuff and then we may—the arrest was made at the time the money was shown.

Q. Do you sometimes take newspaper and roll it up and try to build up a phony roll?

A. That is what we did, we put the real money on the top and on the bottom, and in between we had newspapers cut.

Q. On that occasion you were able to convince the man that you wanted to see the stuff first?

A. Yes.

Q. Is that right?

A. Yes.

Q. Would you say that when you are dealing with a major heroin dealer that this is a real danger of exposure and exposure obviously has dangers, too?

A. Yes.

Q. But this is the way you were compelled to operate because you could not get the money you needed?

A. Yes." (759-60)

The District Attorney of Queens County cited a case where his office was not able to pursue a narcotics investigation involving international organized crime figures because the New York City Police Department was not willing to provide \$11,000 in "buy money." He turned to the Federal narcotics authorities:

"Q. Mr. Mackell, have you learned from the police that one reason that they are making this type of low level buys is that the Department is not making available to them adequate money for buys, that where the police officer has an opportunity to go up the ladder, he is not getting financial support from the Department?

A. Yes. I would say they have tight purse strings here in the New York City Police Department, and I will give you an example:

We had information on a very, very big operation in our County, as a result of one of our telephone taps, and we were pleading for an opportunity to make a very large purchase that would involve perhaps \$11,000. And there was a chance that it might be lost because in order to get to the next higher echelon they would have to let it go by the board.

And the New York City Police Department was reluctant to do anything on this score, so finally we brought in the Federal people, and, as a result of that particular effort, and a buy that involved some \$11,000, we were able to cooperate with the Federal people in my area, and in the Eastern District, that resulted in the arrest and conviction of Louis Stefenberg, Edwardo Poeta, and, hopefully, in a short period of time we expect to bring back from Switzerland, I believe, a fellow by the name of Grosby, who jumped bail here in the Southern District some years ago, \$50,000, all of this had resulted from our information, and the cooperation of the Federal people, in putting up the \$11,000 that brought about the final conviction of these people.

And John Mitchell and Eddie Neaer, of the Eastern District, United States attorneys office, put out a press release commending our efforts in that regard be-

cause it was the first, by the way, since the inception of wire tap evidence on a State level, that a State tap was used in a Federal prosecution.

Q. Are you saying, though, that initially when the Department, the Police Department working with your office had an opportunity to do something meaningful, to get at an organized crime figure, to make a good case, that the Department refused to give the money that they would need to do that type of work?

A. That's right." (1534-6)

#### *Lack of Coordination\**

A Detective Sergeant who served in both the Field Units of NARCO and SIU, described the "race" between NARCO officers to make arrests and the lack of coordination between not only different field teams but between different men within SIU:

"Q. Can you tell me, Sergeant M, what type of coordination existed between the various field units and, let us say, the SIU, and between field units in one borough and another?

Do you know what I mean?

A. Yes.

Q. Let us assume that an officer in Narcotics Group 4 was conducting a surveillance on a suspect,—were you able to coordinate your activities and make sure that headquarters was not at the same time sitting on the man and that another detective squad was not at the same time sitting on him, or was it just a race?

A. It was a race. There was very little coordination.

Q. Did that exist, that people were under observation by different units of the Narcotics Division?

A. Yes, it did.

Q. Did it exist, did that happen in your experience?

A. Yes.

\* See also pp. 81-4 *supra*.

The Chairman: Do you mean at the same time?

Mr. Fisch: At the same time.

The Witness: At the same time, while we were investigating a suspect, there were other units of the Department investigating him without our knowledge.

Q. You described at your private hearing the situation as being a quote dog eat dog unquote situation? Do you remember that?

A. Yes.

Q. Can you explain what you meant by that?

A. Well, what I meant by that was that there are a limited number of—let us say, major violators in the City of New York. And everybody wants to grab, you know, the same guy. And the people that are working on him are very reluctant to discuss what they have on this individual for fear another team might grab him and get the credit for this arrest.

So there was little discussion about what you were doing, it was sort of a race as to who could grab him first.

And out on the field level you had a situation where there were so many men in the Narcotics field groups, and they all wanted to get on what we call the sheet, or the arrest activity sheet, that they would be also, you know, making this race to apprehend people.” (739.40)

This Sergeant also stated that field officers were “reluctant” to turn information over to SIU and because of this “common and widespread” feeling, potentially fruitful investigations “just evaporated” (742).

### *Selection of Targets*

Theoretically, SIU exists for the purpose of attacking the illicit New York City narcotics traffic at the very top—major drug distributors. As has been stated, those primarily involved at this level of criminal activity are the “organized crime” figures and criminal syndicate members. Another term used by narcotics law enforcement officials to describe these upper-

echelon narcotics criminals is “major violators.” Major violators have been identified by the various federal law enforcement groups, pedigrees compiled, modus operandi described and associates listed. The Federal Bureau of Narcotics and Dangerous Drugs (BNDD), as well as the United States Bureau of Customs maintain current intelligence information on these individuals and direct their investigations at them.

William Durkin, Regional Director of BNDD’s New York office, characterized his unit’s concentration of effort against these top drug distributors and importers as “selective enforcement” (177). He explained at the public hearing that his office is “constantly” seeking to measure its effectiveness by evaluating narcotics purchases and seizures “to insure ourselves that we are working at the appropriate level” (191). As an example of the type of close review BNDD engages in, Mr. Durkin cited the importance of chemical analysis of the drugs seized or purchased:

“A. We use the chemical analysis of drugs, in addition to the evaluating or measuring our own effectiveness, and we find it does give us some investigative leads from time to time.

But we are aware that there may be certain characteristics of heroin that is manufactured in the Far East, say in Hong Kong, that will reflect itself upon chemical analysis here and it gives us—it points a direction for a subsequent investigation or investigations.

Q. You say you regard it as very important.

A. We are dealing in selective law enforcement, and we are dealing in quantities of drugs that are—well, larger than usual, yes, sir.

Q. One of the methods of determining whether you are going after the right man is by lab analysis of the drugs that you seize, isn’t that correct?

A. We use that as an evaluator, yes.

The Chairman: You are pointing, Mr. Durkin, if I may sum up—correct me if I am wrong—it isn’t always quantity that is totally important but equally, if not more important, is the quality of the drugs.

The Witness: Yes, sir. We are aware that there are, as Mr. Tartaglino alluded to this, if we have a wholesaler who is capable of dealing in ten to fifty kilograms, and we are conducting an undercover investigation, we don't feel that it is necessary to buy ten to fifty kilograms of heroin in order to prove that he is, in fact, a wholesaler.

We are trying to get the most for our dollar that we possibly can. So we will endeavor to buy the minimum amount necessary to accomplish our objective." (192-3)

The purity of drugs is a significant factor in evaluating the relative role in the narcotics hierarchy of the defendant from whom the narcotics was purchased or in whose possession it was found. Thus, the man found with only one ounce of pure heroin might be a more important figure than the defendant caught with one pound of heavily diluted heroin of 8% purity. In the case of the former, the defendant is closer to those importing or dealing in large quantities, even though at the particular time he was apprehended he was only found with an ounce (191).

SIU operated in marked contrast to their federal counterparts. In the first place, the New York City Police Laboratory did not analyze the purity of narcotics contraband, so an important investigative procedure was not utilized. Furthermore, although SIU members were supposed to be given ample time to conduct investigations, there was still competition to produce results. Although there was no quota system in terms of arrests which the Field Groups labored under, SIU members had another standard of productivity which they aimed for: seizures of large quantities of drugs. This imposed another arbitrary and artificial target for the men, which differed only in degree rather than substance from the numbers game of arrests imposed on other NARCO men. To SIU, it also meant—make the easy cases but get the drugs. As a result, the number of organized crime figures arrested by SIU was disturbingly poor.

The Commander of the Headquarters Unit of the New York City Police Department's NARCO Division at the time of the Commission's investigation and public hearing was Captain Daniel F. O'Brien. As noted earlier, it was the responsibility of Captain O'Brien to supervise the work of SIU and the Undercover Units. Captain O'Brien was asked about the role of organ-

ized crime in narcotics traffic, and what major organized crime figures were arrested by SIU:\*

"Q. What is your opinion, based upon your experience in narcotics and as head of the Headquarters Unit, as to the role of organized crime in the narcotics traffic?"

A. My opinion, although I don't have any great amount of evidence to substantiate it, is that at the present time organized crime, the Mafia, or whatever you want to call it, is probably involved to some degree in narcotics, but I have not seen any large amounts of narcotics seized where organized crime figures could be connected with it. Perhaps I don't have enough information.

Q. Well, is it just because of the fact that they have not been arrested with the narcotics?

A. No. I am basing it on the intelligence gleaned from other investigations and wiretaps and so forth. All I know is that people—since I have been in narcotics, that people who I've caught with large amounts of narcotics were mainly not organized crime figures.

Q. Are they basically easier to grab?

A. I don't know. I haven't grabbed that many organized crime figures." (Pr. H. 2195)

The question put to Captain O'Brien about whether SIU arrests were related to subjects "easier to grab" was based on private hearing testimony from SIU members to that effect. These officers testified that equipment shortages and lack of buy money made their job very difficult and limited the potential scope of their investigations. They chose the path of least resistance by going after the easier targets who were less sophisticated than organized crime figures. One NARCO officer who served in SIU testified at private hearings that he and his partners once refused an opportunity to work on organized crime investigations in SIU. One reason was his lack of trust in other NARCO police officers.\*\* Another reason was the

\* Prior to questioning Captain O'Brien on this point, the Commission had already elicited testimony from numerous SIU members that organized crime was very much involved in the illicit narcotics traffic in New York City.

\*\* See the section on "Corruption" at pp. 122-07.



competition to make large seizures rather than concentrate on important narcotics traffickers:

“Q. Why did you refuse?

A. Not that I refused. I tended—I felt that it was all but impossible to work on members of organized crime on narcotics. I felt that there was just too many people that I feel that could not be trusted and had to be appraised of the various points of an investigation, and it seemed to me that if I was going to spend four or five or up to six months on an investigation while other members of my group were working on South Americans, if I was going to spend four, five or six months on organized crime operation and come up with a big zero, not only would I be looked at with a jaundice eye, aside from that, I would be evaluated—comparing me to other members of narcotics who were working on people a lot easier to get.

Q. Apart from the corruption possibilities here, are you also saying that it is more difficult to make a case against the organized crime top figures in that it takes more time and the men are not as anxious to do it because they cannot show a record of activity?

A. Absolutely. I am saying that if you were to speak to the head of the Narcotics Squad and ask them what they thought whether organized crime or Mafia were involved in narcotics now, they would tell you no, they are not and probably the reason they would tell you that is because they couldn't show any arrest for any members of organized crime over the past maybe three years.

We all know from various investigations and wiretaps that without these people there probably wouldn't be any narcotics problem.

Q. How recently did you know, based upon your work in SIU that the organized crime figures are still actively in junk in New York City.

Was it as recently as a couple of months ago when you left SIU?

A. Yes.

**CONTINUED**

**1 OF 4**

Q. No doubt in your mind?

A. No doubt.

Q. It is going on today.

A. No doubt in my mind.

Q. You are saying it is easier to arrest others than to arrest an organized crime figure?

A. Yes." (Pr. H. 845-7)

The officer then gave an example, which is not being disclosed in this report for security reasons. The officer continued:

"... their investigation showed that they believed that that was going through an Italian base operation. When I say Italian, I am saying an organized crime operation where many members of these people or groups are in fact people of Jewish extraction—I mean other people aside from Italian, but many of the heads are Italian. The Italians here; east side, on... Avenue.

I am sure—if there are forty-five or fifty active cases in the SIU, you wouldn't find one case being worked on on an Italian.

Q. Why is that?

A. The reason for that is that we are all evaluated on our activity and our activity is concerned with arrests and seizures.

Q. It is the numbers game? Did you ever hear of that expression?

A. I would say not so much the numbers game. I would say it is more of the amount of narcotics that you and your team and the members of your team seize in the course of the year.

Q. So even though you may not be getting at the heart of the problem, nevertheless you have something to show for your work?

A. It is very easy—

Q. Is that it?

A. That is it. If you read in the paper—large seizures are being made by members of the SIU I would say, and I am sure that the records would show that members of the narcotics squad and the SIU seize more narcotics than the F.B.I. They seize what we call burros, donkeys. These are carriers. Foreigners from South America who bring in large quantities of cocaine, mostly, and very little heroin through the New York ports.” (Pr. H. 847-8)

When Captain O'Brien, Commander of NARCO's Headquarters Unit, was asked how SIU selects its targets, he testified as follows:

“Q. Can you tell me how SIU operates in terms of whether they have selected targets they work on or what's basically the approach?

A. Well, like a field group. We get a certain amount of cases that are sent to us. These are numbered cases which have to be returned within a certain amount of time. We don't get as many of these as a field group. These are usually complaints from the public alleging that somebody is involved in narcotics or there is narcotic activity.

I know the complaints coming into the Narcotics Division run into the thousands. We get very few of these. I peruse them every day myself and other superiors at SIU.

When we see a case that looks like it might have something we are interested in, which would be large dealers and so forth, we usually go down and request the case not be sent to a field group, but we will take it.

We also get cases from the field groups where they have worked on a case and they find that the people are too big for them to handle; they don't have the technique, they don't have the men, the time. It goes across borough boundary lines, usually.

We also deal with federal agencies, which they don't. We have many more—much more equipment, more experienced men and so forth.

We also have a number of other techniques we use. For instance, we scan all the newspapers. We review everybody arrested in the City particularly looking for somebody who is only arrested for a little amount of narcotics and is actually a big dealer. Homicides, for instance, I found to have been quite valuable. We start backwards. We start with the victim. It's apparently a narcotic homicide.

In the Amsterdam News, for instance, I find—weekly you find a man is murdered. We work backwards from those and try to ascertain who he was involved with and so forth.” (Pr. H. 2195-7)

Captain O'Brien then said that SIU does select organized crime figures as targets but only if “there is some indication that he is presently active.” (Pr. H. 2197)

### *E. The Undercover Unit Mode of Operation*

The active use of police undercover units is an essential characteristic of the enforcement of narcotics laws. In New York City's teeming communities, particularly, undercover operations constitute a basic necessity for the effective penetration of the sub-culture of the narcotics traffic, with its Byzantine arrangements of secretive meetings, introductions and “buys.”

Unfortunately, the Commission found that the fundamental efforts of the Undercover Unit of the Narcotics Division of the New York City Police Department were misdirected and sorely lacking in meaningful accomplishment. This failure is especially sobering with the realization that the daily activity of the undercover men and women, often operating in the City's cashahs and ghettos, is largely filled with routine acts of courage which regretfully go unrewarded in terms of realistically abating the flow of narcotics traffic.

The critical feature of the operation of the Undercover Unit parallels a major deficiency of the entire Narcotics Division approach, namely, the misplaced emphasis on volume lower echelon street arrests, to the near exclusion of higher echelon suppliers and dealers. There is literally no purposeful effort to employ the talents of the narcotics undercover unit to make quality arrests.

The effectiveness of the undercover operation is further impeded by a shortage of manpower. There is a particular deficiency in the number of non-white undercover agents, which quite obviously has an acute bearing on any efforts made to penetrate the drug traffic in certain critical areas of New York City. While the size of the undercover unit will not be disclosed, there is no doubt that the working staff of the undercover unit is insufficient, both in size and ethnic breakdown, to meet the vital demands placed upon it.

Invariably, the undercover police officer operates as an agent, on assignment to one of the NARCO field units. These field units themselves maintain a policy of primarily effectuating street level arrests because these are the easiest to effect. Accordingly, there is virtually no opportunity for undercover units to participate in detailed police investigations which may lead to the apprehension of major distributors. This limitation on the undercover unit is also reinforced by the apparent overriding attitude of the Narcotics Division to slough off any out of the ordinary matters to its Special Investigation Unit (SIU). As one Supervisor of the Undercover Unit stated: "Anything that we would consider for further investigation [is] referred to SIU which is their function." (Pr. H. 1470)

The undercover agents consequently operate in a rigorously defined pattern which routinely precludes an investigation from "going up the ladder" to a major source of narcotics. The field unit will usually arrest a street level narcotics violator, generally an addict, who may then become an informant for the arresting officer. In consideration for "turning" and introducing the undercover officer to sellers of narcotics or furnishing information leading to other arrests, the informant expects and, generally, is granted favored treatment by the prosecution and courts.

However, in practice this procedure merely results in one street level addict or "accommodation seller" informing on another, without any attempt made to break this circular pattern of arrests at the same level of narcotics traffic. One narcotics undercover officer indicated that, in approximately two and one-half years as an undercover operator, virtually all of his activities were "confined to the street and house connections." (626) In this regard, he agreed with the testimony of another undercover police officer that basically lower echelon purchases of a "bag or two . . . represented about

90% of his activity" (626; Pr. H. 1647). The average "bag" of heroin which the undercover agent purchases, contains only a grain or perhaps two, of heavily diluted narcotics.

The usual procedure was described by a Sergeant Supervisor of the Narcotics Undercover Unit:\*

"Q. Could you describe for us how a typical buy operation works?"

A. Well, normally it starts—the field unit, . . . they secure or they get in touch with an informer and they, in turn, contact our unit, Undercover Unit, and we assign a man to work with the field unit.

\* \* \*

They will then make a meet and the supervising agent of the field team then will make a date to meet and . . .—the Undercover agent will go out with the informer and he will tell him where to go and whom to buy from and, in turn, the field unit is backing up the Undercover agent. (Pr. H. 1466)

\* \* \*

Q. Are your informants basically addicts?

A. Basically addicts.

Q. Are they basically working for you because of an arrest?

A. Primarily, yes. (Pr. H. 1467)

\* \* \*

Q. In other words, you arrest an addict and he wants to work?

A. Yes.

Q. Do you require in exchange for this consideration he must give you someone better than he is instead of more of the same?

\* One striking feature of the Undercover Unit is that neither of the two Sergeant Supervisors assigned to this Unit had any particular training in narcotics prior to assuming their positions. One Sergeant, although on the police force for 18 years prior to his assignment to the Narcotics Undercover Unit, had never made a narcotics arrest (658-9).

A. No. No requirements. It's just information that he can possibly give us. (Pr. H. 1468-9)

\* \* \*

Q. What percentage of the time would you estimate that one informant you trust is giving you better information or one step higher and what percentage of the time is it more the same?

A. Mostly, majority of times, he has given us information at the same level that he is." (Pr. H. 1469)

**Total Amount of Heroin Purchased by the Undercover Unit During 1970—4.97 lbs.**

A true picture of the limited operation of the Narcotics Division's Undercover Unit was revealed through the Commission's analysis of the Undercover Unit's own records. The Commission examined the total number and types of "buys" made by the Undercover Unit for the entire calendar year 1970. This included every buy made throughout the City of New York, for each of the Field Groups of the Narcotics Division. The results of this study, as disclosed through the testimony of Commission Special Agent Richard E. Alleyne, established that, with some few exceptions, the Narcotics Division Undercover Unit is consciously directed toward the lower echelon, street level mode of operations (648).

By the way of background, as a rule, the New York City Police Department tries to operate on a "two-buy" basis for each suspected seller of narcotics. Briefly stated, the Narcotics Division seeks to have its undercover officers make two separate purchases of narcotics from a defendant seller prior to his arrest. These purchases are commonly referred to as "A" and "B" buys. The rationale behind making the second purchase of heroin is not only to buttress the prosecution's burden of proof, but to strip the prospective defendant of any defense or plea in mitigation that there was no profit-making motive in making the sale, in that the transfer of narcotics was a gift, or an isolated transaction designed *merely* to accommodate ("accommodation sale") a fellow addict.\*

\* Cf. 3 (a) below. Technically, any transfer of narcotics constitutes a felony.

**ANALYSIS OF ONE COMPLETE YEAR'S (1970)  
HEROIN "BUY" OPERATIONS IN NEW YORK CITY  
BY UNDERCOVER UNIT—NARCOTICS DIVISION  
(N.Y.C. POLICE DEPARTMENT)**

Field Group	Total No. of Heroin "Buys"	Grains	(Ounces)	"Buy" Money Expended	No. of Arrests
#1 (Man S)	681	3,524 1/2	(8.06)	\$ 8,009	387
#2 (Man N)	961	4,862 1/4	(11.11)	11,824.50	574
#3 (Man N)	1,340	7,656	(17.50)	17,927	798
#4 (Bronx)	1,246	6,593	(15.07)	14,640	691
#5 (B'klyn S) (Richmond)	1,234	4,096	( 9.36)	16,036	570
#6 (Queens)	677	2,778	( 6.35)	8,930	391
#7 (B'klyn N)	1,127	5,249	(12.00)	13,831	596
<b>TOTALS</b>	<b>7,266</b>	<b>34,759 3/4</b>	<b>(79.45)</b>	<b>\$ 91,197.50</b>	<b>4,007</b>

GRAINS 4.97 POUNDS  
(OUNCES)

NOTE: (1) There are 437.5 grains per ounce  
(2) Largest single "Buy"—1 oz., 2 gr. (\$800.)  
(3) 2d Largest "Buy"—1/2 oz., 20 gr. (\$85.)

Where unusual circumstances exist, arrests may be made after only one purchase of narcotics, as where the seller is considered to be of a fugitive nature and must be immediately apprehended after the sale. There are also the "buys" made by undercover officers which do not result in arrests. Usually, in those instances, the seller has disappeared from the area of the purchase and is unable to be located by the police.

Following is a Chart,† introduced into evidence at the public hearing, depicting the Commission's analysis of the Undercover Unit's heroin buys during 1970.

The analysis of the Undercover Unit's books and records revealed that in the calendar year 1970, the Undercover Unit spent \$91,197.50 in making a total number of 7,266 separate buys of heroin. This activity resulted in a total of 4,007 arrests. However, astonishingly, the Police Department, in making these buys, arrests and expenditures of money, was only able to purchase or remove from circulation 4.97 pounds of low quality heroin for the entire calendar year 1970.

The largest single purchase recorded by the Undercover Unit during this year was one ounce, two grains of heroin at a cost of \$800.\* Following this exceptional purchase, the second largest buy cost \$85 (651). Thereafter with very few exceptions, the usual operation was clearly limited to purchasing a bag or two from street addicts, with rarely more than \$30 spent on any one purchase of heroin.

During the course of its investigation, the Commission received numerous reports from police officers which indicated a reluctance on the part of Police Department officials to authorize the larger amounts of money necessary to make more substantial or higher quality purchases of narcotics. This self-defeating limitation on the amount of "buy" money available for use by the undercover officers clearly represented an unnecessary hindrance to effective narcotics enforcement. On occasion, the need for adequate "buy" money became so acute, that federal authorities had to be introduced into certain investigations in order to supply the funds needed to purchase the larger amounts of narcotics necessary to effectuate the arrests of certain higher echelon distributors (721).

† Commission Exhibit #11.

\* This was the very special instance concerning the purchase of heroin from one Melvin Fischler, who received this ounce of heroin from Detective Joseph De Vito, a member of the New York City Police Department. De Vito, Fischler and a third partner were engaged in buying and selling heroin. See pp. . . *infra*.

It is a basic rule of police intelligence that the highest quality, or purest form of drugs is to be found at the higher echelons of narcotics distribution. As indicated, the narcotics purchased at these street level operations by the Undercover Unit are highly adulterated, with an average purity of only 4 to 12% heroin. Consequently, the arrests made as a result of the undercover buys, in very practical terms, could not correspondingly result in any appreciable inroads into the higher echelons of heroin being trafficked in New York City.

### *Effect of the Undercover Unit's Operations*

Arresting addicts and charging them with the felony of selling heroin is hardly the most productive way of attacking the narcotics problem or combatting the narcotics traffic. The meagre results of this system of low echelon enforcement must be weighed against the substantial amounts of manpower, time and money spent in the operational activities of the Undercover Unit of the Narcotics Bureau. The expenditure of this effort not only includes the use of undercover police officers, but the efforts of the field unit that initiates and covers the investigation and makes the arrest, the police laboratory that analyzes the contraband, and the overall burden on routine police administration. Certainly, as earlier indicated, the imposition placed on the already overburdened judicial and penal systems by this type of law enforcement can only frustrate rather than aid the attack on narcotics traffic.

Finally, consideration must be given to the demoralization and cynicism which attaches to giving indiscriminate and unjustified leniency to informants, particularly those informants who have not, in turn, responded with information significant enough to warrant the consideration extended to them by the police and the courts. Without minimizing the value of informants to law enforcement, as these informants or anyone else, who now deal in narcotics, are indiscriminately released back into the community without appearing to be made to account for their crimes, arrests consequently lose their value as a deterrent. Narcotics traffic may then appear to be an almost routine fact of life and the impression created is that those who deal in narcotics at the street or community level are seemingly impervious to the law.

### The Judicial Revolving Door

While the New York City Police Department does not maintain separate records of the disposition in court of cases made on an undercover sales to police officers, every indication is that the treatment afforded to these cases is in no respect different from other narcotics arrests (627-31).

As with most narcotics arrests, cases involving undercover sales are disposed of by plea, with the same resulting problems of inadequate sentences being imposed by the courts.\* However, by its singular nature, an undercover sale to a police officer, certainly more so than most other narcotics crimes, does not warrant indiscriminate leniency by the courts and prosecution. Correspondingly, certain factors peculiar to undercover sales merit careful attention.

(a) *The statutory mandate of a felony charge as a result of a "sale" of narcotics.*

The Penal Law of the State of New York (Sec. 220.35) defines a *sale* of narcotics as follows:

"A person is guilty of criminally selling a dangerous drug in the second degree when he knowingly and unlawfully sells a narcotic drug."†

Accordingly, any valid arrest resulting from an undercover sale carries the statutory mandate of a felony charge. If a defendant has transferred *any* amount of narcotics to an undercover police officer, clearly, by operation of law, a felony has been committed.

Furthermore, the statutory requirements of a "sale" (Penal Law Sec. 220(5)) do not require an actual transfer of money or other traditional form of consideration from buyer to seller. In this context, the term "sale" embraces *any* transfer or gift of a contraband narcotics item from one party to another, regardless of how the transaction occurred.

It is obviously the seller who introduces narcotics contraband into the community and is responsible for the havoc that is left in its path. Consequently, by establishing every

\* On occasion, undercover officers have even made buys from the same seller of narcotics on different operations. While these undercover officers take understandable pride in their ability to sustain their posture as narcotic addicts, there is also a disheartening effect at seeing the same individuals back to trafficking in narcotics shortly after previous arrests (627-31).

† Conviction of this crime is a class C felony carrying a potential 15-year maximum prison sentence.

sale as a felony, the intent of the Legislature was clearly to deter traffic in narcotics by charging the seller with the felony rather than the receiver. This is particularly so, since there is no statutory requirement that a specific minimum quantity of narcotics be "sold" in order to constitute a felony rather than a misdemeanor.\*

In this regard, it should be noted that cases involving "sales" of narcotics constituted 26.8% of all felony arrests in 1968, and 36.9% in 1969, and 39.5% in 1970.\*\* Although these figures include arrests made as a result of police observation as well as undercover sales, it is still apparent that neither the police, the courts nor the prosecution are giving sufficient emphasis to the abhorrent nature of the distribution and sale of narcotics. If law enforcement is to have any serious impact, it must be the non-addict sellers, rather than the lower echelon addicts, who bear the thrust of law enforcement's attack on the drug menace.

An undercover sale of narcotics to a police officer, presents in terms of logic, a fact situation which comes closest to being an irrefutable case for conviction. In most other crimes, the police officer's or witness' knowledge of the crime is limited to that evidence obtained through the elements of his own senses or rational thought, e.g., seeing a gun fired during a robbery, or concluding that an embezzlement of funds has occurred. In a sale of narcotics to an undercover officer, unlike other instances, the undercover officer is an actual *participant* in the criminal transaction, and knows for a certainty that a crime has been committed the instant he receives the contraband narcotics. Accordingly, from a purely evidentiary viewpoint, any indiscriminate leniency extended to those defendants apprehended as a result of an undercover sale to a police officer is particularly misguided and self-defeating.

In one striking example of the damaging effects of indiscriminate leniency, the Commission uncovered an instance where a female defendant in one county was arrested on four different occasions in a five-month period. Three of those arrests were as a result of separate undercover sales to police officers. This defendant was allowed to plead guilty to a class E felony charge to cover all of the arrests. (A class E felony

\* In *possession* rather than *sale* cases, there are requirements of quantity necessary to elevate the crime from a misdemeanor to the various degrees of felony (Penal Law, Section 220.15 *et seq.*).

\*\* See p. 40, *supra*.



carries a conviction lower in degree of penalty than that attached to any one sale of narcotics.) This defendant, who was not an addict, was thereafter sentenced to five years on probation, without spending any time in prison.

While out on probation and at large in society, this same defendant was again arrested for two separate sales of heroin to an undercover police officer. At the time of this fifth and last arrest, she was also arrested for possession of dangerous weapons (hand-guns) and attempting to bribe the arresting officer with \$5,000 in cash. The arresting officer, at the Commission's public hearing, characterized this defendant as a "wholesaler," dealing exclusively in "bundles" or packages each containing 25 glassine envelopes of heroin, which she sold to street dealers. At the time of the Commission's public hearing, this defendant was again at large on \$5,000 bail pending disposition of this last series of arrests, and, of course, any further charge for violating the terms of her probation (563-72).

This defendant subsequently "jumped" bail and failed to appear in court on the required date. As of this report she is still unable to be located by law enforcement authorities. Significantly, her bail, which, as indicated, was only \$5,000 (the amount of her attempted bribe offer) was clearly inadequate to insure her presence in court.

The personal frustration experienced by the men in NARCO as a result of incidents of this nature was described by Officer "B," a police officer in the undercover unit:

"By MR. SMIGEL:

Q. Now, Officer, there has been testimony earlier, during the course of this public hearing, about defendants or arrested parties who have made direct sales to undercover police officers. And these people have gotten lenient treatment from the courts. Probation, conditional discharge or some other similar form of lenient treatment. Now, going on to a philosophical concept, you worked uniform for awhile, didn't you?

A. A short period of time, yes.

Q. As a uniform police officer, if you see a crime committed, even if you are right next to it, there's still

the element as to what you saw, your senses, your vision, you are relying on your senses?

A. Yes, sir.

Q. If you are an undercover officer participating in a sale, you are actually a participant in the sale, you were there, you were a party to the transaction.

A. There is no doubt, yes, sir.

Q. So in a sense that is almost a—that is an airtight case?

A. The way we look at it, yes, it is. You couldn't get any closer to it.

To us, in undercover, it's the perfect crime. In other words, when he hands me those glassine envelopes with a white powder, the laboratory says it is heroin, that's it. In other words, it should be a closed case. You have him red-handed, so to speak. It's cut and dry.

The situation—this is where the problem comes in. This is why a lot of people are very frustrated by this. If you are so close to a sale, and you are part of it, you are there—I know he's guilty, nobody—I don't care if I go to the Supreme Court, nobody is going to tell me he isn't. Whether he gets out from court in technicality or whatever, that's fine, because that has to be the law and so forth. *But as far as I'm concerned, he's guilty and I know he's guilty, and I'll take it to my death, because there is no way to change it. He did hand me the glassine envelopes.*" (642-3) (Emphasis added)

(b) *Leniency on sentences after trial.*

The disposition of meaningless sentences is complicated by one further factor in cases involving the sale of narcotics to undercover police officers. In an undercover sale to a police officer, there should be an overwhelming inducement to the defendant to enter a plea of guilty. As indicated above, the defendant is confronted with an extraordinary burden in establishing his innocence in the specific situation of an undercover sale to a police officer.

Notwithstanding these factors, both of the sergeant supervisors of the Police Department Undercover Narcotics Unit indicated that on those occasions where the issue of guilt or innocence relating to a sale of narcotics to an undercover police officer was disposed of by trial in open court, the sentences imposed by the Court were not substantial enough to have a deterring effect on narcotics traffic or justify the time expended by the Court, police and prosecution (Pr. H. 3378-9; Pr. H. 1481).

In theory, it is, of course, questionable whether a defendant should be penalized with a more severe sentence because he has elected to try the question of his guilt in open court rather than plead to charges. However, the special instance in the trial of a sale to an undercover police officer, where the undercover officer and, perhaps, the informant are required to disclose their identities and thereafter compromise either their personal safety or future value to law enforcement, should particularly militate against any misguided leniency by the courts.

## VI. POLICE CORRUPTION

### A. Background and Introduction

One of the factors contributing to the breakdown of narcotics law enforcement in New York City was the corruption of members of the New York City Police Department. As we have tried to point out in the preceding sections of this report, the operations of NARCO were ineffective even in the absence of corruption, because of internal police policies (i.e., the quota system) and the inadequate resources allowed NARCO (e.g., equipment, "buy" money, etc.). With the added ingredients of corruption, local enforcement became a tragic farce.

Police corruption may take a variety of forms. The classic example and simplest type to envision is the acceptance by a police officer of money or something of value to overlook a violation of law. Another example is the situation where the officer cannot avoid arresting the individual offering the bribe and so will make the arrest and then tailor his court complaint or testimony in a way designed to result in a dismissal of the charges or an acquittal. Any number of other varieties of corruption can, and do, occur. These include "tip-offs" about police investigations and other improper disclosures of con-

fidential information to organized police protection of illicit criminal conduct, as in the case of "the pad" in gambling.\*

In narcotics work, the substantive crimes are sale and possession of drugs. In making these arrests, police officers are necessarily dealing with a highly valuable and negotiable commodity—the drug itself. The profits of this trade are fantastic, as has already been noted.

These facts should have alerted the New York City Police Department to the need for vigilant supervision of its NARCO members and close scrutiny of narcotics reported seized in the course of an arrest or search. This care was not exercised and the result was a mushrooming involvement by police officers in narcotics corruption.

Internal police policies and administrative neglect were not unrelated to corruption. The Department's blind insistence on a quota of monthly arrests, coupled with its failure to provide its men with the tools needed to make good arrests had to lead to corruption. Police officers were given ample cause to doubt their Department's sincerity about narcotics law enforcement through the constant reminder that all that mattered was the meaningless facade of the "numbers game" and superiors didn't act as if they cared whether convictions resulted from arrests or who the defendants were. Men were given loose rein, inadequately trained and equipped, and actually had to make an "appointment" with superiors to insure their availability for police raids. Given this climate, corruption was inevitable and almost invited.

The quota system stimulated "corner-cutting" and the lack of supervision proved to the men that they could get away with it. When NARCO officers were unable to get their monthly "collars" legitimately, some decided to help things along. The result was "flaking" and "padding." "Flaking" is the planting of narcotics on an individual who has none, and "padding" is adding to the amount a defendant does have. Some officers rationalized this practice by saying they only "flaked" individuals they "knew" were involved in narcotics but who didn't happen to have it in their possession or on their person at the particular time they were apprehended. The next step, of course, is doing it to an individual a NARCO man "believes"

\*A formal arrangement whereby criminals make regular payments of money, in fixed dollar amounts, to police officers for protection. The officers included in such arrangement are described as being "on the pad."

is dealing in narcotics and before long these distinctions may become blurred and finally, irrelevant.

An obvious question which is corollary to any allegation of "flaking" or "padding" is where do police officers who engage in these practices obtain such narcotics. The answer generally is from prior seizures where some narcotics is retained by the officers. This practice of "holding back" narcotics has been common and widespread among NARCO officers for many years. The narcotics so retained is not only used for "flaking" defendants or "padding" the amounts found. Officers also give such narcotics to their addict-informants for their personal use, as payment for information. This, too, has been a common practice. Finally, narcotics "held back" by NARCO officers goes back into the illicit market in another way, through the direct participation of these officers in the actual sale of such narcotics. By this final step, this officer becomes the most dangerous narcotics criminal of all. Unfortunately, more and more officers have taken this step.

Before relating the patterns and examples of corruption which the Commission uncovered during its investigation, a preliminary explanation about the Commission's objective in this area is appropriate.

The Commission is a fact-finding, investigative body with no prosecutive authority. Where it uncovers evidence of a crime, it will refer such matters to the appropriate district attorney. The Commission's role is broader in scope than focusing on particular individuals or incidents, and extends instead to an examination into general conditions which it will illustrate through individual examples. The Commission's examination of corruption in narcotics law enforcement was therefore not designed to make cases against particular police officers but rather to determine if corruption, as a serious condition, existed, and, if so, to what extent. The Commission was interested in the reasons for corruption, what was being done about it, and whether improvements could be made in its prevention, or more realistically, reduction, as well as in the techniques of its detection. Within this frame of reference, history and background become just as important as contemporary events, and perhaps even more so. It should be quickly noted, however, that in the course of its work, the Commission did discover evidence and

information of corruption involving active members of the NARCO Division which it referred to the appropriate officials.\*

In order to study the patterns and development of corruption in narcotics enforcement, the Commission undertook a review of completed cases involving police officers, as well as complaints and pending departmental investigations. This information covered the three-year period of January 1968 through January 1971. In addition, the Commission obtained evidence and testimony of corruption from current NARCO officers questioned at private hearings, as well as from other sources. The results revealed that significant corruption existed in narcotics law enforcement in the New York City Police Department and that this condition seriously affected the police effort in this vital area.

### ***B. A Female Addict, Her Boyfriend and the Cops***

The Commission's disclosure of the nature and extent of the corruption problem, began with the tale of a female addict, her boyfriend and NARCO officers. The story unfolded at the public hearing on April 6, and was related by the principal actors themselves, as well as through police records and other testimony. The case was among many contained in official police reports which the Department made available to the Commission during our investigation. Although the story had its genesis in 1967, the final chapter had not yet been written by the time of the Commission's April 1971 public hearing.

Diane was an addict who was hooked on heroin. Her boyfriend, Mr. P,\*\* entreated her to enter a hospital or some treatment program, but she was not willing to do so. He discussed the problem with her mother and they agreed that Diane would never voluntarily consent to treatment. They therefore decided that Mr. P would notify the Narcotics Division when he knew Diane was in possession of drugs so that an arrest might be made, and compulsory commitment to an addiction treatment center ordered (205). Mr. P contacted the Narcotics Division and arrangements were made to pursue this course of action. During the summer of 1967,† Diane was arrested for illegal

\* See Section "Events Subsequent to the Hearing."

\*\* Mr. P was subpoenaed by the Commission and testified at a private hearing. When he testified at the public hearing, he was identified only as Mr. P although his true identity is known to the Commission.

† The Commission did not wish to cite the exact date of the arrest at the public hearing.

possession of heroin. The arrest was made by Patrolman T† of NARCO, acting upon a tip from Mr. P. The first stage was set.

Mr. P was asked about events subsequent to Diane's arrest:

"Q. What happened subsequent to her arrest by Patrolman T?

A. Patrolman T started to call her and see her after she was out on bail. Shortly thereafter I was informed by her that Patrolman T was supplying her with narcotics for her personal use.

Q. Are you saying that the police officer, the member of the Narcotics Division who arrested her, was then supplying her with narcotics?

A. That is correct.

Q. Are we talking about heroin?

A. Yes.

Q. Did she tell you this?

A. Yes, she did.

Q. Did she show you heroin she had received from Patrolman T?

A. Yes, she did." (207).

When Mr. P discovered that Patrolman T was supplying Diane with heroin to support her habit, he telephoned him at NARCO (207). He told the officer that what he was doing was wrong and that he was hurting Diane rather than helping her, and that her arrest was effected for that purpose (207). Patrolman T said he would meet with Mr. P and Diane that evening to discuss the matter. Mr. P said:

"A. . . . The meeting was arranged for that evening in Diane's neighborhood.

We subsequently, that evening, met, at which time he beat me up and told me to mind my own business or he'd blow my brains out.

Q. We are talking about Patrolman T?

A. That is correct.

† Patrolman T was also questioned at a private hearing and his true identity is known to the Commission.

Q. Did he deny that he was supplying her with heroin?

A. No, he freely admitted it." (208)

After this incident, Mr. P kept out of Patrolman T's way but continued to see Diane. He learned from her that she was still receiving heroin from Patrolman T "either daily or every other day" (208) and that now another police officer, who was a friend of Patrolman T's, was also supplying her heroin for her habit (209). This second officer, Patrolman R, also gave her hypodermic needles with which she could "shoot up" (209). Involvement of other rogue cops went still further. On one occasion, Diane gave Patrolman T information about a pusher and an arrest resulted. While this pusher was being booked, Diane and another policeman burglarized the pusher's apartment. Mr. P was questioned about this at the public hearing:

"Q. In other words, Diane gave information to Patrolman T leading to the arrest of the pusher, while the pusher was being booked, taken away, she and another officer went up to his house and burglarized his house?

A. That is correct.

Q. How do you know she did that, apart from what she told you?

A. She gave me a ring that she got from the burglary." (216)

The cast of characters did not end there. As these incredible events unfolded, a new development was brought to Mr. P's attention by Diane. Diane contacted Mr. P one morning and in terror, related that she had a meeting with Patrolman T the night before and that he had another man with him. T introduced this other man to her as "Sally G," and told Diane that he was "a gangster" (209). They then gave Diane 100 bags of heroin and told her "to go out and sell it" (210). Diane was warned to do as she was told, "or else":

"A. . . . They also told her that she was to do as she was told, or else they would take care of her kids. She had kids by a former marriage.

Q. What did they say would happen to the kids?

A. They said she would never see them any more, unless she did what she was told, they would throw lye in

her face, probably their face, I don't recall the exact words." (210)

When Mr. P heard this story, he contacted the Police Department. He went to the Civilian Complaint Review Board and from there was referred to the Internal Affairs Division (IAD). IAD lost no time in verifying Mr. P's information. The first step was to "wire" Mr. P so that he could visit Diane and record her story. He also had her show him the 100 bags of heroin. Mr. P reported back to IAD, and based upon this information, Diane was arrested for illegal possession of the heroin. The purpose of this arrest was to enlist Diane's help against the rogue cops. Mr. P contacted Patrolman T, informed him of Diane's arrest and told him it was all Patrolman T's fault. They then met in front of the courthouse, and under the close observation of IAD, went to a bail bondsman, and from there to the Women's House of Detention to bail out Diane (213-4). Mr. P also had the balance of the 100 bags of heroin, and returned this to Patrolman T. As they were driving in Patrolman T's car with Diane, IAD officers stopped them and arrested Patrolman T.

These events were described at the public hearing by Mr. P and later confirmed by Patrolman T himself. But more shocking revelations were still to come. At this stage in his testimony, Mr. P was shown a photograph which he recognized as "Sally G." He explained that he had been with Diane in court on one occasion when she saw him and pointed him out:

"Q. I would now like to return to the mysterious Sally G. Did there come a time when you learned the true identity of Sally G?

A. Yes.

Q. I would like to show you a photograph and I ask you whether you recognize this individual (indicating).

A. Yes, I recognize him.

Q. Is that Sally G?

A. Yes, it is.

Mr. Fisch: Mr. Chairman, for the record, I have just shown the witness a photograph, and he has identified that photograph as Sally G. It is a photograph of a member of the New York City Police Department, a

current member of the New York City Police Department, who at one time had served in the Narcotics Division?

Q. Now, did you have any occasion to, yourself, see Sally G and learn that he was a member of the Department.

A. Yes.

Q. Can you tell us about that?

A. Once in court while Diane was in court on her case I saw him there. And, of course, during his departmental trial at the Police Department Headquarters.

Q. Did Diane tell you that this, in fact, was the man?

A. Yes." (216-7)

And so, yet another member of the New York City Police Department was revealed as a principal participant in the scheme to have Diane sell narcotics. Moreover, at the time of the public hearing, "Sally G," who was really Patrolman B, was still a member of the Department.

After the arrest of Patrolman T by IAD, Diane "disappeared for a couple of days" (218). She later told Mr. P that she had been "kidnapped and held" by either Patrolman T or Patrolman B (Sally G) or both (218). What actually did happen was explained by Supervising Assistant Chief Inspector Joseph McGovern, Commander of the IAD and by Patrolman T himself.

Chief McGovern testified at the public hearing, that following Patrolman T's arrest, Diane was taken outside of the City of New York to a house in New Hyde Park and kept there for two days. She was taken there by Patrolman T and two other men, one of whom had a criminal record. Two cars were used, one transporting Diane and the other carrying other men. The home in which she was kept was owned by another individual, a friend of Sally G (Patrolman B). This friend had a criminal background and, in fact, was once arrested after a plane ride to Florida with Patrolman B. He had been observed, by the stewardess, to be in possession of a hidden weapon, and the captain contacted the F.B.I. who awaited the plane's arrival. At the time of this incident, Patrolman B was a member of NARCO, and when the Department learned who his traveling companion was and what had happened on the flight, Patrol-

man B was transferred back to uniform. This was the individual in whose house Diane was kept. During Diane's stay there, a man sat in a car outside the house and remained there. Diane eventually was able to get free and she and Mr. P testified at Patrolman T's criminal trial. Patrolman T was convicted and was sentenced to a prison term of one year.

At the time of the Commission's public hearing in April 1971, Patrolman T had completed his jail term and was working as a laborer. Mr. P had married and he, too, was employed. Diane was nowhere to be found. The Commission was greatly surprised, however, to learn that Patrolman B was still a member of the New York City Police Department. He had been brought up on charges and both Diane and Patrolman T testified at his departmental trial.\* In addition to their testimony, a raid of Patrolman B's locker by IAD shortly after Patrolman T's arrest, resulted in the discovery of three guns and over fifty pieces of narcotics contraband which had been confiscated during a preceding three-year period and improperly retained by Patrolman B (272). In view of the weapons found in Patrolman B's locker, it is interesting to comment on the background of the criminal with whom he had traveled to Florida some years earlier, and whose assistance he obtained in removing Diane from New York City. Chief McGovern described this individual's background:

"Q. The other individual you learned had been associated with this officer, can you tell us something about him, what was his background?

A. Mr. G?

Q. Right.

A. Mr. G has a criminal record going back to many years before. At the time of his association with Patrolman B Mr. G had been involved in a series of armed robberies and he had been suspected of selling or providing police shields, phony police shields and guns to other people for this robbery of bookmakers and other people involved in unlawful activities. He served something like twenty years in States prison for a similar crime, many years before.

\* Chief McGovern testified that the District Attorney's office which had jurisdiction, felt there was no basis for a criminal case against Patrolman B (276).

Q. He had supplied and it had been established that he had, in the past, supplied guns and police shields to people who use them to impersonate officers and commit holdups, is that right?

A. Yes, sir.

Q. We now have two individuals with criminal backgrounds that this Patrolman B had been associated with. And an interesting common thread is that both had guns on them or were dealing with guns, is that correct?

A. Yes, sir." (268-9)

Departmental charges were filed against Patrolman B by the New York City Police Department prior to the Commission's investigation. He was found guilty by the Trial Examiner after a departmental trial, and dismissed from the police force shortly after the Commission's public hearing.

Another witness at the public hearing was (former) Patrolman T himself. Patrolman T corroborated, albeit reluctantly, all of the events which have been described above and which had been elicited through the testimony of Mr. P, Chief McGovern and Police records. Patrolman T's testimony is extremely significant in many respects. It should be noted that the events which he described as personal experiences occurred in 1967 and 1968. These experiences ran the gamut of "holding back" narcotics, giving such narcotics to informants for their personal use and finally giving it to informants to sell. Although these corrupt practices were brought to the Department's official attention when Patrolman T was caught by IAD, apparently little was done to determine how widespread this corruption was, and to what extent it had contaminated other members of the force. This conscious neglect by the Department and its failure to clean house were unmistakably responsible for the corruption which the Commission found in 1971.

Patrolman T admitted that he gave heroin to Diane (224). At first, it was for her own use and then it was given to her for another reason:

"Q. Did you ever give narcotics to Diane?

A. I did.

Q. For what purpose?

A. She's supposed to sell it in the street for me." (224)

He was asked where he got the heroin he gave to Diane:

"Q. Can you tell us where you got the heroin to give to Diane?

A. I received it from another patrolman.

Q. Before we get to the other patrolman, did you have narcotics or were you able to get narcotics in any other manner?

A. I was.

Q. Can you tell us how that was obtained, how such narcotics was obtained?

A. We obtain it in the street, taking it off a dope addict without making an arrest.

Q. Can you repeat that, please?

A. You take it off a dope addict in the street without arresting them.

Q. You meaning members of the Narcotics Division?

A. Yes.

Q. Was that a common thing in the Narcotics Division?

A. That's where I learned it from.

Q. You learned it from other members of the Narcotics Division?

A. Yes.

Q. Did you, in a private hearing, identify by name the partner who broke you into the Narcotics Division?

A. I did.

Q. Did that partner, whose name we have in private hearing testimony, show you how this was done?

A. He did.

Q. You saw it yourself?

A. Yes.

Mr. Fisch: I would like to mention, Mr. Chairman, that the former partner is still a member of the New York City Police Department.

Q. Did you ever do it yourself?

A. Yes.

Q. Can you tell us how regularly this was done and for what purpose it was done?

A. The reason being, we worked on an expense account. Your expense account was according to the amount of your arrests. The highest expenses you could obtain was \$100. which wasn't nearly enough to supply your informants. So rather than money you would give him drugs.

Q. So you say your expense account was related to the arrests?

A. Yes.

Q. Was it a regular dollar—

A. Yes. Ten dollars for a felony and \$5 for a misdemeanor." (224-6)

\* \* \*

"Q. You said you would get drugs from people you knew had them and you would take it from them in the street.

A. Yes.

Q. Are you talking about addicts, or did you also mean to include people you knew were in violation of narcotics laws by reason of illegal possession or possible sale?

A. Anybody with narcotics in general was.

Q. Anyone who had narcotics was fair game?

A. Yes.

Q. Would you say that this practice was generally known not only by the patrolmen and detectives, but by your superiors?

A. I would.

Q. And on what basis do you make that statement?

A. Being an ex-narcotics officer, and knowing the routine of the office.

It was pretty general knowledge what went on in the streets." (227-8)

\* \* \*

"Q. In addition to obtaining narcotics in the fashion that you have just described, were there ever occasions where you would make an arrest but hold back the narcotics you seized?

A. That is true.

Q. Was that also a practice that was common within the Narcotics Division?

A. It was.

Q. Can you describe what we are talking about here, by holding back?

A. If you make an arrest on the street, an addict had fifty bags, you would turn in twenty-five and keep twenty-five, or whatever you felt was sufficient to get a felony collar.

Q. And for a sale, of course, any quantity would represent a felony, is that correct?

A. Yes, sir, that is correct.

Q. So it made no difference to the officer, or his superior, whether you arrested a man for a sale of one bag or fifty bags.

A. That is true.

Q. Is that correct?

A. That is correct." (229-30)

Patrolman T testified that a quota system existed when he was a member of NARCO and if a man did not make the required number of arrests, he would be transferred out of the unit (229). The quota was arrests, not convictions and he could not recall a superior officer ever speaking to him about the quality of his arrests (230).

With regard to the narcotics furnished to Diane which he had obtained from "another patrolman," Patrolman T stated that this came from Patrolman B (231). He explained that he merely told Patrolman B he wanted narcotics and Patrolman

B gave it to him. Patrolman B asked no questions "because it was a pretty regular thing for one officer to give narcotics to another officer" (233). Commission Chairman Paul J. Curran asked Patrolman T why he had selected this particular officer:

"The Chairman: Why did you single Patrolman B out with the request for narcotics?

The Witness: I can't answer that. I couldn't put my finger on why I singled him out, but I knew him better than the rest of the unit.

The Chairman: You assumed that he would have narcotics?

The Witness: Yes.

The Chairman: Is it your point that you might as easily have gone to A or C and made the same request?

The Witness: I guess it is possible.

The Chairman: And received narcotics?

The witness: I guess it could be done." (233)

The amount received from Patrolman B was "100 bags" which Patrolman T then gave to Diane to sell (235).

Patrolman T testified that he "might have" introduced Patrolman B as "Sally G," but couldn't remember whether he told Diane he was a gangster, although he didn't deny saying that (235). "Sally G" did threaten Diane and the threat "might have" been that he would kill her or her children or throw lye in their faces if she did not do as she was told (236-7).

After Patrolman T's arrest, he met with Diane:

"Q. Can you tell us for what purpose and what happened?

A. She was going to testify in my behalf in court that the drugs didn't belong to me.

It was suggested that she be put some place to be made available for her appearance in court.

Q. You say she was supposed to testify that the drugs did not come from you, is that correct?

A. Yes.



Q. Which was not the truth, correct?

A. Right." (242)

Patrolman T admitted that he went with Diane to New Hyde Park, and that Patrolman B went along in another car (243-5). He "might have" told her it was necessary that she remain there until after the Grand Jury hearing, but Patrolman T insisted she was free to leave (244). In addition to taking these precautions against Diane, both Patrolman R and Patrolman B ("Sally G") spoke to Patrolman T. Patrolman R, who had also supplied Diane with heroin and hypodermic needles "discussed" with Patrolman T the fact that he didn't want to be implicated (253). However, an unexpected search of Patrolman R's locker by IAD also disclosed drugs and hypodermic needles. Patrolman T was asked about that:

"Q. When you were questioned at a private hearing, and we spoke about Patrolman R, you said that they found, the Police Department, in searching his locker had found needles and drugs.  
Do you remember that?

A. Yes.

Q. And you said something else, and I wonder whether you recall that?

A. No, I don't.

Q. If they broke into ten other lockers they would have found the same thing?

A. That is a fact.

Q. That is a fact?

A. Yes, that is a fact." (257-8)

Patrolman B ("Sally G") also contacted Patrolman T after the latter's arrest and communicated to him his desire that he, Patrolman B, be left out of it, Patrolman B didn't bother with subtle talk in making his wishes known to Patrolman T:

"Q. After your arrest, did Patrolman B ever threaten you or your family?

A. I recall an instance where he said something like that.

Q. What did he say?

A. Something about injuring my wife and children.

Q. Did he threaten to kill them?

A. I just don't remember exactly what he said, what kind of violence it would be, but I remember an instance where he mentioned something like that.

Q. Did he mention something about throwing lye in their faces?

(The witness and his counsel confer off the record)

Q. You would certainly remember that.

A. He made a threat. Just to what, I don't recall. Just the accompanying words of what he would do, how he would go about it, I don't remember it.

\* \* \*

The Chairman: What did you understand him to be threatening you?

The Witness: I understood it to be just a threat, this is your case, you handle it. He never said, keep me out, this will happen because of this.

The Chairman: This was your understanding of why he was interested in it?

The Witness: That is my understanding - how I took it.

The Chairman: That he wanted to be kept out?

The Witness: Yes, I would say so." (255; 256)

### *C. Varieties and Patterns of Corruption Bribery and Extortion*

No report, text or commentary on narcotics is truly complete without some observation on the utterly fantastic profits made in the illicit drug market. The single kilo of heroin purchased in Europe for \$3,500, will bring \$200,000 to \$220,000 by the time it is fully adulterated and ready for the street addict (185). With so much at stake financially, plus the long

jail sentences provided by law which theoretically await convicted pushers, it follows that large sums of money are available for the bribery of police officers. Although one can almost take judicial notice of this logical truism, the Commission's review of three years of police corruption cases, plus testimony elicited during its current investigation, corroborated this fact.

One NARCO officer assigned to SIU testified that he had once been offered a bribe of \$50,000 which he refused (Pr. H. 927). In another situation, an informant told a different NARCO patrolman of a \$70,000 payment made to a police officer to release an individual caught with several kilos of narcotics (Pr. H. 732). Yet another officer, who was in plainclothes at the time, was heard describing his eagerness to get assigned to NARCO because, according to him, that was where "the big money" was (Pr. H. 600).

The size of a bribe offer depends upon the importance of the defendant, quantity of drugs involved and other factors. NARCO field officers, operating at a lower enforcement level, are not likely to be confronted with the type of offers which potentially may be made to SIU. But still the offers are made and made frequently. A number of NARCO men conceded this point, and one stated that if you get a defendant "good," practically the first word out of his mouth is to talk "deal."

Some corrupt policemen have gone beyond making just their own "deal" with defendants and have implicated other officers. And the intrigue may extend beyond one or two police officers, as evidence given at the Commission's public hearing disclosed.

One of the witnesses who testified was a former NARCO officer. He was dismissed from the force after an assistant prosecutor reported to his superior, the District Attorney, that this officer had attempted to bribe him on behalf of a narcotics defendant. The District Attorney instructed his assistant to pretend he was amenable to the bribe offer in order to obtain additional evidence. These instructions were followed and the matter was subsequently presented to the Grand Jury which then indicted this officer and another policeman. They then both pleaded guilty to reduced criminal charges and left the Police Department. What happened was this:

A man with three prior felony convictions was arrested on a narcotics charge by Officer A. The defendant had a large quantity of drugs in his possession and the case against him was solid. Officer A subsequently saw Officer B who had once

served with him in NARCO. Officer A proceeded to describe the arrest and told Officer B that the defendant could not afford another conviction because he was a 3-time loser (289) and that the defendant was "very good . . . good all the way" (290). Officer A wanted an opportunity to testify before the Grand Jury in such a way that the defendant would "walk" (290). However, Officer A did not know the Assistant District Attorney handling the case well enough to approach him and thought that Officer B, who did know him, might be willing to do so. Officer A promised Officer B that if everything worked out, he, Officer A, would "take care of" him (292). Officer B went to the District Attorney's office and waited until the end of the day so he could see the Assistant Prosecutor "privately" (292). When he mentioned the arrest made by Officer A, the Assistant District Attorney remarked that it was "a good arrest" (292). Officer B told the prosecutor that he had run into the arresting officer (A) who asked him to speak to the Assistant about the case. When the Assistant District Attorney asked "what about?" the officer replied that the arresting officer "seems to think the guy is very good, and he feels he can't come to you and talk about the guy, so he asked me to come over" (293). The District Attorney pressed him further, asking what it was about the case he wished to discuss, and Officer B replied "according to the officer, the guy is good and he wants to—you know, he doesn't want to go to jail" (293-4). The Assistant District Attorney suggested the arresting officer himself come over, and when this meeting broke up, he reported it to his chief. At a subsequent meeting between Officer B and the Assistant, at which time the conversation was being recorded, the officer suggested that the District Attorney and the others "get together and take care of it," and when asked how much Officer A was going to be paid, he replied "I don't know because the lawyer will handle everything" (294). When Officer B was subsequently questioned about these events by the Commission, he was asked about that remark that the lawyer would "handle everything."

"Q. Did that include you?

A. No, he didn't mean me.

Q. Did the other officer say he would take care of you himself?

A. Yes." (295)

As a result of the above events, both officers were indicted for attempted bribery and pleaded guilty to other criminal charges and were dismissed from the force.

Other examples and testimony of bribery of NARCO officers were presented at the public hearing (295; 323; 447; 481-3).

The other side of the bribery coin is extortion. In this instance, the officer is the moving force and extracts money or something else of value (e.g. narcotics) from an individual, in exchange for not taking some police action.

One of the witnesses at the public hearing was (then) Inspector Donald F. Cawley, who was Commanding Officer of the Inspections Division in the office of the First Deputy Police Commissioner.\* Inspector Cawley had been designated by the First Deputy Police Commissioner William H. T. Smith as the liaison officer with the Commission on the subject of police corruption.

Inspector Cawley testified that NARCO members and other New York City police officers engaged in narcotics enforcement work had taken bribes and extorted money and narcotics from narcotics violators in order to avoid an arrest (323). When asked to cite examples, he mentioned two cases involving a total of ten different members of the same NARCO Field Group. Both cases occurred in the same year, 1969.

In the first case, three police officers contacted a store-keeper and stated that unless \$6,000 was paid, they would arrest this individual's daughter-in-law on a narcotics charge, with the further threat that if that happened, her children would be taken from her and sent to a foundling home (325). The man paid the officers \$6,000. Approximately two months later, a second approach was made to the store-keeper, and this time the officers demanded \$12,000. The store-keeper told them to come back in a day or so, and in the interim, contacted the police. Marked money was given to him, and his shop was put under surveillance. At the appointed time, two officers entered the store, and one waited in a car parked nearby. As soon as money was exchanged, the arrest was made. Inspector Cawley explained:

"Q. All right. Will you continue?"

\* During the summer of 1971, following the Commission's public hearing, Donald Cawley was promoted to Chief of Patrol.

A. Yes. And when the money was transferred the superior, one of the superiors in the store, then placed the officer under arrest.

Q. All right. Did you learn of the identity of the officers who had been there on the first occasion?

You said the first time there were how many, three?

A. Three the first time.

Q. And \$6,000 was extorted?

A. Right, sir.

Q. And on the second time there were two officers coming by?

A. Yes.

Q. Were they two of the three who were involved the first time?

A. At least one of the two was. I am not certain about the second.

Q. Was the complainant and the person who turned over the money able to identify other officers which brought the total to six?

A. He was able to identify the other officer in the car. He, too, was placed under arrest and at some point in time, frankly, I am not as conversant with the timetable as the other four.

Q. But these were all members of the Narcotics Division, and all members of the same field team, were they not, sir?

A. That is correct, sir." (326-7)

Inspector Cawley then related the other 1969 case involving the same Field Group. Two men, claiming to be Detectives conducting a narcotics investigation, entered the premises of a narcotics suspect who was also an addict. They searched his apartment, found \$1200 and some narcotics and walked off with both. The very next night, there was a knock on the door, and two other men claiming to be police, entered the apartment. They searched the premises but found neither money nor narcotics. They then threatened the tenant and his wife with an

arrest and so the woman gave them \$900. They were apparently not satisfied, however, and said they would return in a few days (Pr. H. 2291-2). At this point, the complainant went to the police. He was able to provide a description of the automobile which these men used, and because it was a foreign car, it was easily traced to a particular member of that NARCO Field Group. The complainant identified the owner's photograph, and that of his partner and finally photographs of the remaining two officers. In addition, an entry in the memo book of one of the officers recorded that they had been to the complainant's apartment on the date in question, but no evidence of any violations of law had been observed. These four officers were also arrested, bringing to a total of 10 men who were discovered to have extorted money from narcotics suspects. All men were members of a single NARCO Field Group and these incidents occurred within the same year.

#### *Interstate Transportation of Narcotics*

Another witness at the public hearing was Supervising Assistant Chief Inspector Joseph McGovern, who for many years had commanded the Police Department's anti-corruption unit, known as the Internal Affairs Division (IAD). Chief McGovern, together with Inspector Cawley, were quite candid in describing how serious the corruption problem was, and both gave numerous examples of various types and categories of corruption.

Reference has already been made to police officers becoming personally involved in supplying narcotics to informants and to others for sale on the open market. A later section describes how deeply and directly one officer participated in buying and selling narcotics, and providing armed protection while his partners transacted business. Numerous cases are contained in police records of such practices, and stories abound among NARCO members of other officers having done the same thing without getting caught.

Chief McGovern mentioned a case where a police officer was bringing large quantities of heroin to Boston, Massachusetts for sale there:

"By MR. FISCH:

Q. We were talking about an officer who was involved in interstate trafficking.

A. Yes, sir.

Q. A member of the New York City Police Department?

A. He was, yes, sir.

Q. Was he a member of the Narcotics Division?

A. No, sir.

Q. Can you tell us how you learned about this case?

A. Yes, sir.

Another law enforcement agency, the Federal Bureau of Narcotics and Dangerous Drugs conferred with our office and advised us that they had information that a patrolman or a suspected patrolman at that time, who was assigned to the TPF, the Tactical Patrol Force, was making trips to Boston and selling substantial quantities of heroin to a buyer up there, for distribution. This would have been in June of 1969 we first became aware of this—1969 we first became aware of this. This was a Patrolman E. Patrolman E had been appointed to the Department in April of 1969 and he did—he was assigned to the Tactical Patrol Force until the spring of the following year, at which time he was transferred to a Bronx precinct.

Q. Perhaps without the background, if I may, Chief, help you along.

You learned that he was bringing narcotics in large quantities or significant quantities to a man in the business of selling narcotics?

A. That's correct, sir.

Q. He was not bringing it to a personal friend for personal use?

A. No, sir." (278-9)

Acting upon this information, plans were made for Federal authorities to make an arrest of this officer in Boston. They learned when the next shipment was due, and arrangements were made to observe the actual meeting and transaction between the buyer and this seller—Patrolman E. However, Patrolman E's car had mechanical difficulty and so he sent a

female courier in his place (280). Rather than arrest her, it was agreed that efforts were to be directed at Patrolman E. Accordingly, a Federal informant and other undercover personnel were employed and the investigation was pursued against Patrolman E in New York City. Patrolman E introduced the undercover agents to narcotics sellers in New York City from whom they purchased drugs. The investigators were still waiting to make an actual purchase of drugs from Patrolman E, when the unexpected happened: Patrolman E was arrested by a Police Sergeant for an attempted robbery of another narcotics defendant. Chief McGovern stated that the entire package was then presented to a Grand Jury:

"Q. Did there come a time when this matter was pursued locally?

A. Yes, sir.

Q. Can you tell us briefly how that was done?

A. Undercover people were brought from Boston who had some knowledge of this man. They came to New York City and they attempted to make buys from him. And he then introduced the buyers to other people from whom actual buys of hard narcotics were made. This happened on two occasions, and the investigation was to continue so that an actual buy could be made from then Patrolman E. However, in the interim, and unrelated to our investigation, a uniformed Sergeant, who was assigned to narcotics control within a precinct on the upper west side of Manhattan, apprehended our Patrolman E while he was off duty for an attempted robbery of another narcotics man. And on apprehension he was found to have narcotics with him. At that point he was placed under arrest by the Sergeant and, of course, he was suspended.

This brought to a temporary halt the undercover buy operation. However, the whole package was brought into the local court, it was all presented to a Grand Jury in New York County, both the buy operations and the arrest by the uniformed Sergeant. Subsequently Patrolman E was convicted and dismissed from the Department. And as far as I know he's serving time now.

Q. This was a rather recent thing, wasn't it?

A. Yes, sir. He was convicted and dismissed in November of 1970." (280-1)

Patrolman E was interviewed in person by members of the Commission staff in March 1971. He stated that based upon conversations he had had with numerous police officers, it was his understanding that they were involved in narcotics traffic. He also stated that some prison inmates claimed that police officers had been their sources of supply for narcotics.

#### *Association with Narcotics Criminals*

One police officer actually shared an apartment with a notorious narcotics criminal and had been living with him for about eight months (332). Inspector Cawley testified about the case at the public hearing, and other information was gathered from police records and from other witnesses at private hearings.

The drug dealer was a wholesaler in the heroin trade, who "cut" about five kilos of heroin per week, and who dealt directly with organized crime figures. He was an important "Lieutenant" in a major heroin operation in Harlem, and his transactions crossed state lines. It was established that he had narcotics business in Pennsylvania, New York and other states. The police officer knew and had been a friend of this criminal for over five years. This open association was not discovered by the New York City Police until the criminal was murdered in Pennsylvania. The Pennsylvania State Police undertook an investigation of the homicide, and came to New York to pursue certain leads. They, together with SIU men, went to the criminal's apartment and found this Police officer there. The Pennsylvania State Police recognized him as an individual they had seen the day before in the apartment of the murdered criminal's grandmother. When they had asked him the day before if he knew the victim, the officer stated that he had not (766). A search of the apartment which the patrolman had shared with this multi-kilo heroin wholesaler disclosed glassine envelopes and traps apparently used for narcotics (768-769).

The departmental specifications against the police officer included charges that he not only knew and lived with this individual who had a criminal record, but that he knew of his

involvement in narcotics and had observed the criminal in unlawful possession of a revolver. He was also charged with having permitted the criminal's mother to enter the apartment and remove certain items although he knew there was an active investigation by the Pennsylvania State Police into the circumstances of the murder. The officer was dismissed from the force.

Another example of open and notorious consorting between a police officer and a known criminal was uncovered by the Commission during its investigation. The officer was a member of NARCO, and it was known among fellow members of the same Field Group that he was too friendly with the owner of a hotel in Harlem where arrests had been made for narcotics and other crimes. The owner himself had a criminal record and the officer admitted at a private hearing that he knew this individual had served time, or, as the officer put it, ". . . I know he spent a lot of time away" (Pr. H. 2170). In spite of this, he admitted visiting him at his home, and at the hotel. He drank with him at the hotel, both on and off duty (Pr. H. 2146-7). At first, the officer claimed he did not know the hotel owner was involved in narcotics. At the same time, however, he alleged that he received tips from him which led to the arrests of others for narcotics crimes (Pr. H. 2172).

At a subsequent private hearing, this NARCO officer testified that his hotel-owner pal had recently been arrested for possession of several kilos of heroin (Pr. H. 2169). In addition to associating with this criminal, the patrolman gave evasive and contradictory answers when asked certain financial questions, including where he received the money to purchase a new \$6500 1971 Oldsmobile Toronado (Pr. H. 2700) in addition to a \$2,400 new Mustang which he purchased in June 1968 (Pr. H. 2705). For example, at his first private hearing, he stated that his wife had received a bequest of between \$5,000-\$8,000 from her father's estate (Pr. H. 2153) and that he had received a \$10,000 gift from his father (Pr. H. 2155). At a later examination, his story was that the amount received by his wife was only \$3,500 and it was a gift from her father prior to his death, not a bequest (Pr. H. 2702). He was asked where the money was kept:

"Q. Where was the money kept?

A. The money was kept in the house.

Q. Where?

A. In a tin box.

Q. Cash?

A. Yes, sir." (Pr. H. 2702)

### ***Illegal Possession and Use of Drugs***

A number of police officers have been dismissed from the New York City Police Department because of their personal use of narcotics and dangerous drugs. There have also been cases of officers found to be illegally in possession of such narcotics, and the quantities involved would indicate that it was for commercial sale and not because they were users. Some such cases have already been mentioned, and there have been others. Inspector Cawley testified about one such example which occurred in May 1970 and which resulted from complaints by some tenants of a possible burglary or forced entry into one of the apartments in their building. They telephoned to the local precinct about the noise and other indications of an illegal entry and the precinct dispatched men to investigate. Inspector Cawley was asked what the officers found when they entered the apartment:

"Q. Can you tell us what they found, sir?

A. Upon search of the apartment they found a quantity of cocaine and some forty-seven marihuana cigarettes. Further search of the apartment came up with a letter with a name and address, hanging in the clothes closet was a pair of uniformed police trousers with the shield number.

Q. Did you find, not only the cocaine and the marihuana, but some mixing materials, either quinine or milk sugar, or something else?

A. Yes, sir, I think that was found as well.

Q. Which meant that the officers could have been doing one of two things with the drugs, either mixing for their own personal use or mixing for sale, possibly, isn't that correct?

A. Yes, sir.

Q. Were you able to establish which of these two—

A. No, sir." (331)

The amount of narcotics found in the apartment, according to official police records, was over  $\frac{1}{4}$  ounce cocaine and marijuana. The apartment was leased and occupied by two members of the NARCO Division, both of whom were subsequently indicted by the Bronx Grand Jury for felonious possession of drugs. During the course of the investigation, it was learned that these two police officers had wrongfully and knowingly associated with a known criminal for a substantial period of time and ultimately two other police officers became implicated. These two officers were discovered to have purchased and used drugs on several occasions. At the time of the Commission's public hearing, two of these officers had resigned from the police force, and charges were pending against the remaining two.

#### *Aiding and Abetting Narcotics Criminals*

The cases of police corruption mentioned above obviously resulted in such officers aiding and abetting narcotics criminals by their failure to take appropriate police action. In some of the examples, the assistance was a product of their corrupt practices, rather than being aimed specifically at that objective. The records examined by the Commission revealed other instances where officers went out of their way to facilitate violations of the drug laws by such criminals.

One such example involved a NARCO member assigned to a Manhattan Field Group. His complicity in narcotics trafficking was discovered accidentally when two known criminals were arrested for narcotics violations while driving an automobile. A check of the vehicle's registration disclosed that it was a leased automobile which had been rented from a car rental agency by this NARCO police officer. Further investigation showed that this officer, who owned his own automobile, had rented this car and then loaned it to a known narcotics criminal. This criminal had used the car for two weeks before his arrest. According to Inspector Cawley, the officer rented a number of automobiles and provided them to this known narcotics criminal (329-30). At the time of the arrest, he had quantities of narcotics in the rented automobile (330). The

officer was brought up on departmental charges. His Detective designation was revoked and he was fined 10 days vacation time.

Officers have also aided criminals by "tip-offs" of impending police raids and by interceding in their behalf with fellow officers. This is discussed later.

#### *Perjury*

Narcotics officers have also aided criminals escape the penalties of law by filing perjurious affidavits or lying in court in order to effect their release (323; 482; 484). One particularly graphic case involved a Brooklyn police officer.

This officer arrested two individuals, both of whom had criminal records, on narcotics charges. In the court affidavit which he signed and swore to, he described how the arrest was made and the evidence obtained. A few months later, he appeared in court and testified under oath in support of his affidavit. After this testimony, he was observed by the Assistant District Attorney engaged in a conversation in the court corridor with the defendant's attorney. Two hours later, on the same day, he took the stand again and materially changed his earlier testimony and court affidavit, resulting in blatant inconsistencies between them. The District Attorney's office reported this to the Police Department, and the officer was dismissed from the force in June 1969.

#### *Retention of Money and/or Narcotics*

Reference has already been made to the testimony of a number of police witnesses concerning the practice of "holding back" narcotics seized during an arrest or search. There was also testimony of officers taking narcotics from addicts on the street, without making arrests. One officer, upon learning that a raid by the Internal Affairs Division (IAD) of a NARCO member's locker had resulted in the discovery of narcotics, reacted by saying, "if they broke into 10 other lockers they would have found the same thing" (258). Inspector Cawley, in summarizing the cases of police corruption he reviewed, also mentioned officers extorting narcotics from suspects.

Finally, it is appropriate to recall the experience of the Commission when it requested that SIU furnish a summary of all seizures of 1 lb. or more of heroin and cocaine during 1970.

The discrepancies between the amounts reported by the arresting officers in their official police reports and the amounts found by the police laboratory were staggering. In eight cases the discrepancies amounted to 68¼ lbs. See pp. 76-7, *supra*.

With regard to retaining money found during a search, Ptl. Frank Serpico stated that officers who do this may arrest the violator, but try, philosophically, to justify keeping the money:

“Q. Did they ever tell you how police officers do make money in narcotics?”

A. Well, again, this is only hearsay: that some cops state that they haven't heard of any organized payoff except there might be one or two hungry guys that would be doing something. Something that is accepted in narcotics is the fact that when you—if you were to make an arrest and there were large sums of money, that that money would be confiscated and not vouchered and the rationale there is that the city is going to get it anyway and why shouldn't they.

But that this is not in a way to be interpreted as letting the defendant go. He still gets arrested.

The only thing that they do is confiscate the money for their own use.

Q. Wouldn't that necessarily compromise them in that the defendant knows they have taken the money? Wouldn't that necessarily mean that they, in order to keep the defendant quiet,—they would be charging him with a lesser crime?

A. The feeling is that it is his word against theirs, and usually there is a narcotics team of four men working.

Q. So they outnumber the defendant?

A. Yes. The defendant is outnumbered four to one.

Q. Have you heard this from officers that not only is it a way of making money, but that, in fact, this is done?

A. What do you mean? Of course, if it is a way of making money, and it is done.” (Pr. H. 603-5)

### “Flaking” and “Padding”

In the Introduction to this section on police corruption, we stated that police officers have placed narcotics on individuals who had none, or added to the amounts they did have. These practices are known, respectively, as “flaking” and “padding.” The term “padding” also encompasses the practice of mixing with adulterants the narcotics possessed by a defendant, in order to inflate the weight. The adulterants include quinine, milk sugar, mannite or mannitol (also known as mannita) and other “cutting” ingredients. The narcotics used to “flake” defendants generally represent narcotics seized by the officer on a prior occasion and not turned in to the Police Department.

The practices of “flaking” and “padding” were related to the Commission by NARCO officers during private hearings (Pr. H. 1530-4; Pr. H. 1563; Pr. H. 1725; Pr. H. 1987). At the public hearing, one police officer was willing to testify on this subject, as well as on other corrupt practices. The officer, who was then an active member of one of the NARCO Field Units, was identified as Patrolman X. Here is what he had to say about this matter:

“Q. Can you tell me whether you have ever heard of the expression ‘flaking?’

A. Yes, I have.

Q. What is ‘flaking?’

A. Well, flaking involves, number one, placing a narcotics contraband on an individual who beforehand had no narcotics on his person. That could be a misdemeanor weight or a felony weight. It could be adding to the amount of narcotics already on a person to make it a felony.

Q. In other words, if a man may have only had that quantity which would represent a misdemeanor violation, by adding additional narcotics it would raise the crime to a felony and enable the officer to get credit for a felony arrest?

A. That is correct.

Q. Now am I accurately describing what you are trying to say?

A. Yes.



Q. Any other examples of flaking?

A. An individual might be charged with a felony and even though the officer knows that by the time on the adjourned date the lab analysis, the amount and the quality and the quantity would be found to be a misdemeanor weight, nevertheless he is charged with a felony.

Q. Have you ever heard the expression 'padding'?

A. Yes, I have.

Q. What is 'padding'?

A. Usually involved adding to the quantity of heroin already seized from an individual or the premises and making it a heavier weight.

Q. What is added?

A. Usually mannita or quinine.

Q. Are these mixing materials?

A. Yes, they are.

Q. Now are you saying that both narcotics and mixing materials will be added to change the nature of a crime?

A. Yes.

Q. Have you been told by officers with whom you work that this is done?

A. Yes.

Q. Did they tell you that this is done by narcotic police officers?

A. Yes." (478-80)

Patrolman X was then asked where the narcotics comes from:

"Q. Can you tell me, Patrolman X, where do they get the narcotics from?

A. When they make a seizure of larger quantities they hold back some of the narcotics seized, and they don't give out the entire amount.

Q. In other words, they were confiscated during the course of a police action and just not report all of it?

A. That is correct.

Q. Have you been told that officers, in fact, carry narcotics around with them for such purposes?

A. Yes.

Q. Under what circumstances would they hold back narcotics, if, in fact, the more narcotics an individual has raises the degree of the crime? Is not a police officer interested in reporting the better, the larger quantity and the more serious crime?

A. They are supposed to be, but there are certain police officers that make deals with individuals that they arrest, they hold back quantities of heroin to let them be charged with a misdemeanor, or because the individual is a heavy pusher, and that if you hold back too much of a quantity to make it a misdemeanor, it would be obvious that they only hold back enough to make it a felony.

Q. When you say 'make a deal' with the defendant, what do you mean by that?

A. I mean by holding back a substantial quantity of drugs seized, either on the person, or on the premises, so as to make the court affidavit a lower charge.

Q. All right. And what do the officers get out of that?

A. They can get money or they can get heroin, or both.

Q. Have you been told by officers about such deals that have been made by narcotics officers?

A. Yes, I have." (480-1)

The witness described other corruption which was taking place within his own NARCO field unit by his fellow members. These practices included bribery, extortion, "tip-offs," and numerous other criminal acts. Patrolman X's testimony is reported in greater detail in the section titled "The Extent of Corruption in Narcotics Law Enforcement in 1971."

**"Tip-Offs"**

The expression "tip-off" is self-explanatory and in law enforcement work, it means giving advance or secret information to criminals about police investigations and activities.

In the earlier section on the SIU, the testimony of a member of that unit was quoted on the selection of targets for investigation. It will be recalled that he stated there were then very few, if any, investigations of organized crime figures by SIU because they are difficult subjects against whom to make cases. It will be recalled that he also stated he did not want any such assignments and had "refused" such investigations for another reason:

"Q. Why did you refuse?

A. Not that I refused. I tended—I felt that it was all but impossible to work on members of organized crime on narcotics. *I felt that there was just too many people that I feel that could not be trusted and had to be appraised of the various points of an investigation. . . .*" (Pr. H. 845) Emphasis added

This SIU officer cited examples where it was obvious to him that inside, confidential police information had gotten out to the criminals he was investigating (Pr. H. 852). Other SIU officers gave similar information to the Commission, although some were not willing to go on the record. One officer who was willing to speak out on the subject of his fellow officers "tipping off" the criminals they were supposed to be investigating, was Patrolman X.

Patrolman X described two of his cases which were aborted by tip-offs. In both, he and his partner had conducted lengthy surveillance and had obtained search warrants. The courts had granted their applications for search warrants based upon their observations that these suspects were dealing in narcotics and had been doing so on a continuous basis over a period of several weeks. Armed with these court orders, Patrolman X and his team mates proceeded to the premises to execute the search warrants, arrest the narcotic criminals and confiscate the heroin and other hard drugs. When they arrived, the individuals had disappeared:

"Q. Can you relate those examples?

A. On two occasions I was able to secure a search warrant, two different search warrants, and after securing the search warrant I went to the premises to execute the same. When I got there I found the place to be empty, and that the occupant, who was a pusher, was gone.

I found this to be on the second occasion, when I got another warrant, a search warrant, the same thing occurred.

After both occasions I was able to receive information from individuals in the community, which indicated that policemen within the Narcotics Division had been to the premises before I had executed my warrant.

Q. When you say that they had been there, are you saying that they went to tip off the dope pushers?

A. Yes, I am." (473)

Patrolman X then recounted the two occasions, one by one. In the first case, the investigation was over a two week period, during which time Patrolman X had personally witnessed the suspect sell drugs to addicts (474). This criminal activity had continued uninterrupted during the two weeks and right up to the time application was made for a search warrant. Only nine hours transpired between the granting, by the judge, of the search warrant and its execution by Patrolman X. When Patrolman X got there, he found the door open and the place "cleaned out" (475). He went back to the neighborhood shortly thereafter and spoke to his informants and other people who knew what had happened. These were people who had proven their reliability in the past and whose information had resulted in several arrests:

"Q. Can you tell us what these people told you had happened?

A. They told me that narcotic bulls had been by, and had tipped the person off.

Q. Did they see these individuals?

A. Yes, they did.

Q. Can you tell us what they described having seen?

A. They saw a car pull up with two individuals, one get out, go into the premises for a short period of time and then come out again.

Q. And you said that they told you narco bulls had been by?

A. That is correct.

Q. Is it fair to say that once a man has worked in the community his identity is recognized and known by the community?

A. Yes.

Q. In other words, they had recognized these men from having seen them operate as police officers in the past?

A. Right." (475-6)

The second case of a tip-off came after a three week investigation of an individual and premises where there had been "very heavy" narcotics activity, continuing up to five hours before Patrolman X executed the search warrant. The results were similar to the first case—the place was bare by the time Patrolman X arrived. He again checked with his neighborhood sources:

"Q. Did you speak to people who knew what had been going on in the apartment, and did they tell you what had transpired between the time that you obtained the warrant and the time that you went there?

A. Yes, I did speak to them. And they told me that narcotics bulls had been there and a person, who was a narco agent, had been inside the apartment for a short time and had left.

Q. I ask you the same question about these people: Had they established their reliability to you in the past?

A. Yes, they had.

Q. Was their reliability established in the same way, by giving you information which led to arrests?

A. Yes, it was.

Q. Were there one or two people involved in telling you the story?

A. Yes, more than one." (477-8)

It is obvious that investigations cannot succeed if police officers charged with arresting criminals assist them in avoiding arrest. The community witnessing such complicity soon loses confidence in its police department, and fears to report evidence of crime lest the criminals reported learn of it. United States Congressman Charles B. Rangel, whose 18th Congressional District encompasses the Harlem community in New York City, described this at the public hearing:

"The biggest problem that we find, however, on the local scene is the lack of commitment on the part of the Police Department to believe or to have the community believe that they are doing anything about drugs. It is senseless and it is difficult for anyone in the Harlem community to believe that if they saw a person actually pushing drugs on the streets, or in the community, that they should report this to the New York City Police Department. We have witnessed, unfortunately, cases where arrests have been made as a result of information given by people in the community, and the same persons that have given the information have been accosted by the defendant who reaches the uptown area before the policeman on the beat. . . ." (440)

\* \* \*

"The community is frightened to death that by turning in drug pushers that are known, that they would only be confronted with the drug pushers rather than with the District Attorney and the courts." (454)

The examples of corrupt practices just cited are not an exhaustive litany of every case of corruption found in official police records and described to the Commission by witnesses. They represent general categories of misconduct which have occurred throughout the years in narcotics law enforcement.

There have been refinements and variations of these themes of corruption, depending upon the sophistication and imagination of the actors, but the patterns have remained basically unchanged.

By the time the Commission commenced its public hearing in April 1971, corruption in narcotics law enforcement was the Number 1 corruption problem in the New York City Police Department.

#### **D. Joseph DeVito, the Pusher-Cop**

Cases of police officers selling narcotics have already been documented in this report. Some officers did it through their informants, others more directly, and one was apprehended as he was ambitiously branching out and transporting heroin for sale in other states.\* A separate section devoted to just another "pusher-cop" would therefore seem to be repetitious and unnecessary. We do not think this is so in presenting the story of Detective Joseph DeVito. The ramifications and significance of this particular case will become obvious as the story unfolds.

#### **Background**

The Commission first learned of the DeVito case through a news item in the press in late 1970. On December 29th of that year, the *New York Times* carried a story under the heading "Ex-Detective Gets a Year's Probation." The story reported that a police officer who had been indicted for conspiracy to sell about one-half pound of heroin—a felony punishable by up to four years in prison—had pleaded guilty to a misdemeanor charge of "official misconduct" and had been sentenced to one year's probation. When asked why the felony charge had been dropped, the Assistant District Attorney handling the case was reported to have said it was because a key witness had refused to testify in an open trial although he had testified before a Grand Jury. The story also mentioned that the officer, Joseph DeVito, had resigned without permission of the Police Commander and was therefore not eligible for back pay or pension. No other newspaper carried reports of DeVito's plea, and the sentence imposed.

\* See pp. 125-45, *supra*.

When the Commission saw this newspaper item, it was puzzled by the reported explanation of the District Attorney's office. We conducted a preliminary inquiry by interviewing the Assistant District Attorney and obtaining pertinent records. As more was learned about the case, it became obvious that an in-depth investigation was warranted. Accordingly, we asked the District Attorney of the county involved, Queens County, to apply to the court for an order permitting us to obtain the minutes of the Grand Jury which returned the indictment against DeVito. The District Attorney readily complied with our request. We also learned that a letter of complaint about the case had resulted in an inquiry by the Appellate Division, so we obtained a copy of its report. We also requested copies of all police documents, transcriptions of wire-tap conversations and other police records dealing with the DeVito investigation. Police officers who participated in the investigation were examined under oath at private hearings. Joseph DeVito was subpoenaed and questioned at a private hearing and later at the public hearing, as was another principal in the case, Melvin Fischler. Certain aspects of the case which were not concluded in time for presentation at the public hearing were completed subsequent to it and are described in this report.

The information gathered as a result of the Commission's investigation is the subject matter of this section. The governmental bodies involved in the DeVito case before the Commission entered the picture were the police, the District Attorney's office and the court. The performance of each of these three agencies was not adequately coordinated with the work of the others. When questioned by the Commission about their respective roles in the DeVito investigation and case, the parties involved claimed ignorance of what the others had done and the facts uncovered. The police had important information which the District Attorney claimed he did not know, the District Attorney alleged that the police investigation concluded prematurely without checking with his office and the judge, who sentenced DeVito, believed the defendant the recipient of police awards and commendations, which, in fact, were never bestowed. In order to fully appreciate the different, and at times, conflicting explanations of these three bodies, the Commission is herein presenting the DeVito story—as viewed by each of these three and finally, DeVito's own story, as he gave it at the Commission's public hearing.

### **The Three Faces of Joseph DeVito**

#### **(1) Joseph DeVito: As Seen by the Police Department**

The DeVito case started with information developed by the Narcotics Division that one Melvin Fischler was selling narcotics out of his father's gas station in Jamaica, Queens. An informant brought a NARCO undercover agent to the gas station and introduced him to Fischler as his cousin who wanted to buy drugs. The informant, who had purchased from Fischler before, had laid the ground-work for this introduction by previously informing Fischler that his cousin "Carl" was his partner in the informant's earlier narcotics transactions with Fischler. There was also a telephone call between the police officer and Fischler at which time Fischler quoted a price of \$800 for an ounce of heroin, and an appointment was arranged.

The first meeting between Carl (the undercover agent), the informant and Fischler took place at the gas station in Queens sometime in July 1970. After the introductions, the undercover agent asked Fischler what quality heroin they were getting for \$800 and tried to negotiate a better price. Fischler told them the heroin had been "cut" three or four times and could be cut again that number of times. He told them it was good stuff and then said "Our connection is a cop." Fischler also said "I can get you all you need, he's got a whole trunk load." Fischler added that he, Fischler, also dealt in pills, which he obtained as the result of a burglary of "a diet doctor." The price of \$800 was agreed upon, and Carl told Fischler he'd get back to him.

On July 30th, the undercover agent purchased one ounce of heroin from Fischler at the Queens gas station. In an attempt to learn more about Fischler's "cop-connection," Carl remarked that he wasn't comfortable about the deal because he "didn't like cops." Fischler replied that he didn't either but he had to deal with them. Fischler then told Carl that if he could come up with the money, Fischler could get better stuff, "not from the same source." He claimed it was purer, came straight from Lebanon, and a kilo would cost about \$20,000. Fischler said there was no sense negotiating price until they were sure they had a customer.

On August 3, 1970, the case was assigned to SIU. Discussions were then had with Assistant District Attorney James

Robertson, who headed the Narcotics Unit of the Queens District Attorney's office. Two separate applications were made for wiretaps on the suspect's home and gas station and the orders were granted by two judges.

On September 2nd, Carl called Fischler at the gas station. This was his first contact with Fischler since his purchase of one ounce of heroin on July 30. Carl told Fischler he'd like to buy  $\frac{1}{4}$  or  $\frac{1}{8}$  kilo of heroin, and asked Fischler to contact his Lebanon source. Fischler asked the agent to call back in a day or two and, when he did, Fischler asked Carl to meet him at the gas station on Saturday, September 5th at 1 P.M. Until this time, the police knew nothing more about the identity of Fischler's "cop connection" and, indeed, had no basis to know whether or not there was a police officer involved with Fischler. That answer came on September 5th.

Carl went to Fischler's gas station at the appointed hour on September 5 and was told Fischler was waiting at a nearby luncheonette. When the officer arrived, he saw Fischler at a booth with another individual. That individual was subsequently identified as Detective 2nd Grade Joseph DeVito, Shield #1998, of the 109th Detective Squad.

When Carl approached Fischler and DeVito at the luncheonette booth, DeVito looked him over closely and then left. Fischler and the agent discussed heroin and Fischler's sale of pills to college kids. Fischler quoted a price of \$7,800 for  $\frac{1}{4}$  kilo of heroin and instructed the agent to call back at the gas station on Tuesday, September 8 at 1 P.M.

Later the same day (September 5) Fischler telephoned an individual named "Joe." A check of telephone company records disclosed that the subscriber of that telephone number was Joseph DeVito, the individual in the luncheonette. Fischler gave DeVito the license number of Carl's car and asked DeVito to check it out, and DeVito agreed. They then discussed the  $\frac{1}{4}$  kilo of heroin and DeVito agreed that the price of \$7,800 was O.K. Fischler told DeVito that Carl was scheduled to call back Tuesday. DeVito said he'd check the license number, which was a New Jersey plate, get back to Fischler "and then we'll talk about it and see what we are going to do." Fischler replied "very good."

Surveillances of the subjects and intercepted calls revealed that on September 6, an individual called "Kenny" visited Fischler at the gas station and had a lengthy conversation with

him. When Carl called Fischler on Tuesday, September 8, Fischler set up an appointment for September 10 and discussed a kilo of heroin for \$32,000 which could be cut five times. A subsequent call between Fischler and Carl on September 9 dealt with the subject of testing the narcotics.

September 10 was an eventful day. In the morning, "Kenny" appeared again and part of his conversation with Fischler was overheard by one of the SIU officers maintaining surveillance. Fischler told Kenny to be back later and "check this guy out" and "make sure he's O.K. Take him home if you have to." Kenny agreed and left. When Carl called, Fischler arranged an appointment at the gas station for 7:30 P.M. that night. At 7:15 P.M., DeVito called Fischler. Fischler asked DeVito about "that acid we had," presumably a reference to nitric acid which is used to test heroin. DeVito reported that Carl's car checked out to a leasing company in New Jersey. Fischler asked DeVito if he recognized Carl because "this thing is ready to come to a head," and DeVito said he did not. Fischler told DeVito "the other guy brought me a piece of the goods." DeVito agreed to look for the acid. DeVito then asked "Hey listen, did you see the other guy?" Fischler: "Yeah, when I talk I'll explain. Everything's all right. I'll explain."

At 8:30 P.M. Carl arrived. Fischler told Carl he had a sample in the car but Carl had to supply "references." Fischler also offered pills to Carl to sell, and told Carl that if he bought heroin in larger quantities, he'd get a better price. During this conversation, Fischler was interrupted by a phone call. The caller was Kenny who was to be there to check Carl's references. Kenny explained that he got stuck without transportation, and asked if Fischler's "other friend" (a reference to DeVito) had come down. Fischler stated that "Joe" was coming the next morning and said it was a shame Kenny could not be there because "the guy" (Carl) was there then and "he's hot in the pants." Kenny and Fischler agreed to meet at the gas station the next day (September 11). Fischler then returned to Carl, told him he had just spoken to his "connection" and that Carl had to be "checked out." Fischler told Carl to call him the next day. As Carl left, Fischler instructed one of his gas station employees to follow him.

On September 11, DeVito was observed visiting Fischler at the gas station. Later that night, Carl called Fischler and was

told that Fischler had tested the heroin and it was O.K. However, before selling the heroin to Carl, Carl had to be checked out. A luncheon appointment was arranged for Saturday, September 12 at 1 P.M. On that date, Fischler informed Carl he was still being checked out and needed someone to vouch for him. Fischler stated that all he could do for Carl until then was to get him "pills," or 2 or 3 oz. more of the "other stuff" which now would cost more than it originally did at \$800 an ounce because that was all that source had left. Carl told Fischler he'd think about it. Next day, Carl called Fischler, agreed to purchase 1,000 pills and they arranged a meeting for Monday, September 14.

Monday, September 14, marked the end of the police investigation of DeVito. On that day, Carl kept his appointment with Fischler at the luncheonette and was joined by "Kenny" (subsequently identified as Kenneth Mille) and another individual (subsequently identified as Joseph Cospito). Carl was questioned closely about his former dealings and references. Kenney and Cospito left, Carl and Fischler continued to talk and finally Fischler sold Carl 1,000 pills at 10¢ a pill. On that day, Fischler was arrested by SIU and charged with the sale of one ounce of heroin to Carl on July 30, a felony punishable by a term of fifteen years, plus the sale of the pills, another felony carrying a seven year term. Kenny and Cospito were arrested and charged with conspiracy.\*

The events as related so far are undisputed. They are based on observations, wiretap intelligence and the personal information of Carl, the undercover agent. Subsequent examination of Fischler, DeVito and Carl by the Commission, plus a review of pertinent records which SIU forwarded to us, confirmed these happenings.

Following Fischler's arrest, he was taken to the 107th Precinct and questioned by Captain Daniel F. O'Brien, Commanding Officer of NARCO's Headquarters Unit, which supervises the work of SIU, together with other SIU officers. Assistant District Attorney James Robertson, head of the Queens District Attorney's Narcotics Unit is referred to in a report by O'Brien as having participated in the questioning of Fischler. The official police report by O'Brien, dated October 26, 1970, was a two-page summary of the highlights of the investigation

\* They were also found to be in illegal possession of untaxed cigarettes and were so charged.

and was prepared by O'Brien for the Trial Commissioner of the New York City Police Department. That part of the report dealing with Fischler's interrogation reads as follows:

" . . . when interrogated at the 107th Precinct Fischler told the undersigned and the District Attorney that he was in partnership with Detective DeVito for approximately *nine months* during which time DeVito supplied him with *about two (2) kilos* of Heroin. Patrolman Grillo\* had purchased 1,000 amphetamine pills from Fischler. Fischler stated that he obtained them from the Detective." (emphasis added)

Joseph DeVito was subsequently indicted by the Queens County Grand Jury and charged with conspiracy to sell heroin, a Class E Felony, plus four Class A Misdemeanor counts of Official Misconduct. On December 28, DeVito appeared before Supreme Court Justice Albert Bosch in Queens County, pleaded guilty to one of the misdemeanor counts of "official misconduct," and was sentenced, on the spot, by the Judge to one year's probation. He walked out of the court room a free man.

## (2) Joseph DeVito: As seen by the District Attorney

Assistant District Attorney James Robertson is the head of the Investigation and Narcotics Unit of the Queens County District Attorney's office. It was to Robertson that the SIU had gone for a wiretap order on Fischler's phones and it was Robertson who told *New York Times* reporter David Burnham that DeVito's freedom was the result of a key witness' refusal to testify against him at a trial. The key witness was Melvin Fischler, who had been arrested by SIU for the sale of one ounce of heroin and 1,000 amphetamine pills to undercover agent Carl Grillo, and who was facing a possible maximum jail term of twenty-two years.

Fischler appeared before the Queens County Grand Jury on September 15 after signing a waiver of immunity and was questioned by James Robertson. His total testimony consists of thirteen pages and contains substantial conflicts with the ad-

\* Carl Grillo, the undercover agent.

missions he was reported to have made during his interrogation at the police precinct on the date of his arrest, as contained in Captain O'Brien's report.

According to the O'Brien report of October 26, Fischler told Captain O'Brien "and the District Attorney" that he had been in partnership with DeVito for approximately *nine months* and had received about two kilos of heroin from DeVito during that time. Fischler testified before the Grand Jury that he had been in partnership with DeVito for six months (p.5)\* and had received a total of two ounces of heroin from him (p.6). Robertson did not confront Fischler with the conflicting admissions reportedly made to Robertson and O'Brien on September 14, and Fischler's new version was not challenged.

Fischler also testified before the Grand Jury that when he first discussed entering the heroin business with DeVito, the latter told him "he had a quantity of it" (p. 4). Fischler testified that the ounce of heroin he sold to Carl had been supplied by DeVito (p.7) and that he gave DeVito \$700 of the \$800 Carl paid (p.6). Fischler also testified that he discussed Carl's interest in  $\frac{1}{4}$  kilo of heroin with DeVito and intended to give DeVito "a piece" of the proceeds of the sale (p.8). DeVito was given Carl's New Jersey license number to check and Fischler asked DeVito if he had recognized Carl at the luncheonette (p.9-10). Fischler also testified that DeVito was to provide nitric acid for the purpose of testing the heroin (p.13). As indicated earlier, the Grand Jury indicted DeVito for the felony of conspiracy to sell heroin, plus four misdemeanor counts of official misconduct.

After the Commission read about DeVito's conditional discharge, the Commission's Counsel met with Mr. Robertson at the Queens County District Attorney's office. Robertson was asked why he agreed to accept DeVito's misdemeanor plea. He was asked about the story in the *New York Times* to the effect that a witness who had testified before the Grand Jury had refused to testify at a trial.

Robertson confirmed the story in the *New York Times* but added that, even if Fischler had been willing to testify, the case against DeVito was weak, and the very best that Robertson could have gotten was a Class E Felony. Robertson then pointed out some of the weaknesses in the case against DeVito.

\* Page reference to Grand Jury minutes.

For one thing, the wiretap which produced the most incriminating conversations had been on a public telephone at the gas station. Robertson also noted that the word "heroin" had never been mentioned over the phone. The license number of Carl's car which Fischler had given to DeVito to check was registered to a private individual and not to a leasing company as DeVito had reported to Fischler. This latter point, Robertson continued, showed that DeVito had apparently never checked the number for Fischler.

Robertson agreed that the case against Fischler was solid and they had him "cold" facing twenty-two years in jail. That is why, Robertson stated, he was able to get Fischler to testify against DeVito in the Grand Jury. Robertson also noted that he agreed to DeVito's reduced plea only on condition that DeVito resign from the force and forfeit his police pension. Robertson stated that Fischler was arrested by the police, acting on their own, without consulting him. He related a conversation he had had with Chief of Detectives Lussen about the case. Robertson had suggested contacting the Police Department's Internal Affairs Division so that they might take over or at least join in the investigation of DeVito but Lussen refused, saying "This is our dirty linen, let us clean it up ourselves."

With regard to Captain O'Brien's police report, Robertson stated he was certain he was not present when Fischler spoke of heroin transactions with DeVito which amounted to two kilos. That amount might have been mentioned, Robertson stated, in the context that he could get his hands on two kilos. Robertson stated that in his appearance before the Grand Jury, Fischler recounted three transactions with DeVito involving 1 oz., 1/2 oz. and 1/2 oz. deals, respectively, for a total of two ounces all told.

In summary, Robertson stated his conspiracy case against DeVito, even with Fischler testifying at a trial, was weak and that even if he had gambled and obtained a conviction, the conspiracy charge was only a Class E Felony. He therefore agreed to a plea to a misdemeanor, which was only one grade below that of the conspiracy felony charge. Moreover, he extracted from DeVito a commitment to resign from the force and waive his pension and retirement benefits.

With regard to DeVito's conditional discharge, Robertson stated that he did not know what sentence Judge Bosch was

going to impose and had never discussed it with the judge or with DeVito's attorney. Robertson arranged for us to obtain a transcript of the remarks made by the attorneys and the judge at the time of DeVito's plea and sentence.

### (3) Joseph DeVito: As Seen by the Judge

A letter of complaint to judicial authorities resulted in a review by them of certain aspects of the DeVito case. The sentencing judge, Mr. Justice Albert Bosch, submitted a memorandum to the Appellate Division, together with the minutes of the plea and sentence. During the course of the Commission's investigation, we obtained copies of those documents and questioned the parties involved about those events.

The memorandum by Mr. Justice Bosch reads as follows:

#### SUPREME COURT OF THE STATE OF NEW YORK

JUSTICE'S CHAMBERS  
KEW GARDENS, N.Y.

ALBERT H. BOSCH  
Justice

February 4, 1971

MEMORANDUM TO: Mr. Justice Charles Margett  
Administrative Judge  
Supreme Court, Queens County

RE: *People v. Joseph DeVito*  
Indictment No. 3055-70

At the suggestion of Presiding Justice Samuel Rabin, this memorandum is being sent to you along with the minutes of the plea and sentence in the above-titled case.

I should like to state my recollection of what occurred when the case appeared on the calendar in Part IV on December 17, 1970. The indictment charged the defendant with one count of Conspiracy in the Second Degree and four counts of Official Misconduct. The first crime is a Class E felony and the second a Class A misdemeanor.

On the call of the calendar the District Attorney asked for a conference. At a side bar conference he advised the Court that the District Attorney's Office had made a thorough investigation of the case, and it was their considered opinion that a recommendation of a plea to the misdemeanor of Official Misconduct, which was one grade



below that of the maximum charge, was in the interest of justice. The District Attorney apprised the Court of the fact that the defendant, who had tenure in the New York City Police Department which would entitle him to a pension, was resigning from the department forthwith and forfeiting his pension. The District Attorney also stated to the Court that if the defendant were incarcerated "he was a dead man". He also advised the Court that the defendant had received eight commendations during his police service, two of which were issued by the Police Commissioner personally.

Taking these circumstances into consideration, and after examining the worksheet of the District Attorney and the yellow sheet, the Court agreed to accept the recommended plea. As it was a misdemeanor, the defendant's attorney was permitted to waive the forty-eight hours and sentence was imposed of a conditional discharge one year.

I might add that at no time prior to the date when this case appeared on my calendar was there any discussion about a disposition of this case in the court or anywhere else either with the District Attorney, defense counsel, or anyone else.

Respectfully submitted,

ALBERT H. BOSCH.

AHB:frs

Because of time factors, the Commission did not question Judge Bosch about the sentence he imposed upon DeVito until after the public hearing. When we did speak to him, we found a number of discrepancies between his version of the events as contained in his memorandum, and the recollection of the two Assistant District Attorneys who were present during the plea and sentencing. The discrepancies are as follows:

(1) In his memorandum of February 4, 1971, Mr. Justice Bosch wrote

"The District Attorney also stated to the Court that if the defendant were incarcerated 'he was a dead man.'"

At a private hearing, Judge Bosch recalled that statement and identified "The District Attorney" referred to in his memo as Assistant District Attorney Lawrence Finnegan who was present with Assistant District Attorney James Robertson at the side bar conference preceding the imposition of sentence on DeVito on December 17, 1970 (Pr. H. 3564-5).

Both Assistant District Attorneys Finnegan and Robertson remembered the statement being made but denied that they

said it. It was their recollection that the remark was made by defense attorney McArdle or by the Judge (Pr. H. 3495-6; Pr. H. 3515-6).

(2) In his memo, Judge Bosch wrote

"He [the District Attorney] also advised the Court that the defendant had received eight commendations during his police service, two of which were issued by the Police Commissioner personally."

At his private hearing, the Judge testified that it was his recollection that McArdle, the defense attorney, made that statement (Pr. H. 3565). An examination of DeVito's personnel folder by the Commission disclosed that he received four police commendations, none of which were issued by the Police Commissioner personally.

(3) In his memo, Judge Bosch stated that

"Taking these circumstances into consideration and after examining the worksheet of the District Attorney and the yellow sheet, the Court agreed to accept the recommended plea."

Both Robertson and Finnegan testified that they submitted no worksheets or background information to the Judge, his clerk or secretary (Pr. H. 3498-9; Pr. H. 3520).

When told of the testimony of Robertson and Finnegan, the judge, at his private hearing, stated that it was his recollection that he did see a worksheet or District Attorney's memorandum (Pr. H. 3568). When asked what it contained which helped him accept the plea or influenced him in deciding upon a sentence, the judge replied "There was nothing there that really enticed me one way or the other" (Pr. H. 3568).

(4) Both Robertson and Finnegan testified that after DeVito's attorney, Mr. McArdle, waived the 48-hours notice of sentence, that Judge Bosch stated there was no need for a probation report and that he did not want to subject DeVito's family to additional embarrassment or chagrin; that they had been through enough; that he, the judge, knew the defendant or knew of the defendant (Pr. H. 3493-3503; Pr. H. 3517-20).

Judge Bosch denied making any statements like that (Pr. H. 3568-9).

Judge Bosch testified that it was his recollection that neither DeVito's attorney, Mr. McArdle, nor anyone else had spoken

to him about the DeVito case prior to the plea and sentence (Pr. H. 3554; 3556). He also stated that all he knew about the DeVito case was information which was brought out at the side bar conference which lasted about five minutes. He was not informed of the extent of DeVito's involvement in the conspiracy to sell drugs. Commissioner Silver elicited the following significant observation from Mr. Justice Bosch at his private hearing:

"Commissioner Silver: What I am trying to say, and the Chairman is trying to get at, is that had these matters been disclosed to you at the time of sentencing, is it your opinion now, that you would not have given him the kind of a sentence that you did?  
The Witness: I would say that in all probability I would not have." (Pr. H. 3575)

#### Joseph DeVito: As Exposed by the S.I.C.

The nature and extent of DeVito's narcotics activities were revealed for the first time at the Commission's public hearing. The incredible story of the cop who bought and sold heroin and other drugs, and who provided armed protection to his partners-in-crime, came from DeVito himself and his narcotics partner, Melvin Fischler.

The Commission obtained such testimony in the following way: DeVito was subpoenaed and appeared before the Commission at a private hearing and refused to answer any questions, claiming his privilege against self-incrimination. Because his case had already been concluded and sentence imposed, the Commission conferred immunity upon him in order to compel his testimony. He thereupon testified at a private hearing and subsequently at the public hearing.

When DeVito's partner, Melvin Fischler, first appeared before the Commission, his case was still pending and therefore no testimony was taken. As soon as he entered a plea, the Commission questioned him at a private hearing, and took his testimony.

The results of these examinations follow.

Joseph DeVito joined the New York City Police Department in 1955 and remained a police officer until his indictment and subsequent resignation in 1970. DeVito testified that he first went into the business of selling heroin in 1968 or 1969

and that his partners were Melvin Fischler, who worked at a gas station, and Nicholas Marchi, whom DeVito described as a "hustler" (350) who apparently had no legitimate source of income (351), and who told DeVito that he had a criminal record (352). Nick dealt in merchandise which he said was stolen, and DeVito "seemed to remember" occasions when he got such clothing from Nick which he then sold "to different people" (353). In time, these three sterling characters became friends and began to talk about matters of mutual interest:

"... And one set of events led to another set of events, and we got to talking about narcotics and about the amount of money that could be made in narcotics, and all the different angles of the business. And I suppose that I, in my conversation with them, indicated that I would probably be receptive to some type of deal like that." (354-5)

DeVito testified that the idea of becoming heroin merchants originated with Fischler and Marchi. When they suggested that he "invest" \$5,000 in "this business" (357) he discussed the pros and cons with them, because DeVito "didn't want to blow the money" (357). Among the "pro" considerations was the fact that DeVito was a cop and could provide police protection, and was also in a position to "come upon a quantity of narcotics":

"Q. Was that your only consideration before going into the business of selling narcotics, whether you would be losing the money or not?

A. There were a great many considerations and a great many things I had to weigh up.

Q. But you resolved it in favor of joining the enterprise, is that right?

A. Yes.

Q. Did they also discuss the edge that a partnership would have were a police officer to become involved?

A. We discussed the edges pro and con, the edges good-wise and bad-wise.

Q. What were the edges pro and con?

A. What we discussed pro was the fact that certainly it would be very difficult for someone to sneak up

on me or to grab us in the act due to the fact that I was there and I could do a great many things to either stop it or try to talk my way out of it. There were so many possibilities that we discussed.

Q. When you say somebody sneaking up, you are talking about—

A. I'm talking about someone tailing us or going—I don't mean, you know, in actuality sneaking up behind me and—someone tailing us or trying to get into it with us who was a member of the Police Department, because of the fact that I would be familiar with whatever went on.

Q. In other words, you were going to provide the added ingredient of police protection, in a sense?

A. Yes, sir.

We also discussed the bad points of me being a police officer.

Q. Apparently you resolved in favor of the good points, so let's stay with them.

Was it discussed that if any police intervened you could point out that you are a police officer and call them off?

A. Certainly.

Q. Now, were there any other good points?

A. Well, the fact that—the main fact was that I could probably—or the chances are that I would have a greater edge in stopping an arrest or observing a set of circumstances which did not look good.

Q. Also in the event something went wrong that you might speak to the police officers and straighten things out?

A. That was discussed, definitely.

Q. What about the availability to a police officer of narcotics?

A. Well, certainly it came up in our conversation, to where if I came upon a quantity of narcotics my-

self I—I certainly could switch it or keep it or do what I could to make it available to our partnership.

Q. How would you be in a position to come upon narcotics more easily than the other two?

A. Well, because—we're not talking about purchasing narcotics now, we're talking about coming upon it. Searching an individual and finding narcotics on him, making an arrest of a large quantity and substituting some substitute for this narcotic. This all went through my mind at that time.

Q. So there were almost unlimited possibilities for you, as a police officer, to obtain narcotics?

A. Yes, sir. Not unlimited but I would say that the opportunity may have presented itself." (357-60)

DeVito decided to "invest" the \$5,000. And so, within two to three months after they first met, Detective DeVito, Fischler and Nick, the "hustler," were equal partners in a heroin business (363). A kitty was assembled, DeVito was named Treasurer and the money was kept at his house (364). They were now ready to do business.

Their first customer was "Bob," who had expressed an interest in buying one-eighth of a kilo of heroin, even before the trio had formally organized. Nick, who "knew the score," also knew a "connection," a wholesaler in heroin known as "Georgie." The scheme was simple: DeVito and his pals would buy one-eighth kilo of heroin from Georgie and re-sell it to Bob, and others, for a profit (366).

DeVito described how these transactions were conducted. The purchases from Georgie were made at nightly "meets," with Georgie placing the narcotics in Fischler's car which was left at pre-arranged parking lots in Queens. DeVito watched the transfers from his own car, positioned at good vantage points nearby:

"Q. What role were you to play? What were you there for?

A. Just to watch and to make sure nothing went wrong. I guess the feeling was that we would get beat for

the money, and maybe I could assist us in not getting beat for the money.

Q. Were you armed?

A. Yes, sir." (370)

After purchasing the one-eighth kilo, DeVito and his cohorts then mixed it with other adulterants in order to "stretch" it and thus make their profit:

"Q. How much did you pay for that eighth of a 'key?'"\*

A. It was in the neighborhood—between five and \$6,000, but I am not positive of the exact price.

Q. What about its purity? What were you told about its purity?

A. It was supposed to be what is known as a six.

Q. What does that mean?

A. It could be hit six times.

Q. Now you have the narcotics. Who physically had it? You, Mel or Nick?

A. It wasn't me. So it must have been one of the other two, but I don't know who.

Q. What did you do with it? What did they do with it?

A. We took the narcotics, and I believe we added an ounce of milk sugar to it.

Q. Who provided the milk sugar?

A. I believe Mel did.

Q. Where did you do the mixing?

A. In Mel's apartment." (371)

Following the diluting process, they weighed it on a caloric scale kept for that purpose (371). About one ounce of heroin was removed from their original one-eighth kilo, and they were now ready to sell the stretched one-eighth kilo to Bob. They did this the next night.

\* Kilo.

"Q. Now, how did you sell this stretched eighth of a key to Bob?

A. We sold it to Bob with the understanding—when I say me I mean that Nicky and Mel knew this individual—with the understanding that Bob was going to sell to another individual. He was going to be a middle man, Bob, between us and someone else.

Q. All right.

A. And that's what happened.

We gave it to Bob, and we went with Bob. We took a ride with Bob in our car. (375)

\* \* \*

Q. Was this all in one car?

A. I think we were in two cars.

Q. Were you separated from the others in your own car?

A. That may be so, that may be so.

Q. Were you more or less riding shotgun?

A. It could be.

Q. That was supposed to be one of your primary roles, wasn't it?

A. Yes, sir.

Q. In case there were any problems, police, or anything else, you would step in, you were a police officer, and you would straighten it out?

A. If I could, yes.

Q. That was the purpose?

A. Yes." (378)

The profit on this first transaction was \$1200 which DeVito, Fischler and Nick split three ways (379). However, Georgie tried to "swindle" them on this first sale so they cut him out and decided to deal directly with Bob. There were a total of seven or eight other purchases made through Bob, most of which involved one-eighth kilos, although one or two "may

have" involved one-quarter kilos (386). DeVito and his partners' business dealings with Bob, alone, therefore, according to DeVito's own testimony involved somewhere in the neighborhood of a kilo of heroin (386).

Once Georgie was eliminated as a source, the Commission wanted to know where DeVito and his partners thereafter obtained their heroin. At first, all DeVito would say was that the seller was from East Harlem and was contacted through Bob. The Commission pressed the point, insisting that DeVito identify him. DeVito testified that he was afraid to reveal the seller's name at the public hearing (388). He finally answered the question by writing the name on a piece of paper and handing it to the Commission. The individuals thus identified by DeVito as his heroin source were notorious organized crime members well known to law enforcement officials as prominent figures in the illicit narcotics traffic.

DeVito testified that he and his partners made seven or eight purchases of narcotics from this individual through Bob and then used Bob as the "middleman" to dispose of this heroin. Because they "stretched" their original purchases and held some back, it took fifteen or more contacts to dispose of the narcotics (394). Their dealings with Bob continued for five or six months or more, and then, DeVito claimed, Bob just "dropped out of the picture" (395). However, this did not mean that DeVito then stopped buying and selling heroin.

DeVito testified about the purchases of heroin from the East Harlem criminal because he knew the Commission had questioned his partner, Fischler, at private hearings and he did not want to risk committing perjury. However, DeVito was not willing to truthfully explain where he personally obtained additional heroin. After Bob "dropped out of the picture," the business arrangement between DeVito, Nick Marchi and Mel Fischler underwent another change in structure and procedure. Nick also "dropped out," leaving just DeVito and Fischler. DeVito began to supply heroin directly to Mel Fischler, which Fischler then sold. It was these sales of heroin which led the Narcotics Division to Fischler and subsequently to DeVito. There is no question but that DeVito gave heroin to Fischler, as well as pills, and that Fischler sold them. Where DeVito got such narcotics is another question.

Fischler was asked about the heroin which he got directly from DeVito and where it came from:

"Q. Can you tell us about that? Can you try to tell us about it without me having to pull it out of you?

A. DeVito informed me that he had access, or had come into some heroin, and he asked me if I knew anybody that would be interested in it.

Q. Did he tell you where he had gotten the heroin from?

A. He mentioned that he had gotten it from a couple of police officers.

Q. And he asked you if you knew anybody to get rid of it?

A. Right.

Q. Who would buy it?

A. Right." (511-2)

DeVito was questioned about this at the hearing. He testified that following his dealings with Bob, and after his partnership with Mel Fischler and Nick Marchi had been "dissolved," he "came upon" a large quantity of heroin. This happened one night as he was driving home from work, and observed an individual "acting in a suspicious manner." He decided to follow him and although he lost him, he kept this mysterious figure in view long enough to see him stop his car and place a package "in the bushes" in the vicinity of White-stone Parkway (400). DeVito testified he "later learned that this package contained a one-quarter of a kilo of heroin." It was this heroin he supplied to Fischler for re-sale. DeVito was questioned closely about this fantastic story:

"Q. Now, you have a quarter of a kilo, you found, you say, in a bush. When did you discover it was heroin, while you were in the bush, when you put it in your car, when you came home, when did you make this discovery?

A. I think it was a few days later or a day later. I know it was a short time. But exactly how long it took me to discover this was heroin, you know, in other words, how long it took me to know that it was heroin, I don't know.

Q. Are you saying that a day or two went by before you even opened the package?

A. No, sir, I'm not saying that. I'm saying that I think it was the next day, but I know it wasn't a long time. It wasn't that night. I'm almost positive it wasn't that night.  
I had an idea when I picked that package up what it was.

Q. And you did not even open it up as soon as you had the first chance, to see what it was?

A. Sir, if I opened up that package it would spill all over my car.

Q. You got home, didn't you?

A. Yes, sir. It would still spill. My wife was there, I didn't want to open it up in front of her. I didn't see any reason. I wasn't going anywhere, the package wasn't going anywhere. I had a ninety-nine percent—I was ninety-nine percent and nine-tenths sure in my mind what it was.

Q. Why?

A. Because of its packaging.

Q. How was it packaged?

A. In brown paper with a wrapping around it. It was packed quite tight. Inside the paper I believe was a plastic bag or a type of a plastic bag. But I knew when I looked at it that it was heroin.

Q. You have been on the force about fifteen years, you say?

A. Yes, sir.

Q. Have you ever found a quarter kilo of heroin in a bush before?

A. No, sir." (402-3)

DeVito was confronted with Fischler's testimony that DeVito said this heroin came from other cops:

"By Mr. FISCH:

Q. You just happened to find it in a bush?

A. Yes, sir.

Q. Did you tell Mel Fischler that you got it from other police officers?

A. Yes, sir.

Q. Could you tell us why you told him that?

A. Yes, sir. Because if I told him that I found it he would declare himself a partner, maybe. He would like—want the price to be low. I felt that if I told him I had to get it off other cops and I had to pay for it, I could then charge him a going price for this narcotics. This was my only purpose." (401)

DeVito was asked about other conversations with Fischler about getting narcotics:

"Q. Let me ask you this: During all this time, until you found it in the bush, had Fischler ever asked whether you, as a police officer, could put your hands on additional narcotics?

A. Yes, sir, many times.

Q. What did you tell him?

A. I answered him that I would not involve any other police officer, that I couldn't. Most of them, everybody who I know, except me, and a few that I've seen who have been convicted, have never been involved in that, that I know of. You know, I go back to that. But I really and truly have never discussed a narcotics deal with any other police officer.

Q. I cannot understand this.

You told Fischler—he came to you and he said, look, Bob's out of the picture, the other guys are out of the picture, can you get your hands on some more narcotics? And I understand from your testimony he wanted you to get it from other police officers, is that correct?

A. Yes, sir, he asked me.

Q. Did you tell him that you did not want to involve any other officers?

A. I did not tell him that.

Q. What did you tell him?

A. Let me see. Mel—maybe I'll come upon something, you never know, there's always a possibility. But I never went into specifics with him about it.

Q. Then when you found it in a bush you told him it did, in fact, come from other police officers?

A. This was a perfect opportunity, yes, sir." (405-6)

The coincidence of a police officer who had been buying and selling narcotics for months suddenly finding a fresh, ready-made supply when his original source ran out was incredible. This was not the only story DeVito concocted in order to avoid identifying the other individuals who were involved with him in supplying narcotics for sale.

DeVito said he kept the heroin he "found in the bush" in his locker. That was not all his locker contained:

"Q. So you kept some narcotics in your locker?

A. Yes, sir.

Q. Did you keep anything else in that locker?

A. I had some—I think I had my service revolver in there.

Q. Did you have any other—any pills?

A. Yes, sir.

Q. How many pills did you have in your locker?

A. I had a large quantity.

Q. Fifty, a hundred?

A. No, sir. Thousands.

Q. Five thousand, ten thousand, twenty thousand?

A. Well, I can tell you the box that they were in, or the bag was, maybe, eighteen inches by eighteen inches by about that high (indicating).

Q. Was it in excess of fifteen and in the neighborhood of twenty thousand pills?

A. Probably, yes.

Q. Did you happen to find that in a bush?

A. No, sir." (407-8)

DeVito's explanation of how he happened to have between 15,000 and 20,000 pills was another fairy-tale. According to DeVito, there was a burglary of a "diet doctor's office" in Queens. The burglar, apparently frightened, fled leaving a "large duffel bag" of pills in the street. Police officers of the 109th Squad in Flushing recovered the bag and brought it to their precinct. Because none of the officers assigned to the case knew where the pills came from and were unable to trace them to the "diet doctor," DeVito, being a conscientious detective, set out to do their work for them. He was not assigned to the case and didn't even tell any of the officers who were, how anxious he was to help and what he was doing for them (410). He remembered that there was a "diet doctor" in the neighborhood of the 109th Precinct, and it was this doctor's "habit to hand out a great many pills" (411). DeVito, on his own, went to that location and lo and behold his intuition proved correct: this was the very doctor whose office had been burglarized and whom everybody had been looking for and whom no one but DeVito could find (411). DeVito then searched the area around the doctor's place and found the pills:

"Q. Now that you established that his house had been burglarized, where did you come to the pills?

A. I then, in searching the area outside his house, I found a quantity of pills in a bag or a box. I can't recall which. And by that time the pills that were in the station house had been vouchered.

Q. Before you get to the pills in the station house you found that outside. In another bush?

A. No, sir. I really don't recall exactly where I found it. I know it wasn't out in plain sight, but I don't recall exactly where I found it.

Q. The other officers were not able to find it, but you did, right?

- A. The other officers weren't at the scene, sir.
- Q. What did you do with the pills?
- A. I brought them into the station house and put them into my locker.
- Q. Did they remain in your locker?
- A. Yes.
- Q. For how long?
- A. I would say for five or six years.
- Q. Did you forget, during all this time, to turn them in?
- A. I didn't want—to tell you the truth, I didn't want to get involved in the paper work to turn them in, so I just left them there and I guess it was laziness. And every once in awhile I would look and see if they were there, and they were." (412-3)

Commission Chairman Paul J. Curran asked DeVito why he got involved in a case that wasn't his to begin with if he didn't like paperwork:

"The Chairman: If your explanation is that you did not want to get involved in the paper work, why, in the first place, did you get involved in a case that wasn't your squeal, to start with? I don't understand that.

The Witness: I went out there, Commissioner, because I was positive I knew where these pills came from.

The Chairman: You said that before. And then you found the pills and then you said the reason you did not turn them in was because you did not want to get involved in the paper work.

The Witness: You know how many forms there are to turn in in narcotics? I am not trying to educate or attempting to educate the panel, certainly, but I'm trying to explain a set of circumstances that I think are reasonable. Only a police officer would know that this is reasonable, only a police officer.

The Chairman: We know, generally, how many forms are required in the different kinds of narcotics cases.

But the point is you were trying to be helpful as a police officer. You had an idea where these things are, you went and found them, you put them in your locker and then your testimony is the reason you did not hand them in is because you did not want to get involved in the paper work?

The Witness: Yes, sir.

The Chairman: Wouldn't that be true of all evidence you find, the paper work involved—

The Witness: Yes.

The Chairman: Narcotics evidence?

The Witness: Yes.

The Chairman: Money?

The Witness: Yes, sir.

The Chairman: Any kind of evidence?

The Witness: Any kind of evidence.

The Chairman: All right." (413-4)

DeVito did dispose of these pills, of course, but not by turning them in to the Police Department. He disposed of them the same way he disposed of the heroin he "found in the bush."

"By MR. FISCH:

Q. Did you have in mind the fact that you might be selling these pills the same way you sold heroin?

A. At that time, sir, I had no thought of that. That was a long time ago.

Q. Did you, in fact, sell the pills?

A. Yes, sir.

Q. How did you dispose of the pills, to whom did you sell them?

A. To Mel Fischler." (415)

DeVito confirmed other aspects of his relationship with Fischler, as reported earlier. He discussed the latter's sale of one-quarter kilo of heroin to Carl, the undercover agent, for



\$7800 (417-8) although DeVito testified he did not have that quantity himself and "did not intend to get it" (418). He looked over a prospective customer (Carl) for Fischler to see if he was a police officer (419). He told Fischler he would check the customer's license plate and later told Fischler the results, although, according to DeVito, he never really did (420). DeVito was not sure whether he gave acid to Fischler for testing heroin, although he may have gotten a vial "in the office, one of the little testers in the office, and used it" (417). He did bring heroin and pills to Fischler at Fischler's gas station which Fischler then sold (415; 424).

At the Commission's public hearing, DeVito was asked how much heroin and how many of the 15,000-20,000 pills he still had. He stated that before Fischler's arrest, he had disposed of all the heroin and after Fischler's arrest, the balance of the pills. He got rid of both, he testified, by flushing these narcotics down the toilet (425-6). By the time DeVito concluded his shocking story, the audience attending the public hearing was thoroughly stunned. But the biggest shocker of all was the fact that this disgraced and convicted pusher-cop was able to get out of his witness chair and walk out of the hearing room, a free man.

### *Summary and Conclusions*

#### **The police investigation**

The police investigation of Joseph DeVito was mishandled from the start. As soon as SIU learned that a police officer was the source of Fischler's heroin, the investigation was no longer simply a narcotics case. SIU should have contacted the specialists in this area, the Internal Affairs Division and the investigation should have been handled, or supervised, by them. The objective should then have been to determine if DeVito had other police accomplices in his heroin business, and not merely to get DeVito off the force. This was never done, and the premature conclusion of the investigation by the arrests of Fischler and the others on September 14, ended any chance of apprehending DeVito's other comrades.

The arrests on September 14 were not spontaneous police actions but had been planned in advance. These plans were never discussed with the District Attorney to determine whether or not they had sufficient evidence to sustain prosecutions

against DeVito and the others. And it should be kept in mind that the other defendants were individuals whom Fischler had identified as "connections" capable of supplying pure heroin in multi-kilo quantities. The September 14 meeting between Carl Grillo, the SIU undercover agent and "Kenny" was arranged by Fischler for the purpose of negotiating a purchase of one-quarter kilo of pure heroin for \$7,800. Although no sale had been made by Kenny up to this point, it was SIU's plan to arrest Kenny on the spot for conspiracy based upon his conversations with Carl during their luncheon conference.

Carl Grillo was asked at a private hearing why the arrests were made when they were. One factor was the element of danger, he said, because these men had questioned Carl about references. Grillo was asked about other reasons:

"A. They felt that it would be too dangerous to continue since they already had one sale on Fischler, that DeVito had been tied in with Fischler as a partner, and that there was no indication that he was the one who was going to either bring the one-quarter kilo or directly give it to me, and that he was a partner possibly in money or just with Fischler and that the source was coming from these other two guys that were going to meet me on that particular day, on that Monday, and that their source was someone else, so they felt that since the case that we were working on had taken as much time as it did, and all these meetings, that it should end right there with a good conspiracy against the two men who were coming to meet me, and the sale against Fischler." (Pr. H. 2265)

The failure of SIU to discuss with the District Attorney's office its plans to arrest Fischler, Kenny and the others on September 14 was not the only failure of communication. When SIU learned that Fischler's other "connection" (Kenny) was capable of supplying pure heroin in kilo quantities, federal authorities should have been notified and a joint and coordinated investigation undertaken. This, too, SIU chose not to do, and as a result of their insistence on "going it alone," numerous potential opportunities were lost.

SIU's lack of capacity to handle, on its own, a narcotics investigation of this magnitude was apparent to them. After Grillo had already discussed with Fischler the purchase of

one-quarter kilo of heroin for \$7,800 and after Fischler thereupon put the wheels in motion for this transaction, Grillo's superiors wanted him to somehow change his approach and to negotiate for a smaller purchase. It is obvious that one cannot pretend to be a big-time dealer and then bargain and try to buy one-eighth kilo instead of the original one-quarter kilo. Grillo explained:

"... it was mentioned if I could possibly ask for one-eighth rather than one-quarter kilo, and I said I didn't want to do that because I had already told them that my source was a guy with a lot of money and he was willing to go for the \$7,800, and I thought that after so many meetings it would be unwise to say he can't come up with 7,800 but maybe he can come up with three or four thousand." (Pr. H. 2264)

The Department's unwillingness to supply sufficient funds to make the one-quarter kilo purchase was undoubtedly a factor in their decision to arrest everyone on September 14:

"Q. You say you met with this Kenneth Mille?

A. Yes. I met with him on the day of the arrest, Monday, September 14th.

Q. Was anyone else present?

A. Yes. He came with another man named Joe Cospito and they both were there to talk to me to find out who I had worked for in the past, and just to look me over to see if they were going to allow me to buy the heroin.

Q. One-quarter kilo?

A. One-quarter kilo.

Q. You say Kenneth Mille told you he had your number checked out or he had done some checking on you?

A. Yes. Knowing ahead of time that in any case if they agreed or didn't agree I wasn't going to purchase one-quarter kilo because it was going to be more to try to get a good conspiracy against these people and the arrest was going to take place that day, so I knew that I would have to talk a good conspiracy and that's

why I brought up everything that had happened in the past and all the important things about who had the acid, who had not checked out, and I was bringing up things about myself so that they would, in turn, say, 'Why, we have already checked that part out about you.'

Q. Were you wired on that date?

A. No, I wasn't.

Q. You say it was determined in advance that you were not going to buy the one-quarter kilo but you were going to try to make a conspiracy case.

A. Yes.

Q. Why was that?

A. Because it was felt there were too many meetings already and since there was at least one cop involved that we knew of, someone who had a gun, that it wouldn't be wise for me to be going to these meetings too often like this. And they were worried that they were going to just either rob me or do away with me, one or the other.

Q. Did the fact that you needed \$7,800 to buy a quarter of 'K'\* enter in? You have a smile on your face.

A. I think that might have something to do with it also." (Pr. H. 2261-3)

Had SIU contacted the federal authorities, the money would have been furnished, as well as a good "cover" for Grillo. Not only was a multi-kilo narcotics case blown, but the corruption investigation involving DeVito was compromised as well.

### The prosecution

Assistant District Attorney Robertson asserted that there were evidentiary weaknesses in his felony conspiracy case against DeVito. If this was so, his acceptance of a misdemeanor plea may appear to be justified. However, one finds it difficult to understand why, under these circumstances, he told the press

\* Kilo.

he was compelled to accept the lesser plea because Fischler was unwilling to testify at a trial against DeVito. In fact, Fischler had testified before the Grand Jury and was himself facing twenty-two years in jail for his sales of heroin and pills to an undercover police officer. Fischler was therefore hardly in any position to place conditions upon his cooperation with the prosecution. Moreover, Fischler's alleged refusal to testify at a trial was disputed by his attorney, and Robertson himself, retreated from that story.

A number of aspects of the DeVito prosecution trouble the Commission. Robertson should have contacted the Internal Affairs Division upon learning of DeVito's involvement regardless of whether the Chief of Detectives wanted to "clean his own linen" or not. The discrepancy between Fischler's admissions as reported in Captain O'Brien's memo and Fischler's Grand Jury testimony is another puzzling question. Robertson's examination of Fischler before the Grand Jury was cursory, at best, and it seems strange that he should not have been aware of the admissions made by Fischler at the police precinct following his arrest. This is particularly so since Robertson himself was present during part of the interrogation.

The District Attorney's office did not investigate fully this serious case and its obvious ramifications. DeVito was permitted to plead to a misdemeanor without providing the District Attorney with the information he obviously had. The prosecutor did not advise the judge of DeVito's involvement in the narcotics traffic. Instead, the prosecutor recommended the acceptance of a misdemeanor plea, and remained mute while DeVito's attorney made self-serving declarations of what a hero this detective had been. A police officer who sells heroin and is caught, should not be able to escape the full penalty of his acts just because he is willing to resign and forfeit his pension. Finally, the District Attorney still had an opportunity to conduct a purposeful investigation even after DeVito was sentenced, by summoning him before a Grand Jury, granting him immunity and compelling him to testify or face contempt charges. This, too, was not done.

#### The sentence

The sentence imposed upon Joseph DeVito by Mr. Justice Albert Bosch was a one-year conditional discharge, which meant that DeVito was set free, but was on probation for that period

of time. When questioned by the Commission about the circumstances behind this sentence, and the remarks made at the side bar conference just before sentence, Judge Bosch stated that he had not been adequately informed by the District Attorney of the nature of the case, DeVito's role in the conspiracy nor even what type of drugs were involved (Pr. H. 3563-4). When DeVito's attorney made a plea in behalf of his client, Judge Bosch noted these remarks were not challenged by the prosecution. The Judge's testimony regarding the events of that day, as well as the testimony of the two Assistant District Attorneys, has already been reported.

Judge Bosch's claim that he did not know the DeVito case involved heroin is not in accord with information contained in the indictment, which the Judge had before him at the time of sentence. It is also a claim which contradicts the Judge's own remarks which preceded his pronouncement of sentence, when the Judge stated "I have examined the background of the defendant" (p. 6, *Minutes of December 17, 1970*, Supreme Court, Queens County, Criminal Term, Part 1-A).

The first count of the indictment was the felony count of conspiracy in the second degree, and alleged that DeVito had conspired with accomplices to supply and sell heroin and to offer heroin for sale, and that the quantities involved in such conspiracy exceeded eight ounces. The overt acts alleged in the indictment are five in number, and read as follows:

"And in furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed at various places in the County of Queens.

1. On or about and between July 1, 1970 and July 10, 1970, the defendant, JOSEPH DEVITO, did supply a quantity of heroin in excess of one ounce to a co-conspirator, known to the Grand Jury, for delivery to a prospective purchaser.
2. On or about September 5, 1970, the defendant, JOSEPH DEVITO, did meet with a co-conspirator, known to the Grand Jury, for the purpose of identifying a prospective purchaser of heroin.
3. On or about September 5, 1970, the defendant JOSEPH DEVITO, did receive a license plate number from a co-conspirator known to the Grand Jury, for the purpose of identifying the ownership of the vehicle to which said plate was attached.

4. On or about September 10, 1970, the defendant, JOSEPH DEVITO, advised a co-conspirator, known to the Grand Jury, that the license plate number above-mentioned was registered to a Leasing Company in New Jersey.

5. On or about September 11, 1970, the defendant, JOSEPH DEVITO, did visit a co-conspirator, known to the Grand Jury, at a service station located at 178th Street and Union Turnpike, Queens County, New York, for the purpose of delivering a vial of acid compound to said co-conspirators for the testing of heroin."

Thus, Judge Bosch cannot assert that he had not been sufficiently apprised of the nature or gravity of DeVito's actions. Perhaps the prosecutor should have said more, but this did not relieve the Judge of discharging his own obligation of reading the indictment and thoroughly familiarizing himself with the facts of the case and the background of the defendant. Moreover, if the Judge felt he lacked sufficient information about the case or the defendant, he should not have permitted the waiver of the 48 hours notice of sentence. Not only was DeVito's misdemeanor plea accepted on December 17, but the Judge imposed sentence on the same day without waiting for a probation report. There would appear to be no justification for the haste which surrounded the unusual events of that day.

***E. The Depth and Extent of Narcotics Corruption at the Time of the Commission's Public Hearing in April 1971***

Corruption in police work is nothing new. Corruption on a large scale in narcotics police work, however, is a relatively recent phenomenon. By the time of the Commission's public hearing in April 1971, corruption in narcotics law enforcement was the No. 1 corruption problem in the New York City Police Department. Our hearings presented the first true picture of the depth and extent of the narcotics corruption cancer. It was a shocking disclosure.

For many years, police officers made distinctions between certain types of corruption. The police grafter who readily accepted money from bookmakers, prostitutes and saloon-

keepers considered this "clean" graft, but he wanted no part of any deal with a drug pusher. Any policeman believed involved with such scum, risked not only the opprobrium of his brother officer, but perhaps more. In time, however, this wall between "clean" and "dirty" graft began to erode, and by 1971, it was gone completely. This does not mean that every crooked officer who took money from gamblers was now willing to overlook heroin crimes for the right price; some police officers still were not willing to take that final step. But more and more were, and more importantly, those who held back, still refused to do anything about the others who did. Moreover, it was not the individual NARCO cop alone who was involved but generally his partners as well, and finally his team. Those infected sometimes approached the "straight" ones, telling them how foolish they were to hold out. "Deals" between NARCO men and pushers were no longer hushed whispers, but stories told openly at the precinct house, with brazen recitals of the size of the "scores." This was the state of affairs in April 1971.

A number of SIU officers related attempts by brother officers to intercede with them in behalf of narcotic criminals. The criminals were described as being "good guys" who would make it worth their while to listen to what they had to say. A clear illustration of how the cancer of corruption had spread by early 1971 came in the testimony of Patrolman X. The testimony of Patrolman X was significant in that it was a graphic explanation of current conditions in the NARCO Division.

Patrolman X testified that brother officers in his NARCO field unit "laughed" about narcotics factories they had "scored" (Pr. H. 1536) and discussions of their deals and how they flaked addicts, took place in the precinct house while sitting around the table:

"Q. Have there been other people present when they described this to you?

A. Usually we are sitting by the table in the Group office. There may be anywhere between six additional people to twelve.

Q. They talk about it openly?

A. Very openly. I am surprised." (Pr. H. 1429)

On one occasion, Patrolman X was offered a bribe by a man he was about to arrest for felonious possession of drugs.

The prospective defendant proceeded to describe how Patrolman X could submit a weak complaint by stating in his affidavit and in his testimony that the drugs were on the floor, rather than on the defendant's person. In this way, the court would have no choice but to dismiss the complaint and the defendant would "walk." The individual told Patrolman X that he had done business with other members of Patrolman X's NARCO Group:

"Q. What did he say to you which ultimately led to your arresting him for bribery?

A. He told me that he wanted to make a deal, that he had done business with two other officers in Narcotics, and that I should trust him that he was all right.

Q. Well, did you say anything about the fact that you had already been in there and it would be difficult for you if he wanted to go along to do so since your presence as an officer was known officially to the Commanding Officers, or anything along those lines?

A. I did tell him and he responded to me that he could fix it in court if I testified in a certain manner.

Q. That you or he could?

A. That I could.

Q. Did he say anything about the complaint or affidavit?

A. Yes. He told me that I could testify in such a manner that it would be thrown out, I could explain on the affidavit that the narcotics was on the floor in the proximity of the individual, so as to make it a constructive case and that he had nothing on his person.

\* \* \*

Q. You said he said he had done good business with other officers?

A. Yes.

Q. Did he indicate the amount?

A. Yes, he did.

Q. What did he say he had done with the other officers?

A. He had gotten situations straightened out for a few thousand dollars.

Q. How many other officers did he mention?

A. Three." (483-6)

Patrolman X played along with the individual and made arrangements to have a witness present to hear the bribe offers. He then arrested him and others the defendant telephoned and who brought the money for payment of the bribe. What happened just before the bribery arrest and subsequent to it, revealed the extent of corruption and how matter-of-factly police officers viewed it.

While Patrolman X was in the process of completing the paper work and his police reports, a Detective who worked in that local precinct came over to Patrolman X and told him to accept the money and let the defendant go (486). This Detective was not the only officer who felt that way:

"Q. What else did they say about the individual?

A. They told me that he was a right guy, he was O. K. and you could do business with him.

Q. Did he say anything else?

A. He told me that he personally takes care of him, that he's all right.

Q. Following that bribery arrest, did any other officers speak to you about that particular action you had taken.

A. Yes.

Q. Can you tell us about that?

A. A week or so after the arrest a fellow officer called me out to the hallway and asked why did I make the arrest. He told me that I did the wrong thing because he had done business with this person prior to this, on three or four occasions. The person didn't do too well, and he said it was all right to do business. I shouldn't be afraid to get my feet wet.

Q. He said don't be afraid to get my feet wet?

- A. Yes.
- Q. And he said he himself had done business with this man? What language did he use?
- A. He said he had personally scored the man three or four times.
- Q. Did he indicate that other officers, in addition to he himself, had scored the defendant?
- A. Yes, he did.
- Q. Who was the other officer he was referring to?
- A. His brother officer, a teammate.
- Q. Did he indicate how much money he had received by scoring this defendant?
- A. A few thousand dollars. Two thousand dollars." (487-8)

Read into the record during Patrolman X's testimony was the criminal record of the man he arrested for bribery and also for felonious possession of drugs. This was the officer who told Patrolman X that he had done business with Patrolman X's brother officers in that NARCO Group. And this was the individual Patrolman X's own co-workers said was "all right," "takes care of them," and whom they had "scored."

At the time of the Public Hearing, the defendant had been arrested on drug charges six times, beginning with 1967, exclusive of the arrest by Patrolman X. All six arrests were felony arrests. The 1967 arrest resulted in a reduction to a misdemeanor. All remaining five arrests from 1968 on resulted in dismissals. One of the officers who had made one of those arrests was one of the NARCO patrolmen named by the defendant as a man he had "done business with" (496-7).

Patrolman X described the different types of "deals" with criminals his brother officers in NARCO had been involved in:

- "Q. When you say 'make a deal' with the defendant, what do you mean by that?
- A. I mean by holding back a substantial quantity of drugs seized, either on the person, or on the premises, so as to make the court affidavit a lower charge.

- Q. All right. And what do the officers get out of that?
- A. They can get money or they can get heroin, or both.
- Q. Have you been told by officers about such deals that have been made by narcotics officers?
- A. Yes, I have.
- Q. All right. Now have you been told of deals where no arrest at all was made?
- A. Yes, I have.
- Q. Have you been told of deals whereby an arrest was made, but the officer submitted a weak or faulty complaint?
- A. Yes, I have.
- Q. Have you been told of arrests being made where officers gave weak testimony designed to affect the release of the man they had arrested?
- A. Yes.
- Q. Have you been told by officers of such deals where they reported or arrested a man for a misdemeanor instead of a felony?
- A. Yes.
- Q. You have described occasions where it may be impossible for an arresting officer to cut a man loose entirely.
- Do you remember saying that?
- A. Yes, I do.
- Q. Have you been told of deals where they will arrest a man for a felony, but because of circumstances prohibiting them to release him entirely, they charge him with a felony, but a lower degree, in fact, than he can be charged with?
- A. That is correct.
- Q. And you say that police officers have described situations like this to you in the Narcotics Division?
- A. Yes.

Q. Officers currently in the Narcotics Division?

A. Yes." (481-3)

One area ravaged by narcotics addiction and crime is the Central Harlem community. Congressman Charles B. Rangel, who represents this community, testified at the Commission's public hearing about narcotics and police corruption in Harlem. The following are excerpts from Congressman Rangel's testimony:

"By DEPUTY COMMISSIONER SKOLNIK:

Q. How long would you say this narcotics problem has existed in your particular area? We will confine it to your District, your Congressional District.

A. Obviously it existed longer than I personally had knowledge. I say this because in reviewing some of the people that I had gone to school with, and I see them now in the autumn years, I see that many of them had yielded to the temptation of escaping the problems of the community by becoming drug addicts. But certainly in the last five years I have seen no problem, no epidemic, no illness sweep the community to such an extent that it instills the very fear in the hearts of the mothers that their child will either yield to the temptation of becoming an addict or become the victim of an addict's search for money. There was a time when we all used to believe that a mother was concerned about her child finishing high school and growing up to become a decent citizen in the community. Now the mothers' fears are merely that the child survives." (439-40)

\* \* \*

" . . . It is common knowledge that we have policemen that are anxious to be assigned to the Narcotics Squad, to be assigned to Harlem generally, because of the opportunities to make money, because of the opportunities to be involved in this corruption, and I personally have had people come to me in an effort to use what they thought was political influence to make these transfers possible.

Q. Is that recent?

A. It was as recent as last year.

I have had policemen yell to me, even though I didn't recognize who they were, that they were starving to death as they stood on a traffic corner in downtown New York, asking to be returned to the Harlem community.

And Harlem has accepted corruption historically.

Q. Can I interrupt you for just one moment?

You said that you had police officers who were working on traffic downtown—

A. Yes.

Q. —who were asking to be transferred to Harlem, is that correct?

A. It was a unique thing. The reason that I remember this is because the conversation took place while I was in my car and he stood in the rain directing traffic.

Q. Did you know him?

A. I recognized who he was.

Q. Did he know you?

A. Obviously he knew me better than I knew him because he called me by my first name.

Q. What did he ask you to do?

A. He says, 'Charlie, get me the hell out of here and back to Harlem, I am starving to death.'

Q. Of course by that he didn't mean he wasn't getting the same salary as other police officers.

A. Of course not. He knew that I knew exactly what he meant. He knew that the community knows that you can make money in Central Harlem.

Q. Would you please tell us—I am not trying to put you on the spot—but since this is a hearing at which we are trying to get facts and details, just what did you understand him to mean, what did he want to accomplish by going to Harlem or transferred back to Harlem?

A. He knew that Harlem corruption was accepted as a manner of life; that once he got into the Harlem area, where we have the highest crime rates, where we have the highest narcotics addiction and trafficking rates, where we have a policy number game which exists, that the policemen there being so part of the system, that he could make money other than what his salary called for.

And this, unfortunately and tragically is accepted by the people in Harlem, as well as it is accepted by the Police Department." (442-4)

Congressman Rangel described a visit to his political organization by persons seeking his help in getting police officers assigned to the Narcotics Squad in Harlem:

"And the ironic thing about the request that was made to assist some people to get on the Narcotics Squad was the fact that they were requesting it on behalf of black policemen.

The fact ironically is that they were certain that the black policemen were being discriminated against because they were not allowed to participate in the graft and corruption that exists on the Narcotics Squad.

Q. Is that what you were told, Congressman?

A. Yes. Well, they didn't have to say that.

They were just saying that the decent jobs are going to the white police officers. They asked me to investigate and I will see clearly that black police officers do not have the same opportunities to be on the Narcotics Squad.

However, it was not said on their behalf, that they wanted to get on the Narcotics Squad in order to be a more effective policeman, in order to eliminate the crime, the drug addiction traffic that was taking place. And the hurting thing as a guy that was raised and loves Harlem is that it hasn't been too long ago that policemen felt freely to tell me that while policy graft is something that is pretty well accepted, that they would not tolerate any brother officer involved

in either narcotics corruption, or narcotics trafficking. I haven't heard these words in the last couple of years from other police officers of black persuasion.

Q. As a matter of fact, you just said to the contrary, you were approached, was it, by a black gentleman?

A. By a black gentleman—

Q. Who asked you to intercede on behalf of black police officers, to get them transferred to the Narcotics Squad?

A. That is true.

Q. For the purpose of getting in on the money to be made in Harlem?

A. That is exactly true.

Q. And this happened recently, too, did it?

A. It happened recently. And the people of Harlem have reported crimes that have taken place and have seen nothing happen.

And today you will listen to some young punk tell you openly that before he gets involved in selling narcotics that he must have a thousand dollars cash on him and this is to make certain that even if he is picked up, that he will never make it to the court because this cash allows him to buy his way out of it. And this is supported by the fact that many people are arrested in Central Harlem for narcotics trafficking still return to the community and are trafficking in narcotics.

It may be a little difficult sometimes for even the Police Commissioner to know how many drug traffickers are really involved with police protection. ... ." (445-7)

Other startling testimony about the widespread narcotics corruption then existing in the New York City Police Department was given by two top-ranking officers.

Supervising Assistant Chief Inspector Joseph McGovern, Commanding Officer of the I.A.D., the anti-corruption unit of the Police Department, and Inspector Donald F. Cawley, Com-



manding Officer of the Inspections Division in the office of the First Deputy Police Commissioner, both testified at the Commission's public hearing about police corruption. Both men had worked with the Commission in gathering and reviewing police records in this area, and it was felt that they could best describe and discuss this very sensitive and important matter. It was also felt that these men, officially representing the Department, would present a picture of the past and present condition of corruption which no one could challenge. It was expected that their testimony, bearing the imprimatur and sanction of the Police Commissioner himself, would not only be objective and fair, but would tend toward the most conservative approach in assessing just how serious was the Department's corruption problem.

Chief McGovern, a veteran of over thirty years in the New York City Police Department, had worked continuously in various police investigating units since 1954 (263). He stated that corruption in narcotics work had evolved into the largest single corruption problem, exceeding even corruption in gambling:

"Q. So you have had a number of years of experience, not only in the Police Department, but in the field of investigating complaints of corruption within the ranks, is that correct, Chief?

A. Yes, sir. Since the fall of 1954, I have been in various investigating units continuously.

Q. All right. Chief, can you tell us today whether you receive many complaints about corruption within the Narcotics Division, and how that compares with other law enforcement units within the Department and how it compares with previous years?

A. Yes, sir.

Q. In a general way.

A. Yes. The most significant, or the most, the largest single category of complaints concerning misconduct by policemen falls in the area of narcotics generally. This includes members of the force of all assignments, but the largest single problem is narcotics.

Q. More so, of course, than gambling, since you say it is the largest.

A. Yes, sir. More so than gambling.

Q. Is this a change over previous years?

A. Yes. It was my experience until recently that gambling had been always the big bugaboo—if I can use that expression—in terms of enforcement and the problems of enforcement.

I would say in the past few years, and particularly since we have been able to catalog our complaints under the current administration, we have a central complaint index in my office, so that we are able to know the exact nature of the problem. It is a big problem.

Q. You said it was a big problem.

Would you say that, unfortunately, corruption is a significant factor in the enforcement of the narcotics laws today?

A. Yes, sir." (263-5)

Inspector Donald F. Cawley had worked closely with the Commission's staff in reviewing past cases of corruption involving NARCO personnel and other officers doing narcotics enforcement:

"Q. Inspector, during the course of this Commission's investigation, did there come a time when we contacted the office of the First Deputy Commissioner, of the New York City Police Department, for certain material and assistance?

A. Yes, sir.

Q. Were you involved in any such conferences or discussions?

A. Yes, sir, I was.

Q. Could you tell us when these conferences took place, and what was the subject matter of the meetings?

A. On January 11th, the First Deputy Commissioner and myself met with members of the Commission to provide them with assistance in the current inquiry, and provide information on misconduct cases involving corruption which were conducted by the

Police Department into activities by members of the Narcotics Division, as well as members assigned to other branches of the Department.

These cases included both completed and pending matters covering criminal prosecutions, as well as departmental disciplinary proceedings.

Q. And you reviewed for us and obtained such material for us, including, as you point out, not only past and completed cases, but pending investigations, matters which your Department is currently looking into.

A. Yes, sir.

\* \* \*

Q. Inspector Cawley, did this review alert the Department to any internal problems involving police corruption?

A. Yes. The record of the investigations, which were conducted, revealed a number of very serious allegations concerning present members of the Department, both the Narcotics Division and other branches.

Q. Are you talking about matters currently under investigation, current complaints, current allegations, current investigations involving corruption?

A. Yes, sir.

Q. Preceding you as a witness was Chief McGovern, and I would like to ask you the same questions that I asked him, number one:

Based upon the work that you have done, and your experience in the Police Department, would you say that corruption exists to a significant extent within the Police Department in the areas embracing the narcotics laws?

A. Yes, sir, I would say it exists to the extent that it is of a prime and pressing concern to the Department.

Q. And how would you characterize the number of complaints alleging corruption of narcotics officers, vis-a-vis other law enforcement functions?

A. I would say that they are on the increase. Our records over a limited period of time would suggest that we receive more complaints in this particular category than we do in others.

Q. Would you say that is your major sore spot?

A. Yes, sir. I would say at this time." (319-23)

#### **F. The Police Department's Attitude Towards Corruption**

The Commission's review of official police records dealing with corruption cases pointed up significant weaknesses in the Department's view towards corruption within its ranks. These records of completed cases, as well as pending investigations, revealed a basic weakness in their anti-corruption attitude. In virtually all of the corruption investigations undertaken by the Police Department itself, the impetus for the investigation originated outside the Department. At least with regard to those cases which were examined by the Commission, the general pattern was the lodging of a complaint by some individual or outside agency, which was then followed by the police investigation. A brief reference to examples previously cited will illustrate this point.

The case of Patrolman T supplying heroin to Diane, the addict, came to the Department's attention when her boyfriend went to I.A.D. and told them this was being done. The arrest of NARCO officers for extorting \$6,000 followed a complaint by the individual who paid the money. The officer shipping heroin to Boston was reported to the police by federal authorities. The perjury by a NARCO officer testifying at a court proceeding was observed by the Assistant District Attorney prosecuting the case who notified the Police Department. One police officer shared an apartment with a member of organized crime who was cutting five kilos of heroin per week. Again, the Police Department did not know of this until an investigation of the pusher's homicide by the Pennsylvania State Police disclosed this association. In another case, tenants complained about a possible burglary, and when the local police went to check, they found the apartment contained narcotics and the tenant-occupants were police officers.

The discrepancies between the amount of narcotics reportedly seized by the police, as noted in their official reports, and

the records of the police laboratory, were startling. These fantastic discrepancies were uncovered by the Commission by merely reading police records, an elementary supervisory responsibility which police officials never exercised themselves. And so it appeared in virtually all the cases reviewed by the Commission: the police reacted to outside complaints and did not discover these acts of corruption on their own.

Even this general statement is not completely accurate: the police did *not* investigate all the significant corruption complaints. During the course of the Commission's review of police records, we discovered a "Pandora's box" of serious allegations about police officers doing narcotics work which had never been investigated. There were a total of 72 police officers involved, and the information about these men came from another law enforcement agency which alleged that these officers were "improperly engaged in narcotics traffic." The information was brought to the New York City Police Department's attention during the period of 1968 through 1970, and at the time the Commission discovered this matter, these allegations had not been investigated. The Police Department's explanation was that they understood such information had been forwarded to them for "intelligence" purposes and that the federal authorities themselves were investigating. During this three year period, seven of the 72 officers retired, and others were promoted. The officers included not only Patrolmen and Detectives, but Sergeants, Lieutenants and one Captain. Many of these officers were serving in extremely sensitive positions at the time the Commission discovered this "can of worms."

There is no doubt that some of the allegations against these 72 men were probably unfounded. Perhaps this is true with respect to many or even most of the men. But it is equally true that each and every allegation susceptible of investigation should have been thoroughly pursued. They were not.

Another gauge of the Department's attitude towards corruption can be found by examining the number of arrests made for bribery of police officers. It is undisputed that people dealing in narcotics offer bribes to the police. This not only happens, but it happens with regularity. The Commission therefore decided to see how many pushers offering money to policemen were arrested by such officers and charged with bribery. The results of this review were another eye-opener.

# CONTINUED

2 OF 4

Following is a chart introduced into evidence at the Commission's public hearing as Exhibit #10.

NUMBER OF BRIBERY CASES  
MADE BY  
MEMBERS OF NARCOTICS DIVISION  
1967 — 1970

Group	1967	1968	1969	1970
1 (Man S)	.....	.....	.....	1
2 (Man N)	1	.....	.....	1
3 (Man N)	.....	.....	.....	2
4 (Bronx)	.....	.....	1	3
5 (Bklyn Sand Richmond)	.....	.....	.....	.....
6 (Queens)	.....	.....	.....	.....
7 (Bklyn N)	.....	.....	.....	1
S.I.U.	.....	.....	.....	.....
TOTALS	1	.....	1	8 = 10

The information contained in the chart was supplied by NARCO, and shows the number of bribery cases made by members of NARCO for the four-year period of 1967 through 1970. These cases are broken down by Field Group and also include SIU but not the Undercover Unit. The latter was excluded because they generally limit their work to making narcotics "buys" and do not make arrests. Before discussing the material in the chart, a word of explanation is appropriate regarding the meaning of bribery "cases." For the purpose of this compilation, the Commission was interested in single situations which led to bribery arrests, rather than the number of individuals arrested in those "situations." For example, Patrolman Jones apprehends Defendant A for a narcotics crime and is offered a \$5,000 bribe if no arrest is made. Patrolman Jones agrees and permits Defendant A to make a telephone call to get the money. Shortly thereafter, Defendant B arrives on the scene with the money. Defendants A and B then give the \$5,000 to Patrolman Jones who arrests them both. This was regarded as one "bribery case" by the Commission, since the two arrests arose out of one offer and one situation.

As seen on the chart, only one bribery case was made by NARCO in 1967 and 1969 and none during 1968. In 1970, there are 8 such cases, 7 of which were made after a series of articles appeared in the *New York Times* dealing with police corruption. In summary, there were only 10 bribery cases

made by members of the NARCO Division during the four year period preceding the Commission's public hearing and two Field Groups and SIU made no bribery arrests at all during this entire time.

One final word on police corruption. Public disclosure of wide-spread corruption, particularly in narcotics police work, was not a happy task for the Commission. Nevertheless, it was a responsibility which had to be discharged. Although our facts and evidence were never disputed, the reaction by some police was still resentment, bitterness, and the protestation that "honest cops" were being hurt because of the misconduct of the crooked ones. The reply to that claim is absurdly simple: Where were the "honest cops" when their fellow officers were taking bribes and selling narcotics, and what did they do about it. The answer is that these "honest cops" looked the other way! With the exception of Patrolman Frank Serpico and Detective David Durk, the Commission has been unable to find any examples of police officers reporting police misconduct to superior command personnel in the Police Department or to District Attorneys. The Commander of NARCO, Deputy Chief Inspector John P. McCahey, had been a member of the New York City Police Department for twenty-two years when he was asked at the public hearing whether a policeman had ever given him information of corruption on the part of a fellow officer:

"Q. Have you ever had any instances that you can recall, Chief, where a police officer came to you and gave you evidence about corruption on the part of another police officer?

A. No, sir.

Q. And are you saying that in all instances the discovery of corruption was the basis of a complaint from outside the Department?

A. To my knowledge, yes, sir." (1713)

The Commission's disclosures of corruption came from police records and from some police themselves. No one is in a better position to observe police misconduct than a brother officer. They see and hear things first-hand, as they occur, and on the spot. No one can do more to fight corruption than the police.

At this point, it is appropriate to repeat one of the Commission's recommendations on this subject:

"Corruption in any form and in any branch of police work is reprehensible, but it is particularly heinous in the area of narcotics. Every police officer must be reminded constantly, that he has the duty and responsibility to report any information or suspicion of misconduct to appropriate police officials. The honest policemen must do more than merely protest disclosures of police corruption with the self-righteous claim that the vast majority of police are honest, and that the corruption reported only involves a small number of men. Police corruption nourishes on the indifference and unwillingness of honest police officers to come forward and stand up and be counted. The tide must be turned and a climate created where the dishonest policeman will fear the honest fellow officer, rather than the honest policeman being afraid to report the corrupt ones."

## VII. THE TOOLS OF THE TRADE: GLASSINE ENVELOPES, QUININE AND OTHER PARAPHERNALIA USED TO PACKAGE AND DILUTE HEROIN

Heroin is smuggled into the United States in multi-kilo quantities and in a pure form. As it furtively proceeds along the various routes of distribution, it is adulterated by the addition of materials designed to reduce its purity and to stretch the profit. By the time it reaches the addict on the street, it has been diluted to an average purity of between 4 and 12%. In addition to the adulteration process, it must also be packaged or "bagged," so that it can be easily transported, handled and hidden. The paraphernalia which are used to dilute and package heroin are indispensable ingredients of the traffic, and are the subject matter of this section.

### A. Packaging Paraphernalia

The most popular packaging tools are glassine envelopes and gelatin capsules. Glassine envelopes come in various sizes,

are transparent, and until changes brought about by the Commission's investigation, were readily available in any number of stationery stores and in shops selling paper products and stamps. The smallest size is  $1\frac{1}{2} \times 1\frac{1}{2}$  inches, which is the size containing the heroin a street-addict most generally buys. In New York City, \$5 will buy a "nickel bag" containing one or two grains of highly adulterated heroin, with a 4 to 12% purity, contained in a  $1\frac{1}{2} \times 1\frac{1}{2}$  glassine envelope. This is the addict's "fix."

The legitimate uses of  $1\frac{1}{2} \times 1\frac{1}{2}$  glassine envelopes are limited. They are used by stamp collectors, but cannot hold more than a single stamp or two. This small size is also handy in the jewelry industry for containing small watch parts, and is used by dental laboratories and dentists for dental items. There are other possible uses but not many at the retail level.

Gelatin capsules are popular in Washington, D. C. and other areas in the United States but as a rule not in New York City.

## B. The Adulterants

### Quinine

Quinine hydrochloride is the most desirable adulterant because it is similar to the heroin itself in color (white), form (powder) and taste (bitter). By preserving the integrity of the taste and the other identifying qualities of the drug, the purchaser of a bag of heroin does not know how heavily it has been diluted. Quinine hydrochloride also produces a flashing or tingling sensation at the situs of injection. This further enhances the user's sensation of having high-quality heroin.

The sulfate form of quinine is used in the treatment of malaria. Quinine hydrochloride is used in the manufacture of beverages like quinine water and in the preparation of some hair tonics. Thus, quinine in the form used to dilute heroin (HCL) has very limited use below the manufacturing levels of industry.

Quinine is an imported item, but is readily available for manufacturing purposes from distributors and suppliers in the United States.

### Mannite/Mannitol

These terms are currently synonymous, although originally mannite referred to a naturally occurring plant material and

mannitol to a synthetic product. Both items are imported into the United States.

These products are mixed with heroin in order to add bulk. Because both mannite and mannitol are tasteless, they do not disturb the bitterness of the heroin drug.

Mannite and mannitol are used extensively in the baking and confectionery business as "fillers," in the drug industry as "binders" and "fillers," and in the cosmetic industry as "fillers." Again, one would have no legitimate use for these products below the manufacturing level.\*

### Dextrose/Lactose

These are not desirable adulterants because they possess a definite sweet taste, but are used when mannite and the other items are not available.

Dextrose and Lactose are used as additives to baby foods and cereal, and can be purchased in any retail pharmacy.

## C. Preston Strozier—Paraphernalia Profiteer

During the Commission's investigation, information came to our attention regarding extraordinary purchases of glassine envelopes, quinine and other paraphernalia by so-called "legitimate businessmen" and other not-so- "legitimate" individuals. It was obvious that these items were going into the heroin trade. We therefore decided to look into this situation. What we discovered was a possible loop-hole in existing law which enabled greedy businessmen to reap enormous profits by dealing in these items. It was obvious these merchants knew what their products were being used for, based upon the prices they charged and the quantities sold. An example was the traffic in  $1\frac{1}{2} \times 1\frac{1}{2}$  glassine envelopes which the manufacturer sold to his distributors for \$1.49 per package of 1,000. The retailers paid such distributors a small legitimate profit and then sold the same package of 1,000 envelopes across the counter for \$15-\$20.

At the public hearing, the Commission presented a profile of a well-educated, ambitious young man, nicknamed "Smooth"

\* The imported "cube" form of mannite is used in low-income areas as a mild children's laxative, but according to the Federal Bureau of Narcotics and Dangerous Drugs, this accounts for probably only 1% of the amounts imported in such form.

(826). His real name was Preston Strozier, his age 26 and his profession, a paraphernalia profiteer. The Commission traced Strozier's activities over a four month period as he traveled by land and air, to purchase all the tools of the narcotics trade: quinine, mannitol and glassine envelopes. The story went as follows:

In July 1970, Preston Strozier visited a medical supply company in Chicago. He identified himself as a representative of the Bruce Howard Supply Co. of 2110 Eighth Avenue in New York City and expressed an interest in purchasing 1,000 ounces of quinine hydrochloride. The medical supply firm asked Strozier for a drug license number and he gave them a fictitious number to add authenticity to his visit and order (791). Within a day or so, Strozier returned, accompanied by one Bruce Howard, and the order was placed for 1,000 ounces of quinine at \$4.50 per ounce (792). The next step was a visit to a large stationery shop in Chicago where they placed an order for 600,000 glassine envelopes of the 11½ x 11½ size, at a price of just under \$2 per package per thousand (794). Howard returned to New York by plane using a fictitious name and Strozier came back on his own.

The July order of 1,000 ounces of quinine was shipped via airfreight to LaGuardia Airport where it was picked up by Mr. Howard (795). Pursuant to Strozier's instructions, the quinine was shipped in seven cartons labeled "Foot Powder," and insured for \$25,000 (795).

Contacts between Strozier or Howard and the Chicago firms continued and additional orders and shipments followed. In August, there was another purchase of 600,000 glassine envelopes, and in the months that followed, additional purchases of quinine in quantities of 1,000 ounces. Purchases of mannitol were also made. The first was a purchase of 450 pounds at a cost of \$750, which was shipped to New York City in cartons labeled "Liquid Dishwashing Detergent, New Pink Lotion" (796). There was a subsequent purchase of 450 pounds of mannitol for \$700, and an additional purchase of 600,000 glassine envelopes. At the end of August, Howard and Strozier attempted to purchase four million glassine envelopes but the shop would not accept an order of such size.\*

\* By this time, the Commission had been in communication with the manufacturer of glassine envelopes.

The total quantities of these items purchased by Howard and Strozier, during the four month period of July, August, September and October 1970, were 3,000 ounces of quinine, 900 pounds of mannitol and 1,200,000 glassine envelopes. These are the purchases of which the Commission is aware and there may have been others from different sources. We know, for example, that these individuals attempted to purchase 20,000 empty gelatin capsules (800) but could not get them from these companies. We do not know whether they were purchased elsewhere.

The activities of Strozier and Howard came to a temporary halt in November 1970 with the arrest of Howard at LaGuardia Airport by the New York City Police Department. Mr. Howard was seen picking up the packages of quinine and when asked what the packages contained and whether he was authorized to receive drugs, he misrepresented himself as a pharmacist. This was a technical violation of the State Education Law, which appeared to be the only State law covering such a situation at that time.†

Richard Dreiwitz, Special Agent of the Federal Bureau of Narcotics and Dangerous Drugs assigned to the New York Regional District, testified at the public hearing regarding the Howard-Strozier paraphernalia transactions. Mr. Dreiwitz estimated how the quantities of quinine and mannitol which we know these individuals received, would be used in "cutting" heroin. Assuming an average "nickel bag" (\$5) contained 10% heroin, and using mixing ratios of 10% quinine and 80% mannitol, he calculated that these materials contributed toward the composition of almost nine million individual "fixes." Furthermore, on the basis of a \$5 price per "nickel bag," this comes to \$45 million worth of street heroin:

"Q. Now, Mr. Dreiwitz, have you computed, at my request, what these quantities of quinine and mannitol would produce by way of 'nickel bags' of narcotics, on the market today? Assuming the purity, average ten percent purity, of the nickel bag and the mixing ratios which you already testified to, what would all these materials produce?"

† The Commission plugged this loop-hole by submitting to the New York State Legislature, a statute to prohibit such commerce in narcotics paraphernalia. The bill was passed and became law on September 1, 1971.

A. We went about it by using the percentages, ten percent quinine, ten percent heroin and eighty percent mannite.

An interesting thing is that we found that a thousand ounces of quinine and 450 pounds of mannitol would be the exact—almost the exact, close enough, certainly for the street use, the exact proportions for the nickel bag. Certainly if you have a thousand ounces of quinine you need a thousand ounces of heroin. So a thousand ounces of quinine equal 62.5 pounds—assuming—well, to cut out all the arithmetic we knew that a thousand ounces of quinine equal approximately three million nickel bags, 2,916,666 bags.

Q. Incidentally, Mr. Dreiwitz, did you learn or discover in doing these computations that the amount of mannitol that was purchased seemed to fit very smoothly into the amount of quinine that was being purchased, in that the—assuming your cutting ratio, they were ordering the amount of mannitol they needed for that amount of quinine?

A. That's correct, because the quinine would give approximately two million nine hundred odd thousand nickel bags and that quantity of mannite would give approximately two million, six hundred twenty-five thousand odd nickel bags, which is close enough for street purposes.

Q. So you found you would get about three million nickel bags for each thousand ounces of quinine?

A. Three million nickel bags. And we have to assume that the 3,000 ounces of quinine would also require 3,000 ounces of heroin.

Q. Is it safe and fair to assume that the various dilutants, which they purchased, have been responsible, assuming that it met with the heroin, for nine million individual fixes on the market today?

A. That's the only conclusion we can come to, yes, sir.

Q. And you might add, too, as Judge Silver observed, on the basis of a \$5 nickel bag, we are talking about

\$45 million of heroin being trafficked in the City or wherever it wound up.

A. That's right." (802-4)

Mr. Dreiwitz also reported that the arrest of Howard did not discourage him and Strozier from attempting to order more quinine. On the very afternoon of Howard's arrest, both he and Strozier contacted the medical supply house in Chicago, told them of the arrest and asked for more quinine (801). Acting upon the instructions of BNDD, the Chicago firm refused, but made it appear that they were only hesitating because of the "heat." Strozier and Howard kept calling and offered any amount of money and even suggested chartering a private plane to pick up the quinine:

“Q. Did you learn that on subsequent contacts, after Mr. Howard's arrest, what price they offered to pay for the quinine for which they had earlier paid four and a half dollars an ounce?

A. They offered to pay \$20 per ounce.

Q. Did you learn of any other conversations between Howard and Strozier and the Chicago people?

A. They did telephone Chicago a number of times, trying to obtain quinine. In fact, they even sent the firm in Chicago a check. I think it was toward the end of March.

Q. For what quantity, Mr. Dreiwitz? The date is not important, Mr. Dreiwitz, but for what quantity?

A. I think it was 3,000 ounces.

Q. And you are talking now about their contacts after Mr. Howard's arrest?

A. That's correct.

Q. Before the disposition of the case in court?

A. That's correct, yes, sir.

Q. They were that bold and that confident that they were beyond the law, is that right?

A. Mr. Fisch, they may still be calling this morning for more quinine.



Mr. Fisch: I might put on the record, Mr. Chairman, a conversation that I had with one of the people in Chicago, who indicated that—I am not sure whether it was Howard or Strozier—but there were contacts after the arrest, in which they inquired about chartering a private plane and a private pilot and transporting additional quantities of quinine and landing somewhere in New York other than at a regular commercial airport." (801-2)

Mr. Drowitz's observation that Strozier and Howard were bold enough to be calling for more quinine on the day they had been subpoenaed to testify, was confirmed when Strozier displayed his arrogance on the witness stand.

Strozier described himself as a former pre-med college student who had attended college on financial grants, and currently "Manager of Bruce Howard's Stationery and Supply Store" in New York City (827). He testified that he had worked in a Wall Street brokerage house for \$790 per month, net, before coming to work for Howard at \$300-\$400 a month (829). When asked why he made this financial sacrifice, he said he was single, had no expenses and so the money "doesn't matter" (830).

With regard to his transactions in paraphernalia, he admitted visiting the Chicago medical supply firm in July and discussing quinine, but stated it was done as part of a "survey" he was then conducting because, as he put it, "I was going to write a term paper in our sociology class in the coming fall (832). Also, as part of his "survey," he contacted the Food and Drug Administration, the F.B.I. and New York and Illinois State Narcotics officials, to inquire about the legality of purchases and resale of glassine envelopes, quinine and "mannita" (mannitol). He learned that it was "within your constitutional rights" to buy glassine bags on a wholesale basis and resell it, but that although quinine and mannitol "could be bought by any individual with the money," it could not be resold without "some type of pharmaceutical or narcotic type of license" (832). Chairman Paul J. Curran questioned Strozier on this point:

"The Chairman: Excuse me.

Mr. Strozier, I think you testified that you conducted a survey of, among other groups, the Federal Bureau of Investigation?

The Witness: Yes.

The Chairman: Just out of curiosity, how did you survey the Federal Bureau of Investigation?

The Witness: Very simple: I just got on the telephone, or else I went to either the office and I just asked an aide, you know, what would be the legal procedures. What would be breaking the law and what would not be breaking the law?

The Chairman: With respect to these items?

The Witness: Right. Correct.

The Chairman: All right. And you were told by—

The Witness: Yes, by all of the agencies that it was perfectly all right for any individual within his constitutional rights to purchase quinine, or mannita, as long as you do not try to resell it, and the packaging would have to specify the same way. So far as purchasing, it was perfectly legitimate.

The Chairman: With respect to glassine envelopes, buy and sell—

The Witness: Yes." (832-3)

At the public hearing, Strozier had to be prodded at times by reminding him of testimony he had given under oath at an earlier private hearing. At that private hearing, Strozier testified that while in college he realized that people in narcotics needed quinine, and by "somehow getting the two together," one could make some money (Pr. H. 34). He was asked how one could profit by purchasing quinine since his "survey" had disclosed that the law prohibited its resale:

"Q. Mr. Strozier, I asked you how the money would be made in quinine because you said it cannot be resold. Is that correct?

A. It cannot be resold.

Q. So I said, where the idea of making money, how would you execute that idea, having purchased quinine? I ask you how money would be made, if you merely purchased it. Do you remember me asking you that upstairs?

A. Yes.

Q. What was your answer?

A. That I don't remember. You are going to have to go over it again.

Q. Did you say that the lawyers would come up with some answers for that, and when they would do that you would have a good laugh?

A. Definitely." (Pr. H. 35)

At his private hearing, where Strozier testified at greater length, he demonstrated his keen awareness of current prices and the potential profit in glassine envelopes and pointed out that "you could go to a stationery store and buy a thousand glassine bags for \$1.86 off the shelf . . . and sell it for \$20 a thousand . . ." (Pr. H. 35).

As far as his visits to the Chicago medical supply company, Strozier explained them as part of his "survey." He testified that he identified himself as a college student doing a sociology paper and asked "what was the laws relating to a common individual purchasing quinine, or mannitol powder or glassine bags" (837-8). He admitted telling them he worked for Howard, but could offer no explanation of why he did so, since Howard was not financing his "sociology paper" (838). Strozier denied giving them any "drug license number," and when pressed at the public hearing on whether he was there to order quinine, he refused to answer, claiming his privilege against self-incrimination. And so it went for the balance of the public hearing, with Strozier playing a game of "peek a boo" behind the refuge of the Fifth Amendment.\* During the times he came out, he gave such answers:

(a) In response to what he and Howard were going to do with their shipments of 1,000 ounces of quinine,

"A. Give it to the Veterans Hospital for malaria patients for Viet Nam." (844)

(b) However, none of the 3,000 ounces of quinine were ever donated for such a noble purpose because "somebody stole it" (844).

(c) What happened to the 900 pounds of mannitol? Strozier's reply—"I don't know" (848).

\* Bruce Howard also appeared at the public hearing and claimed his privilege against self-incrimination with regard to most of the questions put to him.

(d) How much did he make on the 1,200,000 glassine envelopes?

"A. Not a dime, all stolen" (848).

(e) Why did he need four million glassine envelopes? Strozier's answer: "Stamps and coins" (849).

(f) When asked about his customers, Strozier said it was not the type of business where one would get names from purchasers, but an over-the-counter transaction "like going to a hot dog stand and getting a hot dog. . . ." He was then reminded of the difference between narcotics and hot dogs, but Strozier was "not interested" in that:

"Q. We are not talking about hot dogs, we are talking about narcotics.

A. It's all the same thing.

Q. It is the same thing to you?

A. It's all the same thing.

Q. You mean as long as you can make a dollar—

A. I am saying that within the law, Mr. Fisch, it is perfectly legitimate to sell glassine envelopes in any size that the manufacturer makes them.

Q. Does it matter to you as a person that—

A. I'm not even interested in that.

Q. —whether this might be going into the dope traffic, apart from the fact that it's legal, does it bother you as a human being?

A. I don't know where it's going.

Does it bother me?

Q. Yes, that is the question.

A. I don't know where it's going, I don't care." (851-2)

(g) Strozier's blase attitude towards his public appearance and his brazen confidence came across during this exchange:

"Q. Did you tell me that there are no laws that can touch you today?

- A. As far as you are concerned, no.
- Q. No you did not tell me or there are no laws that can touch you?
- A. There are no laws in Federal, State or City on this. Best you go and check your law books again." (855)

Mr. Strozier claimed his privilege against self-incrimination and refused to answer a host of other questions. These included whether or not he had given instructions on how the quinine was to be packaged and shipped (841); who his associates were (842); his financial arrangements with Howard on these purchases (842-3); his contacts with Chicago after Howard's arrest (847); the prices he charged for these items (848); his other sources for quinine (852); and other questions. However, at the time Strozier was served with a subpoena to testify at the public hearing, he told the Commission's Chief Counsel that the only effect Howard's arrest had had was to drive prices up. He stated that the street price of quinine before Howard's arrest had been \$40 per ounce, and now had jumped to between \$70-\$80 per ounce. He said the price of mannitol had also gone up and that the purchases of quinine and mannitol from Chicago were nothing compared to the larger quantities he was getting from Canada (855). He boasted that he expected a shipment of 5,000 ounces from Canada within a few days, that he had "the whole city" (New York); that "all this is mine" and that he was the "one brain" behind the whole operation (855).

#### A 782% Profit in Four Months

Among the numerous boasts by Strozier during off-the-record discussions with Commission personnel, was his statement that he did not care even if he had to go to jail because it had been "a prosperous year." Following his public hearing appearance, the Commission put into evidence a chart showing the estimated profits realized by Strozier and Howard during a four-month period in 1970. This chart\* listed the actual prices paid for the various items of paraphernalia, plus retail prices charged on the street for the same materials. The admissions by Strozier were incorporated into this chart, and where they exceeded street prices, the Commission selected the more conservative figures.

\* Commission Exhibit #16.

ESTIMATED PROFITS REALIZED  
BY  
BRUCE HOWARD AND PRESTON STROZIER  
DEALING IN  
QUININE--GLASSINE ENVELOPES--MANNITOL  
From July Through October 1970

	<i>Actual Cost</i>	<i>Estimated Prices Charged on Resale Based on Known Street Price and Admissions</i>	<i>Gross Profit</i>
QUININE		<i>Street Price</i>	
(3,000 oz's @ \$4.50 per oz.) ..	\$ 13,500.00	(3,000 oz's @ 40.00 per oz) \$120,000.00	\$106,500.00
GLASSINE ENVELOPES		<i>Street Price</i>	
(1,200,000 @ \$2.00 per 1,000) \$ 2,400.00	\$ 2,400.00	(\$20.00 per 1,000) ..... \$ 24,000.00	\$ 21,600.00
MANNITOL		<i>Street Price</i>	
(900 lbs. @ \$1.62 per lb) ....	\$ 1,450.00	(\$10.00 per lb) ..... \$ 9,000.00	\$ 7,550.00
TOTAL INVESTMENT .....	\$17,350.00	Total Income On Sales \$153,000.00	\$135,650.00 782%

As seen in the chart, Howard and Strozier paid a total of \$17,350 for their purchases of quinine, mannitol and glassine envelopes, in the quantities noted. These purchases represent only their dealings during this time period of which the Commission is aware. Based upon prices which undercover agents established to be current street prices, together with Strozier's admissions, the estimated gross profit on this \$17,350 investment came to \$135,650—a staggering 782%! A prosperous year, indeed.

(Strozier's sense of triumph over law enforcement was short-lived. His trafficking in narcotics paraphernalia and his false testimony under oath before the Commission resulted in his indictment by the United States Attorney for the Southern District of New York for perjury, conspiracy and interstate travel to facilitate the narcotics traffic. On November 16, 1971, he and Howard pleaded guilty to some of these counts, and in February 1972, Strozier received a three-year jail sentence and Howard, a suspended sentence.)

#### D. "There Can't Be That Many Stamp Collectors. . . ."

Strozier and Howard were not the only paraphernalia entrepreneurs the Commission came across during the investigation. We examined the books and records of a number of jobbers, interviewed other wholesalers and reviewed the results of surveys the Federal Bureau of Narcotics and Dangerous Drugs had conducted in this area. A number of other examples of the new paraphernalia industry were cited at the hearing.

(1) One stationery store in the Bronx purchased 8½ million 1½ x 1½ glassine envelopes in 1969, and 6 million during the first six months of 1970. When the manufacturer began asking questions, including the names of the purchasers of these envelopes, the owner of the stationery store stopped placing orders.

(2) A Brooklyn tobacco shop purchased 6,300,000 such envelopes within a two month period. When the manufacturer asked for names of retail customers, this storekeeper supplied fictitious addresses and false information.

(3) A small card shop in Manhattan purchased one million 1½ x 1½ glassine envelopes in one month in 1970.

(4) A paper jobber admitting paying \$1.49 per package of one thousand 1½ x 1½ glassine envelopes and charging \$15 upon resale. He denied being greedy, citing some "uptown" competitors who were getting \$25.

(5) An individual from New York City visited the manufacturer in Massachusetts to make arrangements for purchases of glassine envelopes. The would-be purchaser gave a Long Island City address, said he intended to go into the business of selling glassine envelopes "door-to-door" and requested the names of Connecticut distributors because he did not want to deal with anyone in New York.

(6) One retail merchant stopped selling glassine envelopes after a visit from the Commission. He subsequently informed us that one of his customers implored him to get envelopes for him, and promised to make him a millionaire within six months if he would do so.

(7) Federal authorities located one pharmacy in New York which sold every type of narcotics paraphernalia. Over a one and one-half year period, this single store sold 40,000 ounces of quinine; over 47 million glassine envelopes; 12 million gelatin capsules; three and one-half tons of mannite. Federal authorities estimated the net profit on just such paraphernalia items to be between \$850,000 and \$1,000,000.

As one law enforcement agent put it, "there can't be that many stamp collectors. . . ."

## VIII. THE PROSECUTORS AND THE COURTS

Throughout the public hearing, the Commission emphasized that the police effort was only one part of the narcotics law enforcement system. This point was repeatedly made during the hearings through testimony, records and statements by Commission members and staff. The other bodies directly involved in the enforcement process are the prosecutors and the courts. A review was made of how they exercised their respective responsibilities.

### The Prosecutors

During the investigation, the Commission had occasion to confer with each of the five county District Attorneys in New

York City and to meet with members of their staffs. Three of these prosecutors testified at the public hearing and described their narcotics work and problems.

The major problem facing prosecutors was the overwhelming volume of narcotics cases which had to be processed through their offices. In Manhattan, Brooklyn and the Bronx, over one-third of all felony indictments in 1970 were narcotic cases, and the figure for Queens was 23%. In each of these counties, the 1970 figures represented an increase in narcotic felony indictments over preceding years. Thus, Queens County increased 2% from 1969 to 1970; New York County showed an increase of 8.5%; Bronx County's volume rose 9.2% and in Brooklyn, the figure jumped 13.2%. These felony indictments dealt only with "pure" narcotic crimes, and did not include "narcotics-related" crimes, as for example, a robbery committed by an addict.

Felony arraignments in the Criminal Court also showed a marked increase in the number of narcotic crimes. In 1965, 7.6% of all felony arraignments were narcotic cases; in 1966, it was 10%; 12.8% in 1967; the next year, 1968 it went to 13.8%; and in 1969, the last year for which complete figures were available it rose to 20.9%. All available evidence indicates these figures are still climbing.

Another major problem with which the prosecutors had to contend was the poor quality of the arrests made by the police. This was shown by the high percentage of narcotic cases which were dismissed on motion of the District Attorney.

In 1968, there were 11,264 misdemeanor cases of illegal possession of narcotics disposed of in the criminal courts of New York City. Of these, 6,823 were dismissed on motion of the District Attorney or by the judge, for a dismissal rate of 61%. The percentage figure in 1969 was strikingly similar—9,550 out of 15,876 dispositions were by dismissals (61%).

With regard to the misdemeanor arrests for drug loitering, the dismissal figures were in the neighborhood of 90% or more for all counties. An exact count of each and every drug loitering arrest and their disposition was made by New York County District Attorney Frank Hogan's office for the year 1970. That exhaustive analysis revealed that 7,594 out of 8,078 drug loitering arrests (94%) were dismissed on motion of the District Attorney or without a complaint being ordered. The figures were similar in the other counties.

Felony narcotic cases did not fare much better. The Commission examined these dispositions in three ways: (a) felony arrests which went to criminal court and were not held over for Grand Jury action; (b) a review of representative narcotic felony arrests by NARCO and SIU and (c) felony indictments and their dispositions in Supreme Court.

With regard to the first category, the Commission found that over one-third of all felony narcotic cases in 1968 were dismissed in criminal court on motion of the District Attorney or the defendant. In 1969, that figure exceeded 36%.

The statistics from the Narcotics Division covered the period of June 1969 through March 26, 1971 and represented those felony arrests made only by members of the NARCO Division for which dispositions were available. (Previous narcotic arrest statistics included arrests by all members of the New York City Police Department.) The figures showed 2,899 dispositions, of which 1,069 were dismissed. This meant that 36.9% of the felony arrests by NARCO field officers during the period involved, resulted in dismissals. The dismissal rate of SIU arrests was even higher. For the two year period of 1969 and 1970, 63.2% of SIU arrests resulted in dismissals (60).

The third method by which the Commission examined the disposition of felony narcotic arrests was an examination of felony arrests which followed indictment by a Grand Jury. This study revealed how the process known as "plea bargaining" operates. This term characterizes the negotiations between prosecutor and defense attorneys which lead to an agreement that the defendant will plead guilty to a lesser charge than the one in the indictment. In 1968, 66% of all narcotics felony indictments resulted in pleas to misdemeanors and in 1969, the figure was 52.2%. In both those years, 88-90% of the felony indictments resulted in convictions, and 99% of those "convictions" were obtained by guilty pleas. However, the pleas were not to felonies, but, as indicated above, 66% were misdemeanor pleas in 1968 and in 1969, the figure was 52.2%.

The following chart illustrates the "plea bargaining" process with exact figures for each of the five counties.

DISPOSITION OF FELONY CASES  
SUPREME COURT  
1968

County	Number of Defendants Sentenced	Number Sentenced for Felonies	Number Sentenced for Misdemeanors
New York .....	1298	465 (35.8%)	833 (64.2%)
Bronx .....	675	100 (14.8%)	575 (85.2%)
Queens .....	117	41 (35%)	76 (65%)
Kings .....	400	239 (59.8%)	161 (40.3%)
Richmond .....	3	3 (100%)	0
<b>TOTAL</b> .....	<b>2493</b>	<b>848 (34%)</b>	<b>1645 (66%)</b>
1969			
New York .....	1243	808 (65%)	435 (35%)
Bronx .....	676	104 (15.4%)	572 (84.6%)
Queens .....	215	59 (27.4%)	156 (72.6%)
Kings .....	782	414 (53%)	368 (47%)
Richmond .....	44	30 (68.2%)	14 (31.8%)
<b>TOTAL</b> .....	<b>2960</b>	<b>1415 (47.8%)</b>	<b>1545 (52.2%)</b>

Note: (1) In 1968, 90% of the felony cases resulted in convictions. In 1969, the figure was 88%.

(2) In both 1968 and 1969, 99% of such convictions were obtained by plea.

The most drastic change between the 1968 and 1969 figures occurred in New York County. The District Attorney of that county tightened his office policy on accepting pleas to lesser charges and as a result, reduced the number of misdemeanor pleas the next year by almost half. This illustrates that significant improvement in this area is possible and every effort should be made to achieve such improvement.

A very succinct and graphic explanation of the prosecutor's position on plea bargaining was offered by one Assistant District Attorney who headed the narcotics bureau in one of the busier counties. That prosecutor stated: "What we are doing is trading years in jail for the defendant for our days in court." What he meant was simply that the prosecutors did not have the time to go to trial on each and every case and were therefore willing to accept a plea to a lesser crime which consequently meant a lesser sentence. There is no doubt that the prosecutors are faced with a shortage of staff, judges, courtrooms and other related services. However, the evidence

is convincing that the prosecutors should increase their efforts to see to it that narcotics traffickers are prosecuted for the violations they actually commit rather than for what are theoretically lesser included services.

### The Courts

The problem of court congestion has been described in practically every report on the criminal justice system. Judges are understandably anxious to clear their calendars and generally are not reluctant to express their desire to prosecutors that cases be disposed of, and disposed of quickly. The edge today is definitely in favor of the criminal defendant who realizes that time is on his side. All legal tactics, from repeated requests for adjournments, to the endless pre-trial challenges to the admissibility of the prosecution evidence, are employed by the defendant for the sole purpose of delay and buying time. Often these tactics need not be resorted to because the prosecutor and the judge are well aware of them and time-saving pleas to reduced charges are the result. The sentences imposed in those narcotics cases where "convictions" are obtained, reveal what a farce this system has produced.

A study of the records of Criminal Court revealed how many defendants received jail sentences and what these jail sentences were.

In 1968, there were 3,619 convictions in Criminal Court for misdemeanor narcotic crimes. Of this number, 1,122 (31%) received non-jail sentences of fines, probation and unconditional discharges. In 1969, there were 5,210 such convictions of which 1,612 (31%) received these non-jail sentences. In other words, in both years, almost one-third of those misdemeanor arrests which resulted in convictions, led to sentences involving no jail at all. Following is a chart which shows the length of jail sentences imposed in the remaining cases.

JAIL SENTENCES IMPOSED IN CRIMINAL COURTS  
FOR MISDEMEANOR CONVICTIONS

	1968	1969
Total No. of Jail Sentences . . . .	2,497	3,598
1-30 Days . . . . .	434 (17.4%)	777 (21.6%)
31-60 Days . . . . .	433 (17.3%)	646 (18%)
61-90 Days . . . . .	686 (27.5%)	992 (27.6%)
Over 3 months to 6 months . . .	635 (25.4%)	823 (22.9%)
Over 6 months through 1 year .	208 (8.3%)	353 (9.8%)
Over 1 year . . . . .	1 (.04%)	0
Execution Suspended . . . . .	100 (4%)	7 (.2%)

Note: (1) In 1968, 62%  
In 1969, 67% } received sentences of up to 90 days.  
(2) In 1968, 88%  
In 1969, 90% } received sentences of less than 6 months.

As indicated in the footnote at the bottom of the chart, 90% of the jail sentences in 1969 were for terms under six months, and the ratio was 88% in the preceding year. Furthermore, 67% of all jail sentences in 1969 were for terms up to 90 days, and in 1968, the figure was 62%.

With regard to felony convictions, it will be recalled that an analysis was made of representative narcotic felony arrests by NARCO field units and SIU. Reference was made to the high percentage of these felony arrests which led to dismissals (pp. . ., *supra*). The study of these cases includes an examination of what sentences were pronounced in those cases which survived motions to dismiss.

The field units made a total of 2,899 arrests during this period, for which dispositions were available, 36.9% were dismissed, leaving a balance of 1,825 which resulted in convictions. Of that number, 388, or approximately 20%, received non-jail sentences.

SIU arrests numbered 473, but dispositions of only 212 were available at the time this analysis was studied. 63% were dismissed and 78 resulted in convictions. Of the 78 convictions, 29 or 37% received non-jail sentences. Following is a chart\* which presents these statistics.

\* Commission Exhibit #7 at the public hearing.

DISPOSITION AND SENTENCE OF FELONY ARRESTS  
NARCOTICS DIVISION N.Y.C. POLICE DEPT.

FIELD UNITS

(Sample covering Period from June 1969 to March 26, 1971)

	(a) Convictions	(b) Dismissed	(c) Other
Total dispositions reported . . .	2899	1825	1067 (36.9%)

S.I.U.

(1969 and 1970)

	Total Dispositions	Convic- tions	Dismissed	Total Pending
Total arrests . . . . .	473	212	78 (36.2%)	134 261

SENTENCE ON CONVICTION

	FIELD UNIT	S.I.U.
25 years or over . . . . .	2	. . . .
10 years or over . . . . .	2	5
5 years or over . . . . .	45	7
3 years or over . . . . .	82	10
2 years or over . . . . .	15	. . . .
16-22 months . . . . .	25	. . . .
1 year exactly . . . . .	421	4
Less than 1 year* . . . . .	504	13
Length of Sentence Unaccounted for . . . .	39	. . . .
Suspended sentence, probation, condi- tional and unconditional discharge and parole . . . . .	388	29
Fines . . . . .	4	8
Indefinite term** . . . . .	5	. . . .
NACC . . . . .	233	2
Youthful Offender . . . . .	65	. . . .

\* Includes 59 convictions for "time served."

\*\* Indefinite terms are treated as sentences in excess of one year.

Note: In the Field Units, there were 176 sentences for a period of over one year (11.5%). This excludes those sentences of unaccounted for length. If those sentences of unaccounted for length are included, then there were 215 sentences for a period of over one year (14.1%).

In S.I.U., there were 22 sentences for a period of over one year (28.9%). These figures do not include those defendants who have received NACC or Youthful Offender treatment.

As indicated in the chart, there were 176 jail sentences of over one year for the Field Unit arrests, for a percentage of 11.5%. This excludes sentences of unaccounted for length, which, if included, would raise the figure to 14.1%.

Jail sentences in the SIU cases included 22 (28.9%) which were for a period of over one year. It should be noted that SIU's function is to concentrate only on the upper echelon narcotics traffickers, and that figure of 28.9% must be viewed with this point in mind.

In summary, it is clear that the courts have been exceedingly lenient in their sentences in narcotics cases. This has encouraged violation of the narcotic laws and has severely impeded the law enforcement effort. The sentences imposed by Federal judges in United States District Courts show a marked contrast to state court sentences and has produced a greater respect on the part of narcotics criminals for the federal program, federal law and federal law enforcement officials. They know that "the feds" mean business, but they mock the local criminal justice charade.

If the lenient sentences imposed in our state courts are due to inadequate personnel and physical facilities, these shortages should be corrected quickly. If, however, these sentences reflect a difference in attitude on the part of our State judges than that evidenced in the federal system, it is time that our State courts realize that narcotics traffic is a heinous crime, committed by persons for money, pure and simple. As such, it can be deterred only by appropriate jail sentences as have been called for by the people through the Legislature.

## IX. NARCOTICS AND THE SCHOOLS

### A. *The New York City Public School System*

There are over one million registered students in the New York City Public School System.\* These students attend 869 schools scattered throughout the city, and come under the direct supervision of 55,390 teachers.†

\* Register as of October 1970.

† The 869 schools consist of 623 elementary schools (517,429 students); 154 junior and intermediate schools (232,485 students); and 92 high schools (285,171 students). These figures do not include the evening or various special schools which are part of the public school system.

The New York City Board of Education ("the Board") functions as the policy making body for the New York City School System. The Board is composed of five members, one appointed by each of the five Borough Presidents. It is located at 110 Livingston Street in Brooklyn. The chief executive officer of the Board of Education is the Chancellor.

Although the thrust of this investigation was in the law enforcement area, the Commission also examined into the narcotics problem in the schools of New York City. The Commission felt this was warranted in view of the growing number of young people arrested for narcotic crimes as well as the alarming rise in the number of teenage deaths attributed to overdoses of narcotics. Another relevant factor was the reports made to the Commission by police officers that school authorities were not cooperating with the police who were trying to take action against student pushers operating in and around the schools. The Commission also learned that school officials were refusing to provide information on student addicts to the Health Department in apparent violation of the law. The Commission examined into all these matters.

### The Extent of Drug Abuse in the Schools

For some time preceding the commencement of the Commission's investigation, and during the time it was in progress, the newspapers carried almost daily reports of young people dying from overdoses of narcotics. The youngest such victim was a 12 year old boy whose body was discovered in a common toilet in Harlem, and whose death was caused by an acute medical reaction to an injection of heroin.

An examination by the Commission of records compiled by the Medical Examiner's Office disclosed that between the years 1965 and 1970, a total of 288 children, 16 years of age and under, died of acute medical reactions to drugs (overdoses). In 1970 alone, the total death figure for this age bracket was 90 youngsters. Dr. Milton Helpern, the Chief Medical Examiner of New York City, testified at the public hearing that more and more youngsters, and of ever-younger ages, were becoming victims of narcotics. He noted that the median age of overdose death victims had dropped from 34 years of age in 1950 to 23 years of age in 1969.\* When

\* Dr. Helpern was accompanied by Dr. Michael Baden, Deputy Chief Medical Examiner who is also Director of the Laboratory for Addictive Drugs.



Dr. Helpern was asked to characterize the extent of the drug problem in New York City, he said:

"I would say that it is both epidemic and endemic. In other words, an epidemic is something that has only been present for a short time.

After something has lasted over ten years, you can't call it an epidemic any more. It would be an epidemic at the beginning. But now it is endemic. And it is just a matter of quibbling about the semantics of the two terms." (909)

In a paper presented at the Second World Meeting on Medical Law in Washington, D.C. on August 18, 1970, Dr. Michael Baden stated that, "Heroin use is now the leading cause of death among teenagers in New York City" (913). Dr. Baden testified on this particular point at the public hearing by saying:

"... so between the ages of fifteen and twenty, or between the ages of fifteen and nineteen, or between the ages of fifteen and thirty-five, an analysis of our records indicate that more people died directly because of heroin addiction than any other single cause, more than cancer, more than heart disease, more than homicide, more than suicides." (914)

Dr. Baden stated in the same paper that, "During 1969, for the first time, there was a significant number of deaths of apparently well-adjusted teenagers with good family and school relationships who experimented with narcotics only because of peer group pressure and who died after brief use of heroin."\* Dr. Helpern concurred with this observation when he testified that the composition of the teenage addict population had changed in that it no longer necessarily involved, almost exclusively, the youngsters from the ghetto areas of New York City:

"The group now, especially in the younger group, comprises persons who come from what older former days used to be called fairly stable middle-class families. But I mean not necessarily people in the ghetto." (903)

\*"Deaths From Heroin Addiction Among Teenagers in New York City," page 3.

The relationship between peer group pressure and addiction among school-age children was dramatized by Dr. Baden at the public hearing when he said:

"It isn't some fellow in a fedora hat, who grabs them in a dark alley and sticks a needle in their arms. Addiction spreads because people, especially among teenagers, emulate their peers, the kids in the class who do the most forbidden things." (926)

In September 1970, the Bureau of Educational Research of the New York City Board of Education submitted a report to the City Council of the City of New York on the incidence of drug addiction and usage among the school age population of New York City. It was the Bureau's conclusion that the drug abuse problem among school age children had reached epidemic proportions. The report concluded that a minimum of 36,500 young people under 20 years of age in New York City were heroin addicts. It was interesting to note that after this report was published, top Board officials attempted to contest the accuracy of the figures contained therein.

In commenting on this report, Mrs. Rose Shapiro, former president of the Board of Education,\* was quoted in the *New York Post* of September 24, 1970 as follows:

"I'm not surprised at the figures,' she said. 'The problem now is seeping down to the junior highs where it is very serious, and is affecting lower and lower age levels.'"

During the process of gathering material for this report, members of the Bureau of Educational Research, a unit of the Board of Education, interviewed a number of young addicts who were former students in the public schools of New York City. Seventy-two percent of these young addicts admitted to having sold drugs and 75% of these sellers stated that they had sold drugs in the schools. All of these student-"pushers" reported that they had sold to individuals under 19 years of age.

The seriousness of the drug problem in the schools can be appreciated by examining annual reports on drug usage submitted by the individual schools to Board headquarters. Since

\* At the time of the Commission's investigation, Mrs. Shapiro was serving as Special Assistant to the Governor for Narcotics Education Programs.

1965, schools have been asked to complete these reports, listing the number of "suspected users," "occasional users," and "known addicts" for seven different categories of drugs, ranging from the narcotic drugs (heroin and morphine) to hallucinogens (marijuana), barbiturates, tranquilizers and others. Following is a copy of this reporting sheet.

CONFIDENTIAL

DEPARTMENT OF HEALTH—NARCOTICS REGISTER  
BOARD OF EDUCATION—OFFICE OF SPECIAL EDUCATION AND  
PUPIL PERSONNEL SERVICES  
REPORTING SHEET

Register as of October 31, 1969 \_\_\_\_\_

School \_\_\_\_\_

Borough \_\_\_\_\_

DRUGS	No.	Suspected Users (Check One)				Occasional Users As Certified by a Physician (Check One)				Known Addicts as Certified by a Physician (Check One)			
		M	F	Age*	DI*	M	F	Age*	DI*	M	F	Age*	DI*
NARCOTIC DRUGS (heroin, morphine)													
BARBITURATES (seconal, nembutal, phenobarbital pentobarbital, etc.)													
CODEINE (percordan, cough syrups, terpene hydrate e codeine)													
TRANQUILIZERS (meproamate, miltown, equanil, thorazine, etc.)													
STIMULANTS (cocaine, benzedrine, dexedrine, desoxyn)													
VOLATILE INHALANTS (airplane glue, cleaning and lighter fluids, paint thinner, etc.)													
HALLUCINOGENS (marijuana, LSD, etc.)													
TOTAL													

BRIEF DESCRIPTION OF SCHOOL'S EDUCATIONAL PROGRAM TO COMBAT  
DRUG ADDICTION

(Use other side if necessary.)

## LEGEND:

No. Number each case.

M-F Male or Female.

DI\* Date case was first identified; note that *suspected* users need *not* be examined by a physician to be reported.

These reports were sent to the Office of Special Education and Pupil Personnel Services\* at Board headquarters. This Office tabulated the data contained in these reports and prepared a summary report which it then forwarded to the Office of the Deputy Chancellor. Only numerical statistics were contained in these summary reports which were ultimately submitted to the Department of Health, ostensibly for use in the Narcotics Register. The Office of Special Education did not have any responsibility to follow up on those schools that failed to file reports and no inquiries were forthcoming from the Deputy Chancellor's Office as to whether the figures embodied in these summaries represented all the schools which were requested to submit reports (Pr. H. 3239-43). Dr. Helen Donovan Feulner gave the following testimony on this point:

"By Mr. FISCH:

Q. While you were there, Doctor, did you ever receive any response from Dr. Anker\*\* to these summaries, Dr. Anker or anyone in his office, asking whether the numbers contained on the summary represented total reporting response or whether there were any schools that had failed to respond or any type of reaction of all?

A. No.

Q. As far as you know, with the exception of going to the Register,\* it was more or less dead storage material?

A. It was considered a report, as far as I know. It was considered a report for the Register. I am not aware of any other action taken on it." (Pr. H. 3242-3)

In examining these annual reports, members of the Commission's staff noticed, among other things, that some schools had not filed any reports (1012). In addition, some schools had not complied with the instructions in the letter of transmittal, which was attached to the reporting form, that directed the schools to include a description of their programs to combat drug addiction in their reports. Still other schools sub-

\* Acting Assistant Superintendent Helen Donovan Feulner was in charge of this office during the Commission's investigation. She had succeeded Assistant Superintendent Richard M. Lubell.

\*\* Deputy Chancellor.

mitted reports in which they said that they could not complete the forms with any degree of accuracy or in which they made some other interesting comment or complaint about the drug problem in their schools. However, as noted above, the only action taken by the Board with regard to these reports was to prepare a statistical summary for the Narcotic Register.\*

An analysis of these individual reports by the Commission revealed that in practically every case the report submitted by each school showed an increase over the preceding year in the number of students who were involved with drugs (1026). An example of this growing trend was very clearly seen in the reports filed by one particular senior high school. The report for the 1967-68 school year listed 25 suspected users of inhalants and 200 suspected users of hallucinogens such as marijuana and LSD. The 1968-1969 report from that school listed 50 suspected users of inhalants and 300 suspected users of hallucinogens. In its 1969-1970 report, this same school reported 350 suspected users of heroin, 12 occasional users of heroin, 50 known heroin addicts, 225 suspected users of barbiturates, 50 suspected users of codeine, 150 suspected users of tranquilizers, 250 suspected users of stimulants such as cocaine, benzedrine and dexedrine, 20 suspected users of volatile inhalants and 700 suspected users of hallucinogens. Some students were using more than one type of drug and therefore were counted twice (1026-7).

The most startling thing about the reports of this school was not the increase in the number of students listed, but that prior to the 1969-1970 school year, there was no indication of student involvement with heroin while the report for 1969-1970 revealed that 412 pupils were using heroin to some degree (1028).

The Commission decided to visit a representative number and cross-section of the elementary, junior high, intermediate and senior high schools in the public school system and to speak to school personnel who faced the problem of student drug abuse on a day-to-day basis. Principals, deans, health counselors, narcotics coordinators and students, as well as police officers assigned to these schools were interviewed by the Commission. The results revealed diverse and conflicting attitudes by school officials towards the problem.

\* See pp. 239-43 *infra*.

In one school visited by the Commission, there were four student overdose cases within one week, requiring ambulance visits to the school. When interviewed by the Commission, the principal claimed that she had not been aware of any serious narcotics problem at her school and did not realize she had one until the occurrence of these four overdose cases. She admitted she must have been naive (1016-7). In other schools, it was obvious that principals chose to "sweep this problem under the rug" and refused to acknowledge that their students were involved with drugs. These principals did not want any adverse publicity for themselves or their schools.

An example of this "ostrich-like" approach was brought to the Commission's attention by a teacher in one senior high school. This teacher told members of the Commission that while he was on school patrol in November 1966, he discovered a "cooker" and several packs of burnt matches on the roof of the school. When he reported his discovery to the principal, the latter refused to believe that drugs were being used at the school and indicated that he did not want the teacher to pursue the matter any further. During this same school year, members of the New York City Police Department conducted an undercover operation at the school and in March 1967, arrested six student pushers in the school cafeteria. The annual report on student drug usage submitted to the Board by this school for the 1966-1967 school year, stated that there were no "Suspected Users" or "Occasional Users" or "Known Addicts" in the school (1019-21).

The fact that this principal in subsequent years remained rather adamant in his refusal to acknowledge that the school had a serious drug problem was brought out in the following public hearing testimony of Patrick J. Vetrano, Assistant Counsel to the Commission:

"By DEPUTY COMMISSIONER SKOLNIK:

Q. What happened the following year? Now, we have the situation where they had filed reports saying none, no problem at all, despite the incident you mentioned. What happened the following year, did they file a report the following year?

A. Yes, they did. They filed reports for the next two school years, as a matter of fact. And the report for the 1968-69 school year listed a total of twenty-six

students who were suspected, at least suspected, of being involved with drugs. And of that number twelve were supposed to have been involved with heroin.

However, in talking to the narcotics coordinator in that school, he indicated that he had conducted a survey in September of 1970 and that the survey disclosed that over 2,000 students at that school were involved with various drugs. And of that number 850 were involved with heroin." (1021-2)

Some school administrators did not try to conceal the existence of a severe drug problem in their schools. For example, the report submitted to the Board by one junior high school for the 1969-1970 school year indicated that 605 pupils out of a total enrollment of 698 students (86.6%) were at least suspected of using some type of drug. This report stated that there were 75 suspected users of heroin, 7 occasional users of heroin and 18 known heroin addicts in the school (1023).

It is interesting to note that when members of the Commission interviewed the principal at that school, she stated that she had not received any communication from the Board since the report had been filed.

The Board's failure to follow-up on reports of serious drug problems in the schools continued in subsequent years.

As the result of a specific inquiry made by the New York City Council, a second report was compiled by the Board on the "Present Status of Identified Drug Users" during the 1969-1970 school year (1145-6). This report was an attempt to determine how many student drug users were undergoing treatment, how many had completed treatment, and other related information.

Attached to this form sent to the schools was a covering letter, over the signature of a Deputy Superintendent, which described the purpose of this report, as follows:

"The schools share the responsibility with the community at large for identifying addicts of school age and referring these children to appropriate treatment facilities. In order to assess the degree to which we are able to meet this responsibility and to assist in determining the effectiveness of referral and follow-up procedures, it is necessary to have certain data

concerning the present status of identified drug users and addicts."\*

The Board experienced difficulty in getting some schools to respond to this communication. This lack of cooperation was noted in a memorandum dated July 29, 1970, from Dr. Helen Donovan Feulner to Dr. Irving Anker, who was then Acting Chancellor. Dr. Feulner's memorandum read:

"As requested, the reports on identified drug users have been classified according to districts, with a separate report for the high schools on a borough wide basis.

May I add these observations:

- (1) No reports were submitted by 127 elementary schools, 32 junior high schools, and 17 high schools.
- (2) Reports from some of our most deprived areas indicate non-existence of drug users. The accuracy of such reports is questionable.

In light of these facts, I tend to believe that these statistics do not accurately reflect the realities of the situation." (1146)

Dr. Anker testified at the public hearing that the Board did not receive any additional reports subsequent to Dr. Feulner's memorandum (1148). The following is his testimony as to why some schools did not cooperate:

"Frankly, these are disciplinary problems. We haven't had this in the area of reporting on reading scores and administering reading tests. You have seen that in the newspapers recently.

There are presently decentralization procedures and great feeling among community school boards, and among some superintendents, that it would be improper for them to give us some of this information, and the Chancellor and the Board of Education are going to have to deal with the question of that percentage of those who do not cooperate." (1148)

\* Board of Education of the City of New York, Office of the Superintendent of Schools, Special Circular No. 87, 1969-1970, dated May 15, 1970.

A WCBS-TV Editorial, broadcast on September 27, 1971, on the subject of identification of student drug users, noted that "the Board is still dragging its feet towards any widescale identification of drug users."

### **Refusal to Report the Names of Addicts to the New York City Health Department as Required by Law**

The New York City Department of Health has the responsibility of maintaining a Narcotics Register of addicts in New York City. The purpose of this Register is to provide an unduplicated case file of all drug users in the city so that agencies working in the narcotics field will have a viable research source. The Register has proved valuable in studying the effects of prolonged drug addiction; the relationship between addiction and premature births; and in evaluating the effectiveness of various treatment efforts, as for example, the methadone maintenance program. These are but a few areas where researchers have turned to the Narcotics Register for valuable information.

The pertinent sections of the New York City Health Code which mandate the reporting of habitual users of narcotics to the Narcotics Register and which provide confidentiality to such reports and records are as follows:

#### *Section 11.05, amended effective January 1, 1963:*

(a) Reports required by section 11.03 (narcotic addiction, habitual and compulsive use of a narcotic drug as defined in section 3301 of the Public Health Law) shall be made by a physician, in charge of a hospital, dispensary, clinic or other institution providing care or treatment, clinical laboratory, vessel or aircraft. Reports of cases of narcotic addiction as prescribed by section 11.03 shall be made by a person in charge of a correctional institution, social agency or *any other person who has knowledge or gives care to a narcotic addict.*

#### *Section 11.07, amended effective June 17, 1963:*

(a) Reports and records of cases of venereal disease, non-gonococcal urethritis, *of narcotic addiction*, and records of clinical or laboratory examination for any such diseases *shall not be subject to sub-*

*poena or to inspection by persons other than authorized personnel of the Department. (Emphasis added)*

Miss J. J. Fishman, former Project Director for the Narcotics Register, was interviewed by the Commission. She stated that the Board of Education has steadfastly refused to comply with these sections of the Health Code by refusing to report the names of addicted students to the Narcotics Register. The yearly report which the Board does forward to the Health Department, ostensibly for inclusion in the Narcotics Register, only contains numbers but not names of "Suspected Users," "Occasional Users" and "Known Addicts" in the New York City Public School System. These numbers are virtually useless to the Register since names are necessary in order to maintain an accurate case file of drug addicts in New York City. According to Miss Fishman, one serious result of this lack of cooperation on the part of the Board was that the Narcotics Register was unable to support with figures, the obvious need for expanded treatment facilities for adolescent drug users.

Dr. Lawrence Bergner, Assistant Commissioner of Health for the New York City Department of Health, who was responsible for the general supervision of the Narcotics Register, testified at the public hearing:

"By MR. FISCH:

Q. What would you regard as the most essential information that an agency or individual report to the Register?

A. Since the underlying problem is to attempt an unduplicated account of individuals, the name and accurate name, of course, is the first line of attack. We use certain other information in our matching process, such as the Social Security number, if the individual has one, and if it is actually his number, that is regarded as a high order match item.

The date of birth is another good item. But they all pertain to the individual because we are trying to establish an unduplicated count.

Q. What you maintain is a case file, do you not, which, therefore, would require the names of individuals?

A. It is kept by name.

Q. Is it fair to say that numbers of addicts would be useless for your purposes without names?

A. Just having a report of numbers would be of no— would be of interest, but no real practical use—" (976-7)

The Board's refusal to submit names of addicts to the Health Department was discussed at the Commission's public hearing. Copies of correspondence from the Health Department to the Board were read into the record. For example, a letter, dated March 4, 1966, from Dr. Florence Kavales, the then Director of the Narcotics Register to Assistant Superintendent Richard M. Lubell, stated that the reports from the Board should include the names of student drug abusers. This letter also pointed out that the information, by law, was confidential and not subject to subpoena.\* The Board, however, refused to furnish such names to the Narcotics Register and has persisted in this attitude, notwithstanding repeated attempts over the years by Health Department officials to persuade the Board to comply with the law (982). In fact, the letters of transmittal from the Board of Education to the individual school principals which were attached to these reporting sheets, *specifically directed the schools not to list names* but merely numbers of "Suspected Users," "Occasional Users" or even "Known Addicts" (1124-5). A few schools, acting on their own, have forwarded names to the Health Department, but such cooperation has been exceptional.

A comparison between the number of names reported to the Narcotics Register by the New York City Medical Examiner's Office after completion of autopsies on overdose victims, and the number of names submitted by the Board of Education disclosed that the Medical Examiner's Office has provided the Register with more names of *dead addicts* of school age than the Board has reported of *live student addicts*. Thus, between 1965 and 1970, the Medical Examiner's Office reported the names of 682 children, 19 years of age or under, who had died of narcotic overdoses, whereas the Board, from 1964 to 1970, reported a total of 31 names of live student addicts to the Register (985).

\* Section 11.07(a) of the New York City Health Code.

Introduced into evidence at the Commission's public hearing as Commission Exhibit #19 was the following chart. This chart lists the number of overdose deaths of children aged 19 or under from 1965 to 1970, as well as the number of names of addicts reported to the Narcotics Register by the Board of Education since the Health Code provision went into effect. The third column shows the number of heroin addicts and users listed in the reporting forms submitted to the Board by the individual schools within the New York City Public School System.

**HEROIN USE AND OVERDOSE DEATHS INVOLVING  
CHILDREN AGED 19 AND UNDER (N.Y.C.)**

	<i>Overdose Deaths As Reported By Medical Examiner</i>	<i>Names of Student Addicts Reported by Schools to N.Y.C. Health Dept. Nar- cotics Register (Required by Law Since 1963)</i>	<i>No. of Student Heroin Addicts and Users ("Sus- pected" and "Occasional") as Reported by Schools to Board of Education</i>	<i>Other Data</i>
1964 .....	....	3	.....	....
1965 .....	20	6	.....	....
1966 .....	31	3	.....	....
1967 .....	74	5	93	....
1968 .....	107	5	173 (incomplete)	....
1969 .....	255	3	1,120	....
1970 .....	195 (incomplete)	6	4,075	....
TOTALS ...	682	31	5,461	....

.... At least 36,500 heroin addicts among the NYC population of young people under 20 years of age."  
("Sept. 1970 Report by Bureau of Educational Research, NYC Board of Education.")

*Note: During the period 1966 through 1970, there were a total of 21,809 arrests of children aged 19 and under for sale or possession of heroin.*

### The Board's Programs of Drug Education, Prevention and Treatment

The Board's explanation for not submitting names of student addicts to the Health Department for inclusion in the Narcotics Register lacked merit. Board officials claimed they were not really aware of the need to submit names until the question was submitted to the Corporation Counsel, who advised them formally in April 1971 that the law meant what it said. They had no explanation, however, of why they had not sought a ruling from the Corporation Counsel in 1963 or 1964 and why they waited for seven years until there was an investigation of this matter by the Commission. Another specious excuse was that they were afraid that these names would get into the wrong hands, in spite of the clear provision in the Health Code that such information was confidential and not even subject to subpoena. The negativism of the Board was not confined to this failure to report names of student addicts to the Health Department, but was typical of the Board's attitude in other important areas involving the serious problems of narcotics and drug abuse.

As noted earlier, the reporting sheets which the Board forwarded each year to its schools, contained space for a "Brief Description of [the] School's Educational Program to Combat Drug Addiction." The letter of transmittal accompanying these forms specifically directed attention to this item. Yet, an examination of completed forms by the Commission revealed that some schools never responded to this inquiry. Further, the Board did not follow up this failure to report by contacting these schools to ascertain what they were doing "to combat drug addiction." It is obvious that these "programs" were not working since the incidence of drug usage in the schools was rising rapidly each year. Thus, in the category of heroin usage by students, the number of addicts and users reported by schools to the Board of Education was 93 in 1967; 173 in 1968 (on the basis of incomplete returns); 1,120 in 1969 and 4,075 in 1970. The Board of Education continued to receive these alarming reports but did nothing about them.

According to the school officials interviewed in the field by the Commission, the various drug education, prevention and treatment programs that did exist in the New York City Public School system, came about largely as a result of each school's own ingenuity and initiative (1054). The assistance provided

by the Board consisted mainly of guidelines for strengthening the curriculum on drug education taught in the health education courses, films, brochures, lists of referral agencies and other similar material. The Board also set up teacher training courses, but as Deputy Chancellor Anker pointed out at the public hearing, "the staff is still inadequately trained in detection, in the nature of the instructional program" (1220-1).

The principal at one school stated that when she sought assistance from the Board to help her deal with the drug problem in the school, she was told that the Board could only provide limited aid and that she was more or less on her own in trying to resolve this problem (1055).

Under the Mental Hygiene Law, anyone who has reason to believe that a person is a narcotic addict may petition for a civil certification to declare that such an individual is an addict and have him placed in the custody of the State Narcotic Addiction Control Commission (NACC) for treatment.\* According to the Deputy Chancellor, the Board has never petitioned for an involuntary civil commitment of a student-addict even though the law permits the Board to take such action (1165).

The District Attorney in one county told school principals that if they did not want to act as petitioners themselves, to present information on student addicts to him, so that he, on behalf of the citizens of that county, could petition to have the student civilly committed to the NACC program for treatment. His office has not received a single request from the schools to do this despite the fact that school principals obviously know some of the narcotic addicts in their own schools. School administrators told the District Attorney that they didn't want to get involved in this program of involuntary commitment (1269-70).

### Non-Cooperation with the Police

In the course of the investigation, the Commission met with officials of the New York City Police Department and the District Attorneys of each county in New York City. One topic of discussion at these meetings was the relationship between the police and school authorities and what the latter were doing about narcotic crimes taking place in the schools. The strongest criticism of the lack of cooperation on the part of some school

\* See Mental Hygiene Law, Section 206(2) a.



officials with law enforcement was made by the District Attorney of one county who said "school officials are contributing more to the drug problem than organized crime."

Commanding Officers of NARCO told the Commission that even when school principals were aware of narcotic problems in their schools, most were unwilling to supply the police with information or leads. Their rationale was that their "rapport" with the students would be lost once the students learned that they had cooperated with the police or permitted the police to conduct undercover operations in their schools. In one case, a principal refused to give the police the home address of a student who was pushing drugs and whom the police were trying to arrest. The police did not want to make the arrest in the school in order to avoid any incident or disruption of the school program. The principal refused to cooperate. In another case, the police were unable to obtain a student's age from a school principal although they explained they needed the information to determine if he qualified for youthful offender treatment.

The fact that narcotics was being sold inside some schools was never denied by school authorities. The figures on juvenile arrests reveal how many youngsters have become involved in violating the narcotics laws.

In 1968, there were 765 arrests of children under sixteen years of age for drug crimes in the City of New York. In 1969, that figure rose to 1,150, and in 1970 increased to 1,449. These figures show an increase in such juvenile arrests of 26% between 1969 and 1970 and an increase of 89.4% between 1968 and 1970.

A breakdown of the total arrest figures for these three years for the under-16 age group discloses that the 421 felony arrests made in 1970 increased from the 1969 figure of 274 by 53.6% and the increase in 1970 from the 1968 total felony arrests of 188 was 123.9%. In 1970, there were 1,028 misdemeanor arrests\* on drug charges for this age group. This represented a rise of 17.4% from the 1969 figure of 876 such arrests and a 78.2% rise from the 1968 total of 577 arrests.

There were 17,505 narcotic arrests in 1970 for the 16 to 20 year age group, which was a 37.5% increase over the 1969 total of 12,733 and a 127.3% boost over the 1968 figure of 7,701 arrests. The 1970 felony arrest total for this age group

\* The misdemeanor arrest figures do not include arrests for violating §240.36 of the Penal Code which is loitering for drug purposes.

was 7,343, which was up 59.2% from the previous year's figure of 4,613 arrests and a 177.8% gain over the 1968 total of 2,643 felony arrests. The number of 16 to 20 year olds charged with misdemeanor violations in 1970 was 10,162, which was a 25.1% advance over the 1969 total of 8,120 and a 100.9% increase from the 5,058 misdemeanor arrests that were made in 1968.

The Commission's field visits to schools disclosed that the amount of police activity in any given school depended to a large extent on the attitude of the principal. Some principals requested police undercover operations in their schools, while others refused to permit it. Where principals encouraged the police to assume an active role, significant results were often achieved. The patrolman on duty at one senior high school told members of the Commission that over a two-year period, he had made approximately 150 drug arrests of both students and outsiders inside the school and in the immediate area surrounding the school. Fifty or sixty of these arrests involved students inside the school. One such student had 145 bags of heroin in his possession at the time of his arrest (1052). The police at another school arrested one student for possession of 60 bags of heroin, a fourteen year old girl student for possession of 20 bags of heroin and a fourteen year old boy for possession of 30 decks of heroin (1052-3).

However, the attitude of some school administrators with regard to police activity within their schools was quite the reverse. The assistant principal at one senior high school told the Commission that there was a uniformed patrolman on duty at the school but the school's administration preferred that he be "present but not visible." As a result, the patrolman sat in an office for the entire day and did not patrol the hallways inside the school, except in the case of an emergency (1053).

During the public hearing, a NARCO patrolman gave the following account of the attempts that were made by members of his team to conduct an undercover operation at a senior high school in New York City.

"A. (Continuing) We contacted the Assistant Principal, who then directed us to the narcotics coordinator, who we met with. We sort of informed the narcotics coordinator of what was required to start what we call a buy operation in the school, that is to plant undercover policemen in the school and we were told by

the narcotics coordinator that she understood what we were talking about, and that she would contact us, which she never did.

She also asked us to stay out of the school, that she didn't want to be seen talking to, you know, narcotics cops; that she had a good relationship with the students and that we might spoil it.

We waited approximately two to three weeks and we had no results. She did not call us. So we called her again and said that we had someone, a stoolie, willing to go to the school then. And through the Assistant Principal we had a stoolie—we set this stoolie up in the school, and information was pretty reliable, it came first that narcotics were being sold throughout the cafeteria and the basement of the school.

- Q. Excuse me, Officer. Is that the reason why you first went to the school, that you did have information that there was a narcotics problem there?
- A. Yes, yes. We knew that there was a narcotics problem there from the communications we had received, that the Department had received, et cetera.

\* \* \*

- Q. Continue, please.
- A. The narcotics coordinator never denied—in fact, she said that there was a narcotics problem in the school when we first had interviewed her.
- Our stoolie was in the school approximately three weeks—
- Q. I am sorry, go ahead.
- A. —and the narcotics coordinator was her home room teacher and quite a few times the stoolie complained that she would be annoyed—

\* \* \*

- Q. Continue, please.
- A. She complained on a number of times that the narcotics coordinator would stop her in the school, speak

to her, call her aside, and the informant got very nervous over this because people in the school see you talking to the narcotics coordinator it puts you in a bad situation with the other students in the school. She was in there approximately three weeks and we had to pull our informant out for her own safety, and we again agreed to try when the term began in February.

At this time I contacted the Assistant Principal, who said he would have to speak to the Principal. He spoke to the Principal. I called him back and he said that the Principal said 'No;' that he did not want us in the school.

- Q. The Principal did not want narcotics officers in the school, is that correct?
- A. That is correct.
- I said, well, I will have to speak to the Principal. I called the Principal and I spoke to the Principal, and I explained to him the situation, what we would do.
- He still said no. He said that his answer to me was that we are going to change the schedule and alleviate the narcotics problem.
- Q. How would changing the schedule alleviate the narcotics problem?
- A. I have no idea. But that was his answer to me.
- He asked if I could obtain a female undercover agent. I explained to him we could obtain any descriptive undercover agent that we wanted to.
- He said, well, I'll let you know in a couple of weeks. And he never—we never received a phone call from him to us.
- We have been shut off completely from the school."  
(603-6)

It is interesting to note that the report which was submitted by the school in question to the Board for the 1969-1970 school year listed 500 suspected users of heroin, 20 known heroin addicts and 800 suspected users of hallucinogens such as marijuana and LSD.

The District Attorney of Richmond County, John M. Braisted, Jr., testified about the lack of cooperation by school authorities with law enforcement in combatting the problem of drugs in the schools:

"Q. Let me ask you, have you had complete cooperation from the school authorities making known to you all the facts and all the situations that occur in the schools?"

A. No, I believe that we have had not full cooperation. There have been—

Q. In what respect have you not had cooperation?

A. Let me put it this way, for example, there have been numerous cases where I have read in the local newspaper that students at a school having consumed pills were rushed to a hospital in a serious condition. Now, this is not heroin but it is pills and we are interested in who is selling those pills, but as far as having the principal of the school or superintendent say well, won't you come and give us a hand, this is not forthcoming.

I have attended meetings at various times and I have pleaded with the administrators, I have pleaded with the superintendents why don't you, if you need help, communicate with us. We want to do it, we want to help our children.

Up to date—

Q. They have not come to you?

A. They have not come.

As a matter of fact, a few days ago I got a call from a principal very distraught. He wanted to see me immediately and I said come down and I will talk to you.

He talked to me and he said what right have you to put an undercover agent in my school. I said an undercover agent in your school? I said we don't put undercover agents in schools. He said well, I understood that you put one there and I don't want him there.

Again you see he was—and his attitude was—there was no such agent there, but it shows the attitude. They apparently do not wish the assistance of law enforcement." (1316-7)

On November 4, 1970, the Commission met with Mr. Murry Bergtraum, President of the New York City Board of Education, to advise him, among other things, that the police and other law enforcement officials were not receiving adequate cooperation from school authorities. At his request, a second conference was held on November 10, at which time he brought with him other high-ranking Board officials. These included Chancellor Harvey Scribner, Deputy Chancellor Irving Anker, Board Secretary Harold Siegel, Director of Health Education Irwin Tobin, Deputy Superintendent Helen Donovan Feulner and others. The Commission advised these officials of the complaints of lack of cooperation, and cited as a specific item, among others, the refusal of a principal to disclose a student's home address to a police officer who wanted to arrest this student for selling narcotics. These officials defended the principal's position. They stated that school authorities had "an obligation" to protect the "confidentiality" of student records. When asked the basis for this "obligation," they claimed that there were court decisions prohibiting disclosure of such information. They also stated that there existed a 1962 Circular to the same effect which had been issued by a previous Board. The Commission requested that the Board identify these court decisions and furnish a copy of the 1962 Board Circular and other applicable Board directives.

Some time later, the Commission was informed by the Board that there were no court decisions supporting a school administrator's refusal to provide the police with such student information as described above. Moreover, when the Commission examined the 1962 Circular, it was clear that it did not impose any prohibition on disclosure of such student information, but actually *authorized* principals to provide this type of information to the police and other appropriate governmental representatives.\* When the Commission discussed this with Board officials, they conceded that the Commission's interpretation of the 1962 Circular was correct. The Commission then discovered that a new Circular had been issued by Chancellor

\* Board of Education of the City of New York, Office of the Superintendent of Schools, Special Circular, No. 63, 1961-1962, dated May 8, 1962.

Scribner on October 28, 1970 which purported to supersede the 1962 regulation, and which now prohibited, for the first time, the dissemination of any information concerning a student to any person or agency except in very special cases.†

The Commission contacted the Board again, and questioned the justification for this drastic reversal of official Board policy. The Commission pointed out that under this new rule, if a principal tried to cooperate with the police, he would be in violation of this Circular. The Commission was informed that Chancellor Scribner's Circular had been rescinded. When members of the Commission staff visited various schools, however, a number of principals stated that it was their understanding, that the October Circular was still in effect, and that they were therefore bound to comply with it.

Dr. Irving Anker, Deputy Chancellor of the Board of Education, conceded at the public hearing\* that the information Board officials provided the Commission at the meeting on November 10 was inaccurate:

"The Witness: Yes, that you may have been given incorrect information at the time, I agree with you.

The Chairman: But it was in a rather critical area and we got from a group, a room full of people the officials of the Board of Education, and we, of course, relied on the statements given to us, that this would be against your policy.

And we also had some indications, of course, from substantial field investigations that the people in the schools thought that that might be policy, or were confused as to exactly what the policy was, subsequent to our meeting with you.

Do you understand that?

The Witness: Yes.

Mr. Fisch: We should point out—and this is very important—that prior to the meeting on November 10th, we met with Mr. Bergtraum on November

† Board of Education of the City of New York, Office of the Chancellor, Special Circular No. 22, 1970-1971, dated October 28, 1970.

\* The Commission had requested the appearance of Board of Education President Murry Bergtraum and Chancellor Harvey Scribner, and both had agreed to testify at the public hearing. On the day of their scheduled appearance, however, the Commission was notified that Mr. Bergtraum was scheduled to have a tooth extracted and could not appear (1215) and that Dr. Scribner was leaving town because of a serious illness in his family.

4th. We posed this question to him on November 4th and he said he did not have the answer, and would return the following week with people who could provide the answer.

The Witness: You may remember at that time on November 10th that most of us, at least were speaking from memory. We did not have the circulars with us at the time. And it may very well be that in one area we made a serious mistake, based upon our memory.

The Chairman: Our problem—excuse me, Dr. Anker,—was that at least in part that given the facts, that there was confusion at least on your level, where the directive emanated, and it is a little bit, I suppose easier to understand how there may be some confusion out in the 900 schools as to what the policy is, and that confusion apparently does still exist today." (1216-7)

Dr. Anker was then asked whether the Board planned to correct problems revealed at the public hearing:

"By MR. FISCH:

Q. Dr. Anker, when you leave here today, can you assure us that you now will be directing your school officials, principals and so on, to number one, report names of addicts to the Register? And, number two, to cooperate with the police?

The Chairman: At least in connection with the drug law enforcement?

A. Since I am the Deputy Chancellor, you can understand if I merely say that I will transmit that to the Chancellor and the President of the Board of Education. I see no reason as to why they will not fully cooperate with you, but as to what the language will be, it will only be referred to them." (1217-8)

### Problems Faced by Principals and School Administrators

#### 1. Outside Intruders.

One problem facing school authorities trying to control the narcotic and other problems inside the schools was the intru-

sion of non-students into the buildings. Many of these individuals were either "drop-outs" or students from other schools which made it difficult to recognize that they were not part of the student population. In attempting to cope with this problem, schools have taken a number of steps, including locking all the exit doors except the front door and placing that door under close supervision. Students are required to show their program cards before being admitted to some schools, and in others are not allowed to leave and re-enter the building once the school-day has begun unless they have received permission to do so. Furthermore, "flying squads" of teachers and school aides have been used to supervise and patrol halls, stairways and lavatories. School authorities have found that the latter two places are favorite locations for both students and outsiders who want to buy, sell, or use drugs (1034-6). Other security measures, including the assignment of security guards, have been instituted in various schools.

## 2. *Inability to Remove Pushers from the Schools.*

The Commission was told by various school personnel that the most difficult problem impeding their efforts to combat the drug problem was their inability to permanently remove student-pushers from their schools. Under the compulsory education law, an individual has the right to remain in school until the age of twenty-one. Even students arrested for sale or possession of narcotics have the right to remain in school while their cases are pending (1037).

Principals are reluctant to suspend such students because the Education Law limits the suspension period to five days and does not permit suspension of the same student more than twice in any given school year. School administrators stated that such suspensions have little or no effect on students. Most of the principals at the schools visited by members of the Commission complained that in almost all of the cases where they recommended a Superintendent's suspension of a student, they were not backed by their district superintendent and the student was allowed to return to the school (1042-3).

A case in point was related to the Commission by the narcotics coordinator at one senior high school in New York City. A 19-year old student was arrested by the patrolman on duty at the school for possession of cocaine. The individual was suspended but a court order directed the school to readmit him while his case was pending. Because this involved ex-

posing other members of the student body to this student-pusher, the school authorities closely supervised his activities inside the school building. This student readily acknowledged that he was a pusher, that he was in business for all he could get, and that nobody was going to stop him. According to the narcotics coordinator, this juvenile played the role of a "budding big-time racketeer" whose basic philosophy was, "You only go through life once, so why not get the most out of it" (1038).

In a somewhat related area, principals told the Commission that as a general rule they tried not to transfer students who were involved with drugs from one school to another school, but if they did take such an action, it was usually done on an exchange basis with the other school. However, this did little towards solving the problem of either. For example, a student in one senior high school was arrested for possession of nine decks of heroin. The next day, he was transferred to a different high school and within three days after his arrival at the new school, this pupil was arrested for possession of \$900 worth of pills and heroin (1046-7).

## 3. *Leniency of the Courts.*

School authorities told the Commission that narcotics education and prevention programs in the schools were being undermined by the leniency of the criminal courts in dealing with student-pushers. They felt that the arrests of students by the police were "mere exercises in futility" because most of these youngsters applied for, and received, Youth Offender treatment and, as a result, "returned to the schools as heroes." One narcotics coordinator stated that the majority of student-pushers with whom he had come in contact, were convinced that the maximum sentence that they would receive, if convicted, would be a "mere slap on the wrist, in the form of either a suspended sentence or probation." They therefore felt it was worth taking a chance in order to reap the big profits available in drug trafficking (1047-8).

## 4. *Lack of Cooperation by Doctors of the Bureau of School Health of the New York City Department of Health.*

Most of the principals and school personnel interviewed by the Commission indicated that the doctors from the Bureau of School Health assigned to their schools were not very helpful to them in their efforts to combat the drug problem in

their schools (1049). These doctors were part-time employees responsible for the general health supervision of the students. They maintained a cumulative health record on each child, checked immunizations, performed routine physical examinations for working papers and examined children referred to them by teachers because of apparent health problems (966).

School authorities stated that a majority of the doctors did not want to be involved with the drug problem and that in most cases, were unwilling to certify a student as a drug addict. Furthermore, when a student was examined for possible drug abuse, the most a doctor was willing to say was that the child appeared to be under the influence of drugs or using drugs. The guidance counselor in one school district summed up this situation by saying that these doctors were not "team members" in an effort to combat the problem of drugs in the schools (1049).

It should be noted that when Dr. Olive E. Pitkin, Director of the Bureau of School Health for the New York City Department of Health, testified at the public hearing, she pointed out that school physicians had not been adequately trained to deal with all the aspects of the drug problem as it existed in the New York City public schools:

"What we had never had for school physicians is more down to earth advice on how to handle the suspected drug user in the medical room in the school, when you are confronted with him there."  
(960)

Dr. Pitkin testified that a Bureau of School Health doctor would not know what action to take if confronted with an overdose case in school. She stated that with the exception of one lecture, these doctors had not had specific training on what to do in such cases (Pr. H. 3034).

The Bureau of School Health did attempt to enlist the aid of the New York City Addiction Services Agency as early as May 1966 in an effort to obtain training and guidance from them for the school physicians on how to handle the problem of drug abuse in the schools but approximately two years elapsed before any assistance was forthcoming. The last training session conducted by the Addiction Services Agency for Bureau of School Health personnel was in October 1969 (949-57).

### 5. Lack of Parental Cooperation.

The extent of parental cooperation with the schools in trying to assist those students who were involved with drugs ranged from poor to excellent. The parents in some cases were eager to help once apprised of the situation. In other cases, parents were unwilling to admit that their children were using drugs and as a matter of fact, became rather defensive about the matter. The health counselor at one senior high school told the Commission of a case where the school requested the parent of a child who was suspected of using drugs, to come to school and discuss the problem. The parent agreed to come, but advised the school authorities that she would "be down with my lawyer" since her child had been accused of involvement with drugs (1051-2).

School officials also discovered that they were unable to obtain parental cooperation in some cases simply because the parents of the students involved were not competent to handle the problem. In many of these cases, the parents were either alcoholics or drug addicts themselves and since they could not take care of themselves, were hardly in a position to assist their child (1052).

### Arrests of School Teachers and other School Personnel for Drug Crimes

The Commission requested that the Board of Education provide a list of all teachers and other school personnel arrested for drug crimes, the disposition of these arrests and a statement of what action, if any, was taken by the Board against such employees. The Board was not overjoyed upon receiving this request. Their initial comment was "what will the Civil Liberties Union say" about releasing such information—information which had to be a matter of court record. After persistent requests by the Commission for this material, the Board referred the matter to the Corporation Counsel of the City of New York. After further delay, the Corporation Counsel advised the Board that there was no legal basis for withholding this information. On March 24, 1971, the Commission received part of the information requested. On April 13, the evening prior to the appearance of representatives of the Board at the public hearing, the balance of the material was forwarded to us. An examination of this material revealed the following:

### Teachers (Pedagogical Employees)

Forty-one teachers had been arrested for drug crimes.

Twelve of these were working in various schools at the time of the Commission's public hearing, while 28 others were still listed as Board employees but merely had no current teaching assignment at the particular point of time in April 1971.

The only teacher whose license was terminated was an individual who had been arrested twice. The Board took no action following the first arrest because the charges were dismissed in court. It was only after his second arrest on drug charges that the Board decided to move.

With regard to the 40 against whom no action was taken:

(a) One teacher had served ten days in jail after his conviction in April 1968 for selling drugs. At the time of the Commission's public hearing three years later, he was teaching at a junior high school in Brooklyn.

(b) Another teacher had been convicted and received a conditional discharge by the court. The information furnished the Commission by the Board did not indicate what the teacher's current assignment was in April 1971.

(c) Another teacher, who held a regular license in Common Branches, had been convicted of illegal possession of drugs and paid a \$200 fine. Following his court conviction, Board of Education officials interviewed him and advised him that if he became involved "in an indiscretion of like kind" he would be severely dealt with. Nothing else was done.

(d) The attitude of the Board was to take no action against teachers arrested for drug crimes if the charges were dismissed in court. No effort was apparently made by Board of Education officials to determine whether the dismissal of the charges had been on the merits and based upon the innocence of the teacher, or whether it was on technical grounds.

### Non-Pedagogical Employees

The Commission learned that 106 non-pedagogical employees who received appointments by the Board of Education for the period 1966 to April 1971, had been arrested for drug crimes. Of these 106 employees, 81 had been arrested prior to receiving their appointment from the Board of Education.

The crimes ranged from sale of heroin to smuggling and illegal possession of drugs. The positions of these "non-pedagogical" employees included: School Aide, Education Assistant, Youth Developer, Teacher Aide, and Community Education Attendant.

Several of these 81 employees with criminal records of narcotic arrests preceding their appointment by the Board had been arrested two or three times. One individual had been arrested three times prior to his appointment and once after his appointment.

Board of Education officials testifying at the Commission's public hearing were asked why these people were hired by the Board to work in the public schools of New York City. They replied that these people are employed by local community boards, and

"... very often in their effort to obtain these employees who are relatively low in salary, their desire to employ indigenous personnel, they employ personnel who may have had some degree of record. ... " (1194)

The Commission then asked the Board of Education witnesses\* the following question:

"Q. Let me ask you, are you stuck with these people if the community wants them, and if you feel that you don't want them? Do you have to keep them?"

A. No. But we will give much more attention to the community school board's wishes in this matter than we would in the case of teachers.

There is some feeling that we ought not to take individuals who have—to use one board member's language—paid their debt to society and deny them employment opportunities in the future.

That does not mean, of course, that there aren't those whom we should dismiss. I don't think we are stuck with them, but we do consult the community school board on their wishes, because in most cases they put these people on their payrolls, even before they get a license with us.

\* Deputy Chancellor Irving Anker; Deputy Superintendent Frederick H. Williams and Deputy Superintendent Seelig L. Lester.

And their procedures are not as thorough as that of a teacher." (1195-6)

The Commission pointed out to the Board of Education witness that one such employee had "paid his debt to society" three times before his appointment, and once subsequent to it:

"Q. But I am talking about a man who was arrested three times before he was employed, not after the start of his appointment. I am talking about three times before. That is a pattern.

I said eighty-one of the 106, about eighty percent have been arrested prior to receiving appointments.

The Chairman: On drug charges?

Mr. Fisch: I'm only speaking of drug charges.

And one man was arrested three times—I am sorry—twice on drug charges and the last arrest included an arrest for possession of stolen property in addition to a drug charge.

A. That doesn't mean, of course, they knew about the record of the individual when they employed him." (1197)

The Board witness testified that when such employees are interviewed in connection with their applications for employment, they are *not* asked if they have ever been arrested (1198). This position, the witness stated, was the policy of the New York City Civil Service Commission. Commission Chairman Paul J. Curran asked the witness the following question:

"The Chairman: Apparently your feeling is then that it is not particularly desirable to ask about arrests. You have made that conclusion.

Mr. Williams: Apparently the school system has made—made the conclusion with regard to these employees.

I might indicate, however, that in—with respect to whether or not they are in sensitive positions, the schools are asked, of course, to look carefully at the particular kind of position that they are giving the person, and when we do have any knowledge

of any record, to look at it, in view of such factors as leniency, severity, as to the kind of charges, whether or not this involves crimes against persons or property, and, again, the nature of the duties that it has.

All of these are taken, presumably, into account, and someone is looking at it now.

Mr. Fisch: What about the fact that a man is in a school with school children? Isn't that sensitive enough? And arrested—

Mr. Williams: There is a distinction, however.

Let us take a person in school with school children, a person may have an assignment which did not necessarily involve the school children. This does not mean that you ignore the fact, that there are school children in close proximity. Even saying in here there are differences in types of assignments that are given. Some in actual contact with youngsters and others which are completely apart from such contact." (1200-2)

The list of these non-pedagogical employees furnished by the Board, indicated that the local community boards chose to retain the services of seven such employees after being notified of their arrest records on drug crimes. A number of others were listed as "not working *at present*" rather than "services terminated," so it would appear that these individuals are also regarded as eligible for future employment in the public schools of New York City.\*

### B. Colleges and Institutions of Higher Learning

Testimony was presented at the Commission's public hearing concerning the serious narcotics and drug problems existing in colleges and institutions of higher learning.

An undercover policeman from the Narcotics Division testified that in virtually no time at all after he had entered the cafeteria at one New York City community college, he was able to make a heroin "buy" (636). According to him, "It

\* The *New York Times* of May 20, 1971 carried a newspaper story reporting that a high school security guard had been indicted in the Bronx on charges of selling heroin to students. The Grand Jury action followed a "citizen's arrest" by students who charged that the school aide had sold them heroin.



was known in the neighborhood that if you needed drugs you can go into this school and go into the particular cafeteria to purchase drugs" (638).

When NARCO field officers attempted to effect arrests at the school as a result of the undercover officer's activities, they succeeded in apprehending two pushers but met with difficulty when they returned to arrest a third:

" . . . and when they went back to the building they were approached by the Dean of that building and he said that he wasn't going to let them back on campus, he was not notified that they were on campus, because he has to make notification to the students." (640)

A professor who served as the unofficial narcotics coordinator at this college, was a witness at the public hearing. He testified that hard core drug abuse (heroin) had been a difficult problem at the school since 1968:

"By MR. SMIGEL:

Q. Would an ordinary college student or somebody entering the premises have any problem in making a buy on campus?

A. I don't think there would be any difficulty in making a buy.

Q. Who was involved within this heroin traffic on campus?

A. I believe students were involved. I believe that there were transients involved. It is hard for me to say. I think one would have to talk about a college population rather than putting it into groups.

Q. The college population was involved and—is that correct?

A. Yes." (1070-1)

When the professor was asked what type of students were trafficking in heroin or using it, he stated that "it cuts right across the board" and included youngsters from different areas of the city and diverse social and economic backgrounds (1074).

According to the professor, the hard drug problem at this particular college finally reached a point where it represented a "clear and imminent threat" to the entire college population. The President of the college summoned a meeting of the entire school on February 23, 1971 and read the following prepared statement which was admitted into evidence as Commission Exhibit No. 23 at the public hearing:

"Mr. Smigel: It is addressed to All Members of the—I will not read the name of the college—it just says College Community.

"This meeting of faculty, students and administrators has been called because pertinent and documented information has been presented to me that indicates clearly the entire issue of sales, possession and use of drugs on the campus has reached a crisis situation.

'1) It is common knowledge that the fifth floor in the Main Building is the major distribution center at the college.

'2) In view of the transactions that take place, it is common knowledge that to be in the lounge area represents the gravest threat to everyone's personal safety.

'3) The side staircases are not only havens for drug distribution and drug use, but make these areas unsafe for the college population.

'4) Word has been passed around that bathrooms should not be utilized unless accompanied by a friend.

'5) It is also common knowledge that similar situations exist in the other centers.

'6) The number of referrals to hospitals and treatment centers has increased considerably.

'7) Personal threats and the number of incidents involving bodily harm are being reported with increasing frequency.

'At this point we must face the fact that to look aside and not take a clear position in terms of positive action means that we as a society are condoning

destructive human acts—and further, by not taking action, we are permitting a small group of disturbed individuals to use college grounds as a sanctuary.

'After consultation with various groups of the college community of students, faculty and administrators, I, therefore, as Chief Administrator of this college, am taking the following course of action:

'1) In view of the present dire circumstances, I am placing a moratorium on all evening and weekend extracurricular activities. This moratorium will remain in effect until there is demonstrable evidence that the drug traffic has in fact ceased, that all areas of our buildings are safe, and that an effective ongoing operational drug control program has been established.

'2) The students, faculty and administrators will have until March 8, 1971, to formulate and put into action such programs that are operationally effective in reducing and eliminating campus drug abuse. Some student groups are now in the process of developing plans for dealing with the drug problem.

'3) I will order the closing of any college facility as necessary to control drug use.

'If, by March 8, 1971, such measures by students, faculty and administrators prove to be ineffective, I have no other recourse but to call in and sanction the use of law enforcement agencies to deal with this crucial drug problem by whatever means necessary to make this college community live up to and maintain its basic educational purpose.'

Then it is signed "The President." (1089-92)

The professor testified that as a result of conversation with colleagues at other colleges within the City University System, it was his belief that the same drug problem existed in the other colleges (1094).

It is interesting to note that the school authorities' plan was to notify the police department only as a last resort. When the professor was questioned on this point at the public hearing by Commission Chairman Paul J. Curran, he gave the following testimony:

"The Chairman: What I'm trying to find out, Professor, is whether you have situations of, let us say, sales of heroin, the pusher category that you use—and I don't care whether he is a student, someone in the college population or somebody off the campus—is it the present position that that information will not be given forthwith to the police and that it will be handled by a group patrol within the school?

The Witness: It will be handled by the drug patrol and the Student-Faculty Committee on Campus Drug Abuse.

The Chairman: Not by the police?

The Witness: Not by the police.

The Chairman: Despite the fact that the criminal laws of the State of New York are being violated?

The Witness: I don't know how to answer that.

If you are asking me my opinion on this, I would have to say that the criminal laws are being violated." (1096-7)

In contrast to the position assumed by this college, authorities at other colleges within the City University system informed the Commission that their efforts to combat the drug problem at their schools met with success only after the police department became actively involved in trying to arrest the "pushers" on each campus. According to the Dean of Students at one community college, the police were reluctant to come on the campus because when they had tried to apprehend such drug offenders at the school in the past, they were subjected to "public humiliation and no cooperation."

The Presidents of the colleges within the City University system were confronted with the same problem that faced the Public School principals, namely, how to remove student-pushers from the school while their criminal cases were pending. The maximum period of temporary suspension is seven days and if the criminal case results in an acquittal or dismissal of the charges, the school must readmit the student even though such disposition may have been based on technical grounds.

## X. TREATMENT AND REHABILITATION

Although the Commission's investigation dealt with the drug problem from the point of view of law enforcement, certain aspects of the treatment of addicts were also reviewed. This examination, though general in nature, was necessary in order to gain a proper perspective of the entire narcotics problem. Moreover, since many of the criminal defendants arrested for narcotic crimes were addicts, it was important to see how they were treated within the overall framework of the criminal justice system. It soon became obvious that deficiencies in the treatment of addict-criminals affected the entire narcotics effort, and that improvements in the rehabilitation program were urgently needed.

### *A. New York State Narcotic Addiction Control Commission*

The New York State Narcotic Addiction Control Commission (NACC) was established on April 1, 1967 as the key agency designed by the State of New York to deal with the problem of narcotics addiction. In creating this agency and setting forth its powers and duties (Sections 200-217 of the Mental Hygiene Law), Governor Rockefeller and the State Legislature sought to launch a major, coordinated statewide war on drug addiction. Pursuant to this new legislation, NACC was authorized under carefully structured legal procedures, to place addicts in various treatment centers where they would benefit from a major rehabilitation program. NACC was also given the authority to fund the treatment programs operated by other governmental and private agencies.

Under the provisions of the Mental Hygiene Law, an addict may be certified to a NACC center for treatment by way of either civil or criminal process.

#### **Civil Certification Pursuant to Section 206, Mental Hygiene Law**

Any person believing another to be a narcotic addict may apply for certification of such addict to a NACC center. In addition, Section 206 provides that an addict may apply for his own certification. The petition, relatively simple in form,

must state reasonable grounds for the belief that the person to be committed is an addict. At the hearing on such petition, if statutory defenses are not interposed, the Court will order a medical examination. This examination is generally conducted three to five working days after the hearing. The medical examination includes the taking of a urine specimen, a close physical examination and the taking of a medical history. In regard to the urine test, a reliable finding of addiction requires a specimen taken within 48 hours of the last narcotic intake. Therefore, because of the time lapse involved, most urinalyses are "expected" to be negative and addiction is usually determined on the basis of recent needle marks, tracks and admitted history of addiction. If a finding of addiction is indicated by the medical report, the Court then holds a hearing on this issue, at which hearing the alleged addict has a right to a jury. If, at this hearing, addiction is determined, the addict is certified to the care and custody of NACC for an indefinite period not to exceed three years.

#### **Criminal Commitment Pursuant to Section 208, Mental Hygiene Law**

Criminal commitment stems from the arrest of an alleged addict on any charge. Where the arresting officer suspects the defendant to be an addict, he completes a police form (CR-1) on which he records his observations of the defendant's physical condition, plus any admissions made by the defendant. If it appears to the Court at arraignment, or at a later appearance, that the defendant is an addict, the Court orders a medical examination. Should the defendant be subsequently convicted of the crime with which he was charged, the medical examination finding of addiction becomes the basis for a commitment proceeding with the same procedural safeguards as the civil commitment procedure. At such hearing, if the defendant is found to be an addict, he may be committed to NACC in lieu of sentencing for a maximum of three years for a misdemeanor conviction and a maximum of five years in the case of a defendant convicted of a felony.

An alternative to criminal commitment under Section 208 is provided by Section 210 of the Mental Hygiene Law. Under this section, an addict-defendant with no prior felony convictions may petition for his own civil commitment. In the event

that the instant charge is a felony, the District Attorney's consent is required for such petition. If such petition is granted by the Court, the criminal charge is dismissed and the defendant is committed civilly for a maximum of three years.

### The NACC Program

When the addict enters NACC custody, he is assigned to one of the several treatment "modalities." These include NACC's own residential rehabilitation centers and after-care facilities, and accredited private agencies funded by NACC. In addition, other addicts are treated by the State Department of Mental Hygiene. Also, the State Department of Correction conducts addiction treatment programs at certain selected penal institutions.

#### (a) NACC Treatment Centers

NACC provides intramural (residential) treatment at a number of centers located throughout New York State. These centers provide rehabilitation programs for both male and female addicts. Such programs have been described as being "interdisciplinary" in nature. They stress group therapy, academic and vocational education. Full medical and dental services are provided and, in addition, psychiatric service is available in cases where it is deemed appropriate.

Virtually all of these NACC intramural facilities are classified as "general medium security" facilities. This means that perimeter security is provided but relative freedom of movement within that perimeter is allowed.

#### (b) After-Care Facilities

Following his stay in a rehabilitation center, the addict is assigned to one of several after-care facilities. These are essentially out-patient facilities; however, a limited number of resident beds are provided for those without a place to live while resettling in the community.

The purpose of after-care is to provide a continuation of treatment combined with supervision and assistance in re-entering the mainstream of community life. The services provided by these facilities include behavior monitoring, regular urinalyses (to determine whether patients have slipped back into drug use), group therapy, academic and vocational educa-

tion. Employment counselling and vocational referral is also provided in an effort to assist in fully integrating the patient into community life.

#### (c) Private Agencies

Rehabilitation programs conducted by private agencies such as Phoenix House, Odyssey House and Daytop are funded by NACC. Before such funding is approved, the agency's program must be "accredited." Accreditation is based upon the submission of complete "protocols" with substantiating information on budget, staff and services. In addition, after accreditation, periodic visits to such institutions are conducted by NACC professionals to review programs and records. However, it had been alleged that addicts involved in certain methadone maintenance programs were able to secure multiple doses of methadone for resale on the street. Milton Luger, NACC Chairman at the time of the Commission's investigation, responded to this allegation during his testimony:

"A. ...

There have been some private enterprise clinics that have geared themselves up, and have been giving methadone out. These are not accredited by us, supervised by us or funded by us. And it might be possible that the addicts going to this clinic, might not be known to us, might be registered in our clinic, and then over there as well.

But within our own networks of systems, we are virtually foolproof on duplication." (1508)

### NACC in Practice

While the foregoing appears to set forth a clear and logical procedure for bringing addicts into a well structured and systematic rehabilitation program, it should be pointed out that, in practice, NACC has encountered a number of significant difficulties, procedural and otherwise.

#### (a) Lack of Uniformity in Judicial Procedures

NACC has taken the position that it cannot conduct a medical examination for the purpose of determining addiction until a judicial order is granted directing such examination. Ordi-

narily, such order should be granted at the time the addict-defendant is arraigned—provided that the court is given reasonable grounds for believing the defendant to be an addict. In practice, however, the arraigning judge will frequently not order an examination even where a form CR-1 is presented to the Court. In some instances, such examination is not ordered until just prior to sentencing.

Similarly, the civil commitment procedure, pursuant to Section 206, according to a NACC official, is often an unduly time-consuming procedure. This is attributed to the considerable variations in the interpretation of the law by courts in different jurisdictions. As examples, two of the larger counties in New York City were cited. In one of these there is an extremely uniform, liberal and expeditious civil commitment procedure. The Administrative Judge in this county is very much in favor of the civil commitment theory. In the other county, the Administrative Judge has shown no particular interest in setting guidelines for civil commitment. As a result, there is a great diversity in both the grounds necessary and the time required to secure civil commitment before the various judges in such jurisdiction.

(b) *NACC Physicians and the Medical Examination Process*

A considerable problem in bringing addicts into the NACC program seems to center around the competence of the NACC examining physicians, both in their efforts to establish addiction and in their ability to sustain such findings before a court. Addicts arrested in New York City undergo their medical examination at a NACC examining facility located on Rikers Island. The doctors conducting these examinations are full-time NACC employees. The Commission learned during the course of its investigation, however, that these doctors are hired without regard to their background or skill in the detection of narcotics addiction. In addition, most of them are retired from practice and over 70 years of age. These points were readily conceded by Mr. Luger during his testimony at the public hearing.

“Q. Do the doctors who examine these addicts at Riker’s Island have any special expertise, any special training to enable them to determine addiction?”

A. The whole area of addiction itself in medical schools is one that has been practically buried and not stressed, and it is, you know, an increasingly new

phenomenon, insofar as the medical profession is concerned.

Therefore, they have, I would say, they have no special background or training because of this. The reality of the situation is that for the most part, because of what salaries can be paid for, for public service, for example, we can start a physician at \$23,900 for full-time employment, and you do tend to get the older, sometimes often, I should say, the retired person to be a medical examiner for us.

Therefore, their experiences are garnered pretty much on the job and they learn to do it as they go along, after they have the general medical background. They are not narcotics specialists when they come to us.

Q. All right. Isn’t it a fact that most of the examining physicians at Riker’s Island are, in fact, retired physicians well over seventy years of age?

A. I don’t know the specific breakdown, but I would not say that is not an untrue statement. Probably so.”  
(1494-5)

Patrolman “M” in his testimony, added a startling statistic to the question of the diagnostic acuity of NACC’s examining physicians.

“By Mr. FISCH:

Q. How many arrests did you make during the fifteen months you were there?

A. Forty-four, I believe.

Q. About what percentage of the forty-four admitted to you that they were addicts?

A. A very high percentage, ninety or a hundred, somewhere in between there.

Q. Now, did you make these observations, these independent observations in addition to their admissions, and you recorded them on the CR-1’s?

A. That’s correct.

Q. You said you personally brought them in, three or four such addicts, for ‘fixes’?

A. Treatment, yes, sir.

Q. Of all these people who admitted that they were addicts, where you saw the observations yourself and these characteristics, how many were then returned medically certified as addicts?

A. None that I know of.

Q. Not a single one?

A. That's correct.

Q. Including the three or four who had to go in because they were experiencing withdrawals?

A. Yes, sir.

Q. Can you describe the type of physical characteristics you saw on some of them?

A. Open sores, eyes watering, nose running, needle marks up and down their arms.

Q. Obvious things?

A. Yes.

Q. Plus their own admissions?

A. Yes.

Q. And not a single medical certification?

A. Not that I know of.

The Chairman: That is including withdrawal in some cases?

The Witness: Yes, sir.

The Chairman: In other words, all the classic signs of the narcotics addict?

The Witness: That's right." (543-5)

According to NACC officials, another regular by-product of the doctors' lack of expertise is their failure to sustain their findings of addiction when subjected to rigorous cross examination. The Commission was told of one NACC physician who was so inadequate a witness that the District Attorney was "conceding" every case in which testimony was required of this doctor. The NACC counsel, in his testimony at the public hearing, while conceding the limitations of many of the examining physicians, placed a different interpretation on why medical findings of addiction are often not sustained before the Court.

"Mr. Cagliostro: . . .

The doctor comes to court. His opinion is based upon the statement made by the addict, yes, I am an addict. And he looks at the needle marks which make this physical evidence consistent with the statement.

He states an opinion that the man is a narcotics addict.

He gets on the witness stand and is confronted by the addict who now says, I am not an addict. This is a very big element here which some courts have failed to keep sight of. The law says whether or not the individual as of the date of the medical examination is an addict.

When he comes to trial three, four, five months later the question that is asked of the doctor is: Now this man has been in the Tombs for four months. Do you mean to say that he is an addict now?

And the ground rules are switched. The doctors, the Assistant District Attorneys, who are, in effect, his lawyer, do not point out that this man is testifying as of the date of the medical examination. They don't raise the objection. The doctor may say, well, I don't know that he is an addict now.

Out he goes.

Mr. Goldman: Are you saying that this is the most common reason for dismissing these cases? Because the doctor won't testify that the man is an addict, as of the date of trial, after several months of incarceration?

Mr. Cagliostro: Probably the largest percentage, yes." (1498-9)

(c) *Location of Examining Facilities*

As indicated previously, addict-defendants, once a judicial order for a medical examination has been granted, do not undergo such examinations until they reach the NACC examining facility at Riker's Island. Since this is almost always in excess of forty-eight hours after the last narcotic intake, it is anticipated that a urinalysis will be negative and addiction must be established by other criteria such as fresh needle marks, tracks or the addict's admission. Facilities for collecting a urine sample immediately upon arraignment—presumably at the courthouse

holding pen—would greatly ease the problem of establishing addiction in most arrest cases. However, it is the opinion of NACC officials that manpower, space and logistical problems—coupled with the unwillingness of many judges to order medical examinations at the time of arraignment, make this desirable procedure virtually impossible to achieve.

(d) *Delays in Admission*

An important element touching upon NACC's treatment program is the considerable delay in actually getting a defendant-addict who has been certified to NACC into a NACC treatment center. Chairman Luger discussed such delay at the public hearing.

“Q. With regard to criminal addicts, who are certified to your care, is there presently a waiting time after such certification has been made by the court, and before they are admitted to one of your institutions, or one of the institutions under your supervision?”

A. Yes.

Q. Firstly, where do the certified addicts—inmates of criminal institutions wait? Is it at Riker's Island in New York City?

A. Yes. In the various detention places around the City. If you are interested in New York City, Riker's Island, the Brooklyn House of Detention, the Tombs, the Women's House, and so on.

Q. How long is the present waiting time in these institutions, before they are admitted to one of your facilities?

A. Yes. Our latest statistics on this, Mr. Goldman, points out that the average time from—that the average time that they spend in detention is some twenty-five days before they are admitted to our program.

That has been reduced down from earlier this year, it was fifty days, and we made a concerted effort to move them out more rapidly. . . .” (1469-70)

Mr. Luger, and the NACC counsel, Anthony Cagliostro, indicated further that a partial explanation for such delay is the fact that it often takes several days for the courts to notify

NACC that an addict has been certified for custody and treatment (1471-5).

George McGrath, who, at the time of the public hearing was New York City Commissioner of Correction, amplified on this problem in the following language:

“Q. Commissioner, you said something before which I would like you to explain.

You said that you have many addicts in institutions being held by you improperly.

A. Yes.

Q. Can you tell us what you mean by that?

A. Yes. In the development of this law we—this has been a very cooperative effort with the State Narcotics Addiction Control Commission, with the court, where the District Attorneys—

\* \* \*

And ourselves, we have to sort of play it by ear, it was a very enormous, an omnibus bill that created a whole new procedure for social problems.

So we had to play it by ear, as I said, from day to day as to how it was going to work. But one of the problems that, of course, came up very early was what do you do in case the city—when the court commits somebody to the NACC?

Obviously the NACC couldn't afford to have an admitting office in every court in the city to take that man from the courtroom to an NACC facility.

So we just then by accommodation agreed that we would take these cases into our detention facilities temporarily, until the state could take them.

But at the beginning, of course, it would be the next day. Over the years, because of the great strain on the Commission to find beds, we found that we have been holding them longer and longer.

And recently it has reached a serious situation where we have held them for several weeks—

The Chairman: In your facilities?

The Witness: In the prisons, when they had been committed to the NACC.

\* \* \*

We have today 269 NACC cases committed to the NACC that are in our prisons.

Q. Who had no business being there, in the prisons?

A. Have no business, in my judgment." (1344-7)

(e) *Overcrowding*

Addict defendants in criminal actions, aware that commitment under Section 208 will usually be for a considerably longer period than the possible sentence for the crime, often use every available procedural device to avoid commitment. Despite this, NACC facilities are so badly overcrowded that criminal addicts are often mingled with those civilly committed under Section 206. During his public hearing testimony, Milton Luger, NACC Chairman, indicated that, at the time of the hearing, NACC direct operation facilities had a bed capacity of 4,300 and a patient population of 4,800. Mr. Luger went on to explain that addicts committed under civil process must be placed in NACC treatment centers, but that arrested addicts committed under Section 208 are treated at selected correctional centers operated by the State Department of Correction. He added that these correctional treatment facilities have a bed capacity of 944 and are so overcrowded that often arrested addicts are placed in NACC's civil treatment facilities.

"By MR. GOLDMAN:

Q. What is the bed capacity of the total of these facilities?

A. At the present time all of our resources for the initial intake add up to a bed capacity of some 6,000, and I think three or four.

Q. What is the present population of these facilities?

A. Sixty-three hundred are in them.

Our facilities, NACC facilities are the most overcrowded.

For example, we have a bed capacity of some 4,300 in our own direct operation facility, with a population of about 4,800 in them.

Q. What about the facilities for arrested addicts who are committed to your facilities? What is the present population as opposed to the capacity for arrested addicts?

A. Well, you see, an arrested addict, an arrested narcotic addict can be put into any civil facilities that we have. I am talking about our own facilities.

But a civilly committed person, the 206 that we mentioned, cannot be put into a correctional facility. In other words, we can't switch.

So if you are asking the Department of Correction, which can only accept arrested, convicted addicts, has a bed capacity of 944 at the present time.

The Chairman: That is the State Department?

The Witness: Yes, the State Department of Correction, 944.

However, many of the criminally convicted addicts find their way into our other facilities.

By MR. GOLDMAN:

Q. Into your civil facilities?

A. Yes." (1467-8)

(f) *Length of Stay*

The average length of stay in NACC's intramural facilities has recently been shortened, both because of overcrowding and the philosophy of Chairman Luger as stated by him in his testimony:

"Q. As a result of this overcrowding, has their stay, their rehabilitation stay in your various facilities been shortened considerably within the past year?

A. I have made a concerted effort to shorten the stay both within our own operation and those conducted by the Department of Correction, and I, quite frankly—it is not only because we have had population pressures—I frankly don't believe in long institutional stays.

I have been in institutional work all of my life. I find that in most institutions are—well, they really



don't have many ways of inversion of the values that you would want to have people incorporate.

And I would say, as an institutional person, I would much more opt towards shorter stays, putting more risk in putting them back to work, in a supported fashion, even though they would fail, rather than getting them institutionalized for a long period of time and making them good inmates or good institutional people, which is very easy to do.

Q. Before we get into the—

A. I'm sorry, but I want to answer your specific question.

We have pushed down the length of our institutional stay an average of somewhere around seven months. It was longer than that before.

Q. What was the average stay before?

A. Oh, probably ten months, eleven months.

Q. It was pushed down to seven months?

A. Upon the initial intake point.

Q. Is this in the intramural and residence facilities?

A. Yes. Across the board.

You see, a person can be sent to us for three years, if he is a self-petitioner, or if he is convicted on a misdemeanor, or for five years, if he is convicted of a felony.

Now our initial intramural stay lasts now about seven months, but a person can be readmitted anytime if his progress so indicates." (1468-9)

It is interesting to note that Burton B. Roberts, District Attorney of Bronx County, maintained an entirely different position in regard to shortened stays in NACC facilities. His public hearing testimony in this regard follows:

"A. . . .

We don't have enough beds. We don't have enough facilities, we don't have enough doctors to treat the people when they are there.

We now have a program which says that individuals are to be committed up to 36 months. The 36 months originally meant nine months. Then it meant six months.

I understand it is now going to mean two months within these facilities. Now, that is not treatment. That means absolutely nothing, and I think that it is incumbent upon the public to know that if we are going to have a State Narcotic Program we must have a program and we must pay for it. . . ." (1273)

### What has NACC Achieved?

Chairman Luger was questioned at the public hearing about the effectiveness of the NACC program and its positive accomplishments. In response, he pointed out that one must first recognize that the persons who come to NACC for treatment generally come involuntarily, and often have failed in other rehabilitation programs. These people are "loath to commit themselves for long term treatment" and resentful about being in an institution from which they cannot leave at will.

"Q. All right. What about the results of your program, Mr. Luger? Can you tell us with any degree of accuracy whether or not your program has achieved a measure of success? And, if so, what sort of measure? The Chairman: This is the overall program now? Mr. Goldman: Yes, not just Methadone maintenance. The Witness: Yes.

A. All right. There are different indices that one might look at as to whether you have been successful or not.

I would like to try to start out in this fashion by pointing out one or two things. The people who come to the NACC operations as certified addicts are people who, for the most part, have had—well, have had experiences elsewhere, and have failed in these experiences.

Often there are people who have been through the private sector for programming.

They often have been to clinics, they have been to psychiatrists, and have been to many other so-called helping services. And they have either withdrawn themselves. They have been to Fort Worth, and to Lexington and withdrawn themselves. So what you have is a—for people who are coming into NACC, a hard core of what is, for the most part, he is usually in the criminal side of things, the unmotivated and the unchosen groups, because, you know, many of the private sectors in there are getting cases for themselves. I say this because I don't think that it is fair to NACC to be compared with any other group of services, although I think our results are quite favorable as compared with most others.

Q. Are you saying, sir, that frequently addicts will flunk out, as it were, from private agency programs, and then be certified to NACC?

A. Yes. Very often." (1508-10)

Having made this observation about the NACC population, Mr. Luger then cited figures dealing with arrests of NACC graduates:

" . . .

For example, a survey taken of all the people who come to us has shown that some eighty-six percent of them have been arrested one time, at least one time before they came to NACC, and forty-one percent have been arrested five times or more before they came to NACC.

Our statistics point out that of all those released from our facilities, twenty-four percent have been rearrested.

Now, this is a survey done by NYSIIS, not by us. It is the official records of a different agency.

So it seems to be that only twenty-four percent are getting rearrested. This does not mean that only twenty-four percent have relapsed to drugs. We would not be naive enough to claim that.

It does point out that they have at least not been emerged in this costly criminal justice system again.

Our statistics point out that at any one time forty-five percent of those who have left us are in a drug free situation in the community.

Now, they are there from one day to over three years, but they are in a drug free situation. It might be that they will relapse again and we will have to pick them up for a week, straighten them out and put them back out on the streets again, but the long costly institutional stays have been avoided.

Our statistics point out, for example, that of those who have been referred to us, only fifty percent of those are gainfully employed, working, earning, if you are interested, an average of \$110 a week, which points out the difficulty of the clientele we are working with. These are not highly skilled people.

Commissioner Silver: Is it fifty percent of the forty-five that are drug free, that you are talking about?

The Witness: Yes. Fifty point six of those who have been discharged are gainfully employed or are in a training program.

The Chairman: Of all those who have been discharged?

The Witness: Released to aftercare.

Now, there is a block of people, and we would like to point this out, too, because we don't—we like to be quite candid—some twenty-three percent, twenty-three percent we have not had because we have lost contact with them. They might be working, but to add to that fifty percent, we don't know their statistics.

Very often these people want to drop out of sight and not be known to us.

The Chairman: Those twenty-three percent would not be included among those arrested?

The Witness: No, they are not among the arrested." (1511-4)

Several factors must be taken into account in attempting to make a judgment as to the efficacy of NACC's program. Among these is the very basic question of what constitutes—or, indeed,

is there such a thing as—a “cured” addict. The question of rehabilitation is one that seems to be predicated on the length of time an addict (or former addict) can remain community-based, productive and drug free.

## B. THE ADDICTION SERVICES AGENCY OF THE CITY OF NEW YORK

The Addiction Services Agency of the City of New York (“ASA”) was created by Mayor John V. Lindsay through Executive Order (#57) on December 22, 1967. In this respect, ASA was designed to be the coordinating body for all narcotics programs within the City of New York and the thrust of New York City’s response to its escalating drug menace. Accordingly, ASA has been publicized as the first urban agency in the United States designed exclusively to devote itself to the narcotics problem.

By way of background, ASA was preceded by the creation of another city agency, the Office of the Coordinator of Addiction Programs, which had also been designed to perform functions similar to those later assumed by ASA. This previous agency had been similarly created by Mayor John V. Lindsay through Executive Order (#16), on July 7, 1966. Upon its own creation in 1967, ASA adopted the responsibilities, programs and staff of the previous agency.\*

As it now operates, ASA is a separate component of New York City’s Human Resources Administration (“HRA”). ASA is, however, largely autonomous and headed by its own Commissioner, who is appointed by the Mayor. The present Commissioner, Graham S. Finney, received his appointment in September 1970, and is the third commissioner of ASA since its creation.

### The Money Spent

At the Commission’s public hearing, ASA Commissioner Graham S. Finney testified on behalf of his agency. At this time, Commissioner Finney testified that since 1967, ASA had made expenditures of “roughly” \$25,000,000 in funds obtained from public sources in its campaign against drug abuse. This

\* Since the creation of ASA was essentially only an evolution or juridical change of form from its predecessor agency, both of these agencies will be hereinafter commonly referred to as ASA.

figure of \$25,000,000 represented a cumulative amount of those public monies which had been channelled into ASA, from federal, state and city governments for ASA’s use in its various programs (1386-7).

Although the Commission would not engage in any evaluation of the various ASA rehabilitative and guidance programs, strong evidence of serious deficiencies in the operation of these programs was disclosed during the public hearing. These deficiencies called into serious question not only the effectiveness of ASA’s key rehabilitative programs, but the proper employment of much of the public funds entrusted to ASA in fulfillment of its responsibilities.

Commissioner Finney admitted that deficiencies did exist in his agency, which he was attempting to correct. These deficiencies were described as being a necessary result of ASA’s “innovative and exploratory constant desire to seek new routes. . . .” However, when asked specifically whether ASA’s responsibilities had been met by the preceding Commissioners, the Commissioner replied:

“A. Sir, my view of addiction is that we are into a field with so many unanswered questions that I certainly would say that, you know, we have not done the full job that I would like to see done. . . .” (1395-6)

### ASA’s Failure to Assist the New York City Bureau of School Health

A both critical and terrifying indication of the dimensions of New York City’s narcotics problem may be found in the alarming increase of narcotics use by children within the New York City school system. Consequently, one of ASA’s most vital functions, is to train and “equip the school system with a special capability to relate to youngsters . . . on the matter of drug abuse” (1387).

The Commissioner of ASA in his testimony outlined the scope of his agency’s activities with regard to the narcotics problem within the New York City school system. In ASA’s own view, its role was to equip the school staffs with those skills and combative techniques which would enable the members of these school staffs to deal with the school drug problem in their own right (1387-93).

In this regard, the programs offered by ASA to the New York City school system were described as being designed "to offer attitudinal skills" and "skills and group dynamics and being able to hold effective interchange with very alienated kids." The basic meaning of these programs was considered "akin to phrases [such as] sensitivity training, encounter group meetings . . . programs . . . designed particularly to accentuate the positive in the school. . . ." (1388-9)

Notwithstanding this acknowledged responsibility, in at least one decisive instance, where firm guidance, rather than fanciful concepts, was necessary, ASA failed to meet the needs of a City agency vitally concerned with combatting the school narcotics problem. The Commission disclosed that, virtually since its inception, ASA failed to respond to almost desperate appeals for assistance from the medical staff of the New York City school system.

The history of ASA's failures to provide this assistance to the medical staff of the New York City school system was revealed through the testimony of Dr. Olive Pitkin, a pediatrician employed by the New York City Department of Health as Director of the Bureau of School Health. In her position Dr. Pitkin was responsible for combatting the effect of the narcotics problem on the children of the New York City public school system (942). In her testimony, Dr. Pitkin detailed the continuous efforts that she had made as Director of the Bureau of School Health to maintain and establish contact with ASA to obtain assistance in combatting the drug addiction problem in the New York City school system (943).

In seeking this guidance, Dr. Pitkin's earliest major effort was to contact the Office of the Coordinator of Addiction Programs, the predecessor agency of ASA shortly after this agency was established in 1966. Dr. Pitkin recognized that this agency had the major responsibility in the attack on New York City's drug addiction problem (945). As Director of School Health, Dr. Pitkin was, appropriately, seeking "help in training school physicians . . . in handling narcotics cases in the schools" (943). There are somewhat over 300 physicians assigned to the Bureau of School Health, none of whom, according to Dr. Pitkin, had sufficient training in narcotics prior to assuming their positions (944-5).

However, from her first written overture toward ASA in May 1966 until seventeen months later, September 1967, Dr. Pitkin

received no response from this agency despite public alarm over an escalating school problem of narcotics (945-6). As Dr. Pitkin testified:

"Q. What was the nature of your contact with ASA in 1966, what were you trying to get from them?"

A. If I remember, in the letter, we asked Dr. Ramirez\* for any appropriate literature which would give the school physicians some kind of background. We sent him a copy of our current procedures, as outlined in our manual of procedures, for handling cases in the schools. And we asked to have discussions with him leading to training courses, brief training courses, to guide the school doctors in how to handle—in handling the cases of drug abuse they were seeing in the schools."

Eventually, in September 1967, after repeated requests, Dr. Efren Ramirez, the then Commissioner of ASA, consented to give a 20-minute to one-half hour lecture to the School Health physicians. Except for one other talk by another ASA staff member, this was the extent of ASA's liaison with the New York City Bureau of School Health from May 1966 until the end of 1967 (949). This lecture was followed by the perfunctory distribution of some literature, somewhat charitably characterized as "abbreviated material." According to Dr. Pitkin, this literature merely indicated the

"sites . . . [of] the Addiction Services Agency . . . which was then the Office of the Coordinator of Addiction Programs, where they were currently in operation, and a very brief description of what kinds of activities they were up to. But no clear discussion of how these could be used by the school physician and how they could work with them." (948)

Dr. Pitkin thereafter repeatedly communicated concern over ASA's lack of response to other officials of the School Health Department. ASA's delay was particularly critical since the Bureau of School Health had anticipated receiving guidance from ASA to enable it to formulate procedures necessary for the use of its own doctors in drug abuse cases (949). As the situation grew more exasperating, Dr. Pitkin, in a memorandum

\* Dr. Ramirez was the first Commissioner of ASA.

dated April 16, 1968, expressed the growing concern over the inability to communicate with ASA:

"It is my understanding that we are supposed to work only with and under the direction of Dr. Ramirez' office. This office, however, continues to be almost unreachable and unhelpful when it is reached: that is, it is unable to provide speakers, training for school doctors, referral resources for any except admitted addicts who want to be rehabilitated." (951)

These desperate appeals for assistance from ASA continued for more than two years after the initial overture to ASA. As the school narcotics problem reached almost crisis proportions, school physicians became increasingly desperate in their need for assistance from the ASA (954-5). Excerpts from a further letter dated May 20, 1968 from Dr. Pitkin to the then Commissioner of ASA (Commission's Exhibit 17-B) describe the situation:

"We have been approached repeatedly, especially in the last few months, by school principals and other educational authorities, for answers to the pressing daily problems of how to handle addicts and suspected addicts. Our school physicians in the field are also very frequently called upon to render both medical and procedural advice in individual cases, and have felt frustrated by their lack of familiarity with 'what is going on' in the citywide program. It is of interest, that when we polled them during the month of April to know their preference for subjects for in-service training for the coming school year 'narcotics addiction' headed the list." (954-5)

The Bureau of School Health eventually did receive some scant assistance from ASA for a few months starting in October 1968. However, since 1969 the New York City Bureau of School Health, with its enormous responsibilities toward the well-being of school children of the City of New York, has had virtually no contact with ASA, the agency established as New York City's major response to the drug problem.\*

\* At the public hearing, the Commissioner of ASA himself did not know of any training or programs ever offered by his agency to school physicians (1394).

The effect of ASA's failure to the school physicians may be evidenced by the fact that, excluding one lecture by a physician from a *private* agency, school physicians have not received any specific training in treatment of narcotics overdoses. At one point the urgency for narcotics training became so severe that school physicians had to independently attend courses on narcotics addiction given by a former Commissioner of ASA at a private institution of higher learning (Pr. H. 3034-6).

In conclusion Dr. Pitkin testified:

"Q. Since October of 1969, have you gotten any further guidance from ASA?

A. No, we haven't.

\* \* \*

Q. Is there any reason why you haven't tried further or made any further attempts to get guidance from ASA?

A. Well, I think we had been becoming discouraged by experiences that we had had, as to the quantity, as well as the direction of the guidance that we could expect from this agency.

Also, in the meantime, we had gotten out a manual on procedures, which seemed to be reasonably satisfactory. And we have been able to provide some reasonable amount of basic training to the school physicians on addiction problems. Although never quite the kind we wanted." (959)

The initial expectations of the School Health Department and the efforts expended by it to obtain assistance from ASA eventually terminated in disillusionment (959-60). Dr. Pitkin testified that there is presently no single agency that can now provide the full assistance needed by the Bureau of School Health in its campaign against the narcotics problem in the New York City school system (960).

#### The Phoenix House Program

A vital aspect of ASA's narcotics control doctrine concerns the administration of its treatment and rehabilitative programs for narcotics addicts. The largest of these rehabilitative pro-

grams is the interrelated body of residential therapeutic communities known as the Phoenix Houses.

The concept of the residential therapeutic community is one of the more recent innovations in the treatment of drug abuse. The design or procedural emphasis of the Phoenix Houses is to provide residential quarters for the use of its addict patients.\* As a result of living in these residential quarters, it is anticipated that the drug addict will, in turn, be exposed to an environment of change conducive to his rehabilitation. The essence of this therapy is the "encounter session" where the addict-patient is "confronted" by other patients and staff of the Phoenix House, and his behavioral patterns are brought to light and reexamined. Although there are other familiarly named communities within ASA (Odyssey, Daytop), Phoenix House, in addition to being the largest, is the one most closely identified with the City of New York.

**(a) The questionable net results of Phoenix House—less than 5% "graduate"**

Commissioner Finney, in his testimony, estimated that from its inception in May 1967, until approximately one month prior to the Commission's hearings, the total cost of the Phoenix program was 7.4 million dollars (1397.9).

During this same period of time, there were 3,417 individual patients admitted into the Phoenix House program for rehabilitative treatment (1399).† Quite naturally, this rehabilitative treatment was not expected to constitute an end in itself, but rather a means toward returning the ex-addict to a role as a working member of society.

Accordingly, Phoenix House has adopted a policy of issuing a "graduation" certificate to recognize a successful completion of its program. This "graduation," according to Commissioner Finney, is achieved when the ex-addict patient "has completed the program and, in the eyes of his peers and of the medical staff is able to return to employment, to his home, . . . as a functioning member of society" (1401).

However, in practical application, the positive results of the Phoenix program appear to be of inconsequential value and

\* There are presently 14 separate Phoenix House communities located throughout the City of New York.

† There are an additional unspecified amount of individuals who do not get past the "induction process or those who don't ever formally get into the treatment regimen of Phoenix" (1400). (Emphasis added.)

hardly adequate to either the urgent demands of New York City's drug problem, or the money, staff or other resources expended in its behalf. As Commissioner Finney testified, ASA's own records indicate that only 167 of 3,417 patients, or less than 5% of those admitted to the Phoenix House program, (even excluding those who do not get past the "induction process"), "graduated" or achieved the desired goal of successful completion of the program.

"By Mr. SMIGEL:

Q. Of this intake of 3,417, how many have graduated . . . ?

A. The figure the Phoenix program gives me is 167 graduates as of this time. . . .

Q. So 167 have graduated out of a total intake of 3,417, is that correct?

A. That is correct.

Q. And passed on to what you would—what you loosely described as a meaningful existence in the outside world. Is that correct?

A. Yes.

Q. According to my figures that is a little bit less than 5 per cent. Does that seem right to you?

A. A little bit less than 5 per cent of the total number." (1401)

**(b) The Phoenix "Graduates"—What has become of that 5%?**

Another startling aspect of the Phoenix program was the virtual lack of any relevant data from which to base an objective evaluation of the program's actual results. Neither ASA nor the administrators of its Phoenix House program maintained any worthwhile study or records for use in evaluating the subsequent progress or post-treatment activities of either those patients who had graduated, or the remaining vast majority who had, to varying degrees, passed through the program without complete success (1402-13).

The figures submitted to the Commission by the present Commissioner of ASA indicated that of these 167 graduates, a full

65 had remained on as staff (salaried) members of different Phoenix Houses (1402-3). Another estimated 20-30 of these "graduates" continued on in other employment in other therapeutic drug communities.

Thus, a maximum of only 82, (2.4%) out of a cumulative total intake of 3,417 addicts entering into the Phoenix House program were able: (a) to successfully complete treatment under this program; and (b) to any meaningful extent, assume a role in a non-drug oriented environment. Significantly, neither ASA nor Phoenix House has any firm records which would indicate whether any of these same 82 "graduates" have, in fact, continued to remain either free of drugs or able to maintain a functioning position in a non-drug oriented society (1404-13).

The present Commissioner of ASA virtually admitted to the almost total inadequacy of the record-keeping system of both ASA and Phoenix House Program, particularly as these records relate to the post-treatment history of its patients. In view of the enormous amount of public funds entrusted to the Phoenix House project for the "effective treatment and control of narcotics addiction"\* serious consideration of the actual accomplishments of these programs should have commenced at some time prior to the Commission's investigation. It is apparent that any objective evaluation of the effectiveness of the Phoenix House program has been seriously hindered by this paucity of records and hard data.

Throughout the course of his testimony, Commissioner Finney attributed much of his agency's problems in its campaign against drug addiction to a lack of public funds (1396). For example, at his request, Commissioner Finney was allowed to insert a statement into the public hearing record. The thrust of this statement was an impassioned plea for the state legislature to grant additional funds for "the great bulk of the youthful drug programs generated by the city in recent months [which] lies in tatters . . . because of recent actions by the state legislature . . ." (1450)

Clearly, an abundance of money, if wisely utilized, might have a salutary effect on the city's narcotics and other problems. However, bearing in mind the limited access to public funds by ASA and other governmental agencies, it is equally

\* Agreement dated 3/17/69 between the City of New York through ASA and the independent Phoenix House Foundation.

clear that more effective controls might have been imposed on those funds already expended. Before a future blank check can be drawn on the public for innovative programs, adequate controls and careful analyses must be imposed upon those programs already in operation, as well as those new programs being contemplated. The Commission's investigation disclosed that, at least with certain of ASA's programs, analysis and safeguards of this nature were lacking.

### (c) Abolition of the Certification Board of ASA

As previously stated, the Commissioner of ASA testified to the considerable degree of failure of ex-narcotics addicts, including those "rehabilitated" by ASA, to maintain a working role in society away from the enclosure of a drug-oriented community. In seeking to explain away the import of this apparent inability of ex-addicts to function independently, Commissioner Finney stated that rehabilitated addicts were often stigmatized and confronted by "discriminatory barriers in industry and in government and almost everywhere against their finding places of employment" (1405).

However, clearly at an earlier point in ASA's history, a mechanism known as the Certification Board of ASA did exist which attempted to alleviate this problem. This Board attempted, by issuing a "certificate of rehabilitation" to the ex-addict, to give independent evidence or certification to an interested party (e.g., a potential employer) that the ex-addict had been rehabilitated. It was believed, not without merit, that the grant of such a certificate from an independent governmental agency, could serve as a warrant for an entry to a new way of life or, perhaps, an official imprimatur of rehabilitation for the ex-addict:

"By MR. SMIGEL:

- Q. Commissioner, you mentioned that one of the problems . . . facing the rehabilitated addict is that avenues of employment are not open to him; is that correct?
- A. That is a problem, that is correct, sir.
- Q. Was there ever a time when the Addiction Services Agency issued certificates of rehabilitation?
- A. Yes, there was.

Q. Could you tell us what a certificate of rehabilitation was?

A. My understanding is that it was a certificate issued by a small group of consultants to the agency indicating that the former drug addict had successfully completed a program of rehabilitation. That is the basic statement." (1414)

This Certification Board eventually was dissolved and, at the juncture of the Commission's public hearing, other than the previously mentioned graduation certificate issued by the Phoenix House, or a possibly similar document issued by another treating agency, a supposedly cured ex-addict had no independent evidence of his rehabilitation (1418-9). Significantly, the Commissioner of ASA admitted that, at least in theory, a "graduate" of one of these therapeutic communities could still have been denied a certification of rehabilitation from this independent board, if that addict was not believed to be sufficiently rehabilitated.

In contrast to the independent judgment of this Certification Board, "graduation" from the Phoenix House, generally requires a 14-month to 2-year tenure within the Phoenix House program (1398). At the successful termination of this treatment period, the patient is considered qualified for graduation if he is "drug free" and "in the eyes of his peers and of the medical staff is able to return to employment, to his home . . . as a functioning member of society" (1401).

Obviously, the subjective evaluation of the Phoenix House or any other therapeutic agency within ASA, and that of a more detached view of an independent Certifying Board could conflict in their evaluation or criteria for a "rehabilitated" addict. The potentiality of this conflict is particularly relevant when a both obvious and critical problem in the field of drug addiction is the super-abundance of programs and treatments, each jealous of the other's success and competing for funds and recognition. Conceivably, even some of the previously mentioned 167 graduates of the Phoenix program might have failed to reach the standard of rehabilitation established by this independent Board (1415-8).

On the other hand, there could readily have been individuals among the balance of addicts admitted to the Phoenix or other rehabilitative programs, who while, perhaps, not reaching the

subjective standards for success established by those in charge of these programs (e.g., length of time in program, proper evaluation by *peers*) might have been quite capable of achieving a certificate of rehabilitation from an independent certifying board. In any event, it is apparent that the dissolution of this independent certification board removed both a much needed standard for determining successful rehabilitative treatment and an equally desired control over the efficacy of ASA's rehabilitative programs. Additionally, the genuinely rehabilitated ex-addict, by the elimination of this Certifying Board, was denied an essential need in any attempt to return to working society.

\* \* \*

Shortly after the conclusion of the Commission's public hearings, the Commission issued certain recommendations for the attention of those concerned with the various aspects of the narcotics problems in the New York City metropolitan area. Although these recommendations were issued as of the conclusion of the Commission's public hearing, they are no less pertinent at this juncture. Accordingly, excerpts from that section of these recommendations dealing with the treatment and rehabilitation programs for narcotics addicts are repeated herein.

" \* \* \* Specific recommendations have been made in a report dated February 19, 1971 by the Criminal Justice Coordinating Council of New York City, among others, to improve current NACC operational procedures and need not be repeated here. Such recommendations should be given careful consideration and prompt action should be taken to implement those which have merit.

In addition to correcting the certification and other procedures, the Narcotic Addiction Control Commission should evaluate thoroughly the progress and results of its treatment and rehabilitation programs as well as the programs and efforts of other agencies, public as well as private, which NACC assists by providing funds. Realistic priorities for such fiscal allocations should be established. NACC should cease to fund those programs which do not show satisfactory results.



As to NACC itself, it appears that its basic concept of treatment and rehabilitation has been generally considered as sound. But its operations need improvement. Once NACC has overcome its procedural and operational weaknesses and has strengthened its treatment and rehabilitation programs, it should be expanded. The present critical situation clearly warrants that NACC be granted additional financial and ancillary support.

2. In New York City, the governmental agency dealing with problems of drug abuse is the Addiction Services Agency (ASA). \* \* \* Since this agency was established to coordinate all drug prevention, education and treatment programs within the City of New York, reform of ASA's operations is imperative. The agency should take a hard look at the activities of the various groups under its jurisdiction which receive public funds, and should discontinue those which are clearly ineffective or of doubtful or marginal effectiveness.

\* \* \*

3. A major overall problem in the field of treatment and rehabilitation is the multiplicity of agencies competing for addicts, funds, and favor. These efforts and programs are fragmented, uncoordinated, often competitive, and most importantly, impossible of objective evaluation because of a paucity of meaningful records and hard data. It is vital that this duplication, waste and confusion end. The problem of treatment must be attacked in an organized, coordinated and responsible fashion, with proper direction, supervision and control exercised by government which is providing the funds and which owes this duty to its citizens. As part of this overall approach, a concentrated program of research and study should be directed at solving the causes and learning how to prevent addiction as well as improving the treatment of those already addicted."

## XI. EVENTS SUBSEQUENT TO THE HEARING

The Commission's public hearing concluded on April 22, 1971. Following are some of the significant results achieved since the hearing.

### *Creation of a Special Narcotics Court System*

In a Preliminary Report to the Governor preceding the public hearing, the Commission urged "a special emergency crash program" to deal with heroin felony cases. In this Preliminary Report, and in testimony at the public hearing, the problems facing prosecutors and judges due to the overwhelming volume of narcotics cases, the inadequacy of physical resources and staff, and other factors, were fully developed. After the public hearing, Commission Chairman Paul J. Curran met in Albany with the Governor's counsel and staff and with the Legislative leaders, and proposed the creation of Special Courts or Parts to handle only narcotics felony cases. Following these conferences, Governor Nelson A. Rockefeller obtained a commitment of financial aid from the federal government for a Special Narcotics Court System. In June 1971, legislation was enacted creating such an emergency court program with centralized prosecution of narcotics felony cases in New York City. This court commenced operation in February 1972.

### *Enactment of New Narcotics Legislation*

The New York State Legislature passed two narcotics bills proposed by the Commission which were then signed by the Governor. One bill made it a crime to sell or possess such narcotics paraphernalia as glassine envelopes, quinine and mannitol under circumstances evidencing an intended use in narcotics traffic. The other measure created a presumption of constructive possession of narcotics by persons in close proximity to drugs in open view of the subjects. Both bills were hailed by the police as helpful to them in their narcotics work. There were eleven misdemeanor arrests and one felony arrest under the new paraphernalia statute from its effective date in October 1971 through December 31, 1971.

### *Meetings with Law Enforcement Officials*

The Commission held numerous meetings with high ranking New York City police and other law enforcement officials and

their staff personnel for the purpose of assisting them in their narcotics law enforcement work. Testimony and other information about individual officers and possible corrupt conditions were forwarded to such authorities and conferences were conducted to discuss virtually every phase of the Commission's investigation. The police officials included the Special Counsel to the Police Commissioner, and representatives of the First Deputy Police Commissioner, the Legal Division, Narcotics Division, Internal Affairs Division, Narcotics Administration Bureau, Intelligence Division, and the Organized Crime Control Bureau. The Commission also met with the counsel and staff members of the Knapp Commission and the United States Attorney for the Southern District of New York, Whitney North Seymour, Jr. and members of his staff.

#### ***Publication of the Commission's "Recommendations"***

On July 6, 1971, the Commission issued a 29-page report of *Recommendations concerning Narcotics Law Enforcement and Related Problems in the New York City Metropolitan Area*. This report contained detailed suggestions for the police, prosecutors, courts, Board of Education, State Narcotics Addiction Control Commission (NACC) and the City's Addiction Services Agency (ASA). Following publication of these Recommendations, Commission personnel met with officials of the Narcotics Division and other City police authorities to discuss implementation of these Recommendations. The Commission was informed that these Recommendations were serving as "the blueprint" for the reorganization of NARCO and the police department's narcotics enforcement program.

#### ***The Police Department's Positive Response to Disclosures made at the Public Hearing and to the Commission's Recommendations***

Shortly after the public hearing, a major reorganization of NARCO was undertaken, including significant changes in personnel. The top commanders of NARCO were replaced, and NARCO was removed as a unit within the Detective Division and placed under the Organized Crime Control Bureau (OCCB). This unit, created in November 1971, was placed under the command of a Deputy Police Commissioner.

The new commanders of NARCO and OCCB reviewed the disclosures made at the public hearing and studied the Com-

mission's Recommendations. Important changes were announced, including the elimination of the quota system and a new concentration on the upper echelon narcotics traffickers. Other changes, as recommended by the Commission, include:

- (a) improvement of criminal intelligence
- (b) allocation of additional "buy" money
- (c) departure from "buy and bust" operations, where appropriate
- (d) new equipment, including a base radio communications system
- (e) appointment of additional sergeants, thereby reducing the ratio of control to one sergeant for six patrolmen\*
- (f) improved training programs
- (g) an increase in the number of arrests by police of individuals offering them bribes.†

In the area of corruption, the Commission met with police officials and provided them with information and sources of information which led to a number of investigations. Such investigations have already led to criminal as well as disciplinary action, with at least one arrest and another resignation. Other investigations are still in progress. We have also been advised that other Commission recommendations regarding safeguarding of narcotics contraband and holding superior officers strictly accountable for misconduct of officers under their command, have also been adopted. Finally, the creation of two new units, the Narcotics Administration Bureau and the Criminal Justice Division, hopefully will provide closer supervision over the activities and arrests made by NARCO officers and will monitor these arrests to see whether they lead to convictions and meaningful sentences.

#### ***A New Climate in the Police Department: The Leadership of Police Commissioner Patrick V. Murphy***

During the 14 years of its existence, the Commission has investigated the effectiveness and integrity of numerous police

\* At the time of the Commission's investigation, there were as many as 30 to 40 patrolmen under the supervision of a single sergeant.

† During the 12-month period following the announcement of the Commission's public hearing, there were 17 bribery cases made by NARCO officers, involving 24 defendants. Prior to the Commission's hearing, there were a total of 10 cases during the preceding four-year period of 1967, 1968, 1969 and 1970.

departments throughout New York State. Where deficiencies were found, they were often attributable to a breakdown in leadership which inevitably filtered down to the men. Police officers take their cue from the top, and invariably render a quality of performance commensurate with that exercised by their leaders. Indifference, or weakness by a Commander, is not lost sight of by subordinates, and, conversely, a police chief who means business will soon have his men tow the mark.

The positive response by the Police Department to the Commission's disclosures of deficiencies in its narcotics program is an excellent example of such police leadership.

Following the Commission's public hearing, Commissioner Murphy demonstrated his determination to clean house and reform the Police Department's narcotics effort. First Deputy Police Commissioner William H. T. Smith worked closely with the Commission's Chief Counsel during and following the investigation and was very helpful in the reform which followed. Particularly gratifying was the news that over 90% of the Recommendations relating to the police which were contained in the Commission's July 1971 publication were adopted by the Police Department or are in the process of implementation.\*

In addition to the recommendations aimed at changes within the Police Department, the Commission also recommended that the Police Commissioner publicly express his displeasure at other agencies in the criminal justice system who were not properly discharging their respective responsibilities. Commissioner Murphy has also done that, and has not hesitated to voice such criticism publicly.

Commissioner Murphy's strength of leadership was especially evident in his attitude toward corruption. The message has gone out to all police officers—loud and clear—that corruption will not be tolerated, and that supervisory officers will be held strictly accountable for the dereliction of their men. The Commission is not unmindful of the courage such a position demands and is confident that under Police Commissioner Murphy's courageous and determined leadership, a vastly improved and respected police department will emerge.

\* The Commission's Chief Counsel and OCCB head, Commissioner William P. McCarthy, reviewed each of the Commission's recommendations during a four-hour conference just before this report went to print.

### ***Response by the "Mayor's Narcotics Control Council" to Disclosures made at the Public Hearing and to the Commission's Recommendations***

The Police Department was honest in acknowledging its past failures and prompt in making appropriate and significant improvements. Unfortunately, the hasty response by the city administration was aimed solely at attempting to discredit the testimony and evidence presented at the Commission's public hearing, and denying the seriousness of the problem.

On May 3, 1971, the Mayor's Narcotics Control Council issued a public statement commenting on the hearings. In this statement, the hearings were characterized as "a naive distortion of the problems of narcotics law enforcement and a grossly inaccurate assessment of the city's efforts in this area." The statement, consisting of three and one-half pages, contained gross misstatements of fact, and represented the only negative response to the Commission's work, of which the Commission, at least, is aware.

#### ***Statement by Mayor's Narcotics Control Council:***

"It [SIC hearings] virtually ignored the critical role of the non-police agencies of the criminal justice system—prosecutors, courts and corrections—without which no police effort can be effective." (p.1)

#### ***Fact***

Three of the five County District Attorneys testified at the public hearing. Records and cases involving the other two prosecutive offices were also put into evidence and discussed.

Numerous witnesses testified concerning the "critical role" of the courts. Exhibits and statistics of court sentences and court cases, as well as testimony are also part of the public record.

The New York City Commissioner of Correction (*a member of the Mayor's Narcotics Control Council*) testified at the public hearing and expressed appreciation to the Commission for the opportunity to do so. (It is interesting to note, that this Commissioner of Correction, on an occasion subsequent to the issuance of the statement by the Mayor's Narcotics Control Council, informed the Commission's Chief Counsel that he had never seen the statement.)

**Statement by Mayor's Narcotics Control Council**

"We believe that the State Investigation Commission's almost total focus on police corruption constitutes a naive distortion of the problems of narcotics law enforcement. . . ." (p. 1)

**Fact**

The testimony concerning narcotics police corruption came from the police themselves. The head of IAD, and the First Deputy Police Commissioner's aide, both testified that it was the Police Department's single largest corruption problem.

The testimony dealing with corruption constituted less than one-third of the total testimony given at the public hearing.

Police Commissioner Patrick V. Murphy, a member of the Mayor's Narcotics Control Council, has publicly expressed his concern over the corruption problem on numerous occasions subsequent to the issuance of the statement by the Council.

**Statement by Mayor's Narcotics Control Council**

"Even in the limited area of police activity—detection and arrest—the SIC's exclusive focus on the City Police Department is unrealistic. Heroin moves through international channels, ignoring state and national boundaries, and efforts to halt it cannot be confined to local police." (p.2) (emphasis added)

**Fact**

Appearing as witnesses on the first day of the public hearing, were the following witnesses, who described, at length, the international and inter-state narcotics traffic and the efforts by other police agencies in these areas:

Myles J. Ambrose, (then) United States Commissioner of Customs

Andrew C. Tartaglino, Assistant Director for Enforcement, Federal Bureau of Narcotics and Dangerous Drugs

William J. Durkin, Regional Director, BNDD (New York office)

**CONTINUED**

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Finally, Police Commissioner Murphy, in his appearance before the Commission, on April 20, also testified about these matters, and referred to the previous testimony of said witnesses. (1647-50)

***Statement by Mayor's Narcotics Control Council***

"The SIC surprisingly declined to inquire into [the role of the State Police] despite a request from the City." (p.2)

***Fact***

As noted earlier, the primary responsibility for enforcing the state narcotic laws rested with the 800-man Narcotics Division of the New York City Police Department. At no time during the Commission's year-long investigation, was any allegation made that the State Police should be assuming greater responsibilities in the area of narcotics law enforcement in New York City. It was not until April 8, 1971, while the public hearings were in progress, that a city official telephoned the Commission and alleged that the State Police had not assigned enough men to the Federal-State-City Joint Narcotics Enforcement Task Force. The official was notified that Police Commissioner Murphy was scheduled to testify on April 20, and that he could raise this point during his testimony.

On April 20, Commissioner Murphy and NARCO Commander John McCahey both testified at the hearings. Neither raised any complaint that the State Police commitment to the Joint Task Force was inadequate. As a matter of fact, the testimony of Police Commissioner Murphy on this subject was as follows:

"At these higher echelons, I should point out, we frequently are engaged in coordinated investigations with other federal and state agencies, which have the capacity not readily available to us of pursuing interstate or international activities. It was the City of New York, I am happy to state, that took the initiative in securing the establishment of the Joint Narcotics Task Force, composed of representatives of a number of federal, state and local agencies. And shortly after I became Police Commissioner I went to Washington to urge the federal authorities to increase

their commitment to the Task Force, pledging that this Department was prepared to increase its efforts to detect major violators. We now have indications that these personnel increases will soon be achieved." (1660-1)

#### **Statement by Mayor's Narcotics Control Council**

"The reasons for NACC's failure and the ways for improving its program constitute the single most critical issue facing narcotics enforcement officials in the State.

But the truth is that NACC last week stopped taking addicts into its commitment program, creating turmoil in the criminal justice system—a fact that the SIC totally ignored." (p.3) (Emphasis added)

#### **Fact**

NACC's failures and the reduction in NACC's budget by the State Legislature were discussed, at length, at the Commission's hearing. Indeed, two members of the Mayor's Narcotics Control Council, themselves testified on these very points at the hearing. They were New York City Commissioner of Corrections, George G. McGrath and Commissioner of Addiction Services Agency, Graham Finney. Further criticism of NACC and comment on the Legislature's action in reducing funds came from Bronx County District Attorney Burton Roberts and others. Finally, NACC Chairman Milton Luger appeared as a witness at the hearings and was questioned by the Commission about the deficiencies in the NACC program.

#### **Statement by Mayor's Narcotics Control Council**

On the last page of its statement, the Mayor's Narcotics Control Council criticized the Commission for taking "cheap shots" at the Board of Education, and others. (p.4)

#### **Fact**

On April 20, Police Commissioner Murphy, a member of the Mayor's Narcotics Control Council, had the following to say about the Board of Education, when he testified at the hearing:

"Perhaps the most troubling disclosures during the hearings this Commission has held have demonstrated a pattern of ostrich-like non-involvement by some school administrators and teachers. We know now that drug dealing is carried on from the grades to the university. The problem is much deeper than such deficiencies in our educational process or course, but opportunities to prevent and protect, or at least to detect and treat, have been frustrated by the failure of some in the school system to come to grips with its critical responsibilities. . . ." (1654)

A concluding comment or two on the motives of the Mayor's Narcotics Control Council is warranted. Several months after the issuance of the statement by the Mayor's Narcotics Control Council, and following the publication of the Commission's Recommendations, the Commission had occasion to question a city official in connection with a few open matters relating to the narcotics investigation. This official had been involved in the preparation of the Statement of the Mayor's Narcotics Control Council. This official admitted that the Mayor's Narcotics Control Council issued its criticism of the Commission's investigation and public hearing without ever reading the transcript of the public hearing, or indeed, any part of the 3,000 pages of testimony taken at the hearing. He also conceded that the Mayor's Narcotics Control Council had never read nor discussed the Commission's Recommendations which were issued in July 1971 and which were serving as a blueprint for the reorganization of the Narcotics Division.\*

Finally, the Mayor's Narcotics Control Council charged that the Commission's entire investigation "was neither impartial nor professional" (p.4). On this point, it is interesting to recall the testimony of Police Commissioner Murphy when he expressed his appreciation to the Commission for the opportunity to testify and stated:

\* The Mayor's Narcotics Control Council consisted of 13 members at the time it issued its Statement in May 1971. In addition to the Mayor and the three members mentioned earlier in this section, the other nine members were: (1) Gordon Chase, Health Services Administrator; (2) Edward K. Hamilton, currently Deputy Mayor and then Director of the Bureau of the Budget; (3) Henry Ruth, Director of the Criminal Justice Coordinating Council; (4) Harold Siegel, Secretary of the Board of Education; (5) Herbert Sturz, Director, Vera Institute of Justice; (6) Jule M. Sugarman, Human Resources Administrator; (7) Joseph B. Williams, Model Cities Administrator; (8) Howard Samuels, currently Chairman of Off-Track Betting Corp.; (9) Joseph Meng, Dean for Students Services, City University.

"... I can only admire the work that the Commission has done in this investigation, as I had admired its work over the years.

It is a pleasure to be able to cooperate with you. We always want to do that." (1674)

### ***The Knapp Commission***

The Commission to Investigate Allegations of Police Corruption, popularly known as the Knapp Commission,\* issued a Preliminary Report on July 1, 1971. In the area of narcotics enforcement, the Knapp Commission's Preliminary Report stated that it "concurred" in the State Investigation Commission's findings with regard to narcotics corruption.

On October 28, 1971, Chairman Paul J. Curran, accompanied by Commissioner Edward S. Silver, testified before the Knapp Commission at its public hearings. Commissioner Curran presented detailed evidence of narcotics corruption, with specific examples and testimony given at our April 1971 public hearing. Again, the Knapp Commission concurred in our findings and endorsed our conclusion concerning the extent of corruption in narcotics law enforcement.

The Mayor's Narcotics Control Council has been conspicuously silent since the Knapp Commission hearings.

\* It was so known because its Chairman was Whitman Knapp.

**END**