



University of Baltimore Law Review

Volume 2
Issue 2 Spring 1973

Article 2

1973

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Paul L. Perito

Special Action Office for Drug Abuse Prevention

Robert G. Pinco

Special Action Office for Drug Abuse Prevention

William A. Duerk

Special Action Office for Drug Abuse Prevention

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Recommended Citation

Perito, Paul L.; Pinco, Robert G.; and Duerk, William A. (1973) "Treatment Alternatives to Non-Incarceration for Drug-Abusing Defendants," *University of Baltimore Law Review*: Vol. 2: Iss. 2, Article 2.

Available at: <http://scholarworks.law.ubalt.edu/ublr/vol2/iss2/2>

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TREATMENT ALTERNATIVES TO NON-INCARCERATION FOR DRUG-ABUSING DEFENDANTS*

Paul L. Perito,† Robert G. Pinco,†† and William A. Duerk†††

The burden on criminal justice systems which has accompanied the increased use of narcotic and other dangerous drugs in our society has forced responsible members from both law enforcement agencies and the medical community to join together in developing new programs within the criminal justice structure to deal with the drug phenomenon. In this article, the authors discuss some of these varied program alternatives and suggest additions which can be utilized to reduce both the criminal activity and the drug-abusing habits of persons who come in contact with criminal justice systems.

I. INTRODUCTION

Given the fact that the most recent federal estimate of narcotics abusers, including addicts, users, and ex-addicts, is between 600,000 and 700,000,¹ and our nationwide prison and detention population is approximately 300,000,² treatment as an alternative or supplement to

*This article expresses the views and opinions of the authors alone and does not necessarily represent the views of the Special Action Office for Drug Abuse Prevention or the Executive Office of the President.

† A. B., Tufts University; J.D., Harvard Law School; former Deputy Director, Special Action Office for Drug Abuse Prevention, Executive Office of the President (1971-April 15, 1973); former Chief Counsel, House Select Committee on Crime (1970-1971); Assistant United States Attorney for the Southern District of New York (1966-1970); member Massachusetts Bar.

†† B.S. Pharmacy, University of Connecticut School of Pharmacy; J.D., Georgetown University Law Center; Assistant General Counsel, Special Action Office for Drug Abuse Prevention, Executive Office of the President (1972-1973); formerly Attorney, Office of the Chief Counsel, Bureau of Narcotics and Dangerous Drugs, Department of Justice and Special Assistant United States Attorney for the District of Columbia (1970-1972); member Maryland and District of Columbia Bars.

††† A. B., Indiana University; J.D., DePaul University; Special Assistant to the Deputy Director, Special Action Office for Drug Abuse Prevention, Executive Office of the President (1971-1973); former Administrator, Illinois Drug Abuse Program (1968-1971); member District of Columbia Bar.

1. *Hearings on H.R. 17034 Before the Subcomm., on Labor, Health, Education and Welfare of the House Appropriations Comm.*, 92d Cong., 2d Sess. 425 (1972) (Statement of Dr. Jerome H. Jaffe, Special Consultant to the President for Narcotics and Dangerous Drugs, and Director, Special Action Office for Drug Abuse Prevention, Executive Office of the President (SAODAP)).
2. 1 ATT'Y GEN. ANN. REP.—FEDERAL LAW ENFORCEMENT & CRIMINAL JUSTICE ASSISTANCE ACTIVITIES (CORRECTIONS SECTION) 114 (1972). See also U.S. DEP'T OF JUSTICE, L.E.A.A., LOCAL JAIL POPULATION SURVEY CONDUCTED BY THE NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, tables I & II (1970); U.S. DEP'T OF JUSTICE, BUREAU OF PRISONS, NATIONAL PRISONERS STATISTICS BULLETIN (1972).

prosecution, as a dispositional alternative to incarceration, or as an adjunct to sentencing must be available within our criminal justice systems. There is ample evidence supported by records of federal, state and local law enforcement agencies, courts and penal systems, which indicates that drug use, recidivism and the re-arrest of addict-defendants who commit crimes while on bail, is appallingly high.³ The release of an active narcotics user at any point from arrest to final adjudication, without treatment, more often than not results in the return of the drug-dependent defendant to the street with the resumption of drug-seeking behavior and criminal activity necessary to support drug use. Treatment alternatives must be available as one means of interrupting what appears to be an inexorable cycle. Addict-defendants must be provided with a reasonable opportunity to reenter the mainstream of society and thereby reduce the indirect social and personal costs of addiction and relieve our presently over-burdened criminal justice systems. Effective treatment and rehabilitation programs will benefit not only the addict-defendant and the criminal justice systems, but moreover society as a whole.

Therefore, it is incumbent upon the legal community, and in particular the lawyers handling drug and drug related cases, not only to be aware of what treatment alternatives are available within the federal, state and local criminal justice systems, but also to help create such alternatives where they do not now exist. In order to properly represent or prosecute a drug user or addict who has committed a drug related crime, it is essential to understand the type of individual who abuses substances and how an individual's drug-seeking pattern of behavior can best be handled within the alternatives available in a given criminal justice system.

II. THE DRUG ABUSER

Our present crisis involving the epidemic use of a broad variety of pharmacological substances cannot be viewed in microcosm. This nation, as well as many others throughout the world, is struggling to respond to the realization that millions of citizens of the world community are using and abusing multiple pharmacological substances for non-medical purposes. However, excessive use and abuse of substances is not confined to illicit drugs. For example, in 1970, over 202 million legal prescriptions for psycho-active drugs (stimulants, sedatives, tranquilizers, sedative-hypnotics, and anti-depressants) were filled in pharmacies by persons who had received prescriptions from their physicians.⁴ Problems of control of substance abuse are

3. U.S. DEP'T OF JUSTICE, B.N.D.D., REPORT ON POST-ARREST DRUG TRAFFICKING (1973).

4. H. LENNARD, L. EPSTEIN, A. BERNSTEIN, & D. RANSOM, *Preface to MYSTIFICATION AND DRUG MISUSE* at vii (1972).

exacerbated in these areas where diversion of licit substances still exists. Diversion and inappropriate use of over-the-counter and prescription drugs which have legitimate (although often controversial) medical uses have been documented as emanating, in certain cases, from careless, negligent or malevolent pharmaceutical manufacturers, distributors, pharmacies or physicians.⁵

Drug-seeking behavior is exceedingly complex, since people tend to use drugs in a variety of different patterns.⁶ Each pattern of use represents a different set of risks both to the user and to the society. There is no single causal factor which can easily explain drug-seeking behavior, and it is now recognized that substantial differences in behavior patterns exist between addicts, users and experimenters.⁷ Causes of initial drug use are not necessarily the same as those for continued drug use. Causes and factors which lead to repetitive use after a period of non-use are also different from causes leading to initial use, experimentation and compulsive use. However, one central theme is clear throughout all abuse patterns: people of all ages, all ethnic, social and economic groups, are abusing a broad variety of substances for non-medical purposes. People use such substances to affect their mood and behavior.⁸

Drug abusers are not a monolithic group, as drug users and patterns of use are clearly heterogeneous. For purposes of this article, the drug abusers will be divided into four basic categories: the occasional user (chipper or experimenter); the addict-user; the addict who traffics to sustain a habit; and the addict-trafficker who traffics for profit.

III. FEDERAL AND STATE DRUG ENFORCEMENT— LEGISLATIVE ACTIVITY

A. Federal Activity

From 1914 until the enactment of Titles II and III of the Comprehensive Drug Abuse Prevention Control Act of 1970 (herein-

5. See *Hearings on Crime in America—Why 8 Billion Amphetamines? Before the House Select Comm. on Crime*, 91st Cong., 1st Sess. (1969). See also HOUSE SELECT COMM. ON CRIME, AMPHETAMINES, H.R. REP. NO. 1807, 91st Cong., 2d Sess. (1971); *Hearings on Barbiturate Abuse 1971-1972 Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Judiciary Comm.*, 92d Cong., 1st & 2d Sess. (1972); J. PEKKANEN, *THE AMERICAN CONNECTION* (to be published Sept. 1973).

6. STRATEGY COUNCIL, EXECUTIVE OFFICE OF THE PRESIDENT, *FEDERAL STRATEGY FOR DRUG ABUSE AND DRUG TRAFFIC PREVENTION* 5 (1973).

7. NATIONAL INSTITUTE OF MENTAL HEALTH, *FOLLOWUP STUDY OF VIETNAM DRUG USERS* (Lee N. Robins, Ph.D., Principal Investigator) (1973).

8. See *Hearings on Mood Drugs (Sedatives, Tranquilizers, and Stimulants) Before the Subcomm. on Monopoly of the Senate Select Comm. on Small Business*, 92d Cong., 1st Sess., pt. 2, at 924 (1971) (address of President Nixon to the American Medical Association House of Delegates on June 22, 1971, in Atlantic City, N.J.):

[W]e have created in America a culture of drugs. We have produced an environ-

after Federal Controlled Substances Act),⁹ neither federal nor most state laws differentiated between the trafficker and the user. The Federal Controlled Substances Act¹⁰ was the first attempt by Congress to differentiate between the trafficker and the user. Prior to the enactment of this legislation, the Harrison Narcotic Act of 1914¹¹ treated the trafficker or seller and the possessor of narcotic drugs identically. A similar situation existed under the relevant provisions of the Marihuana Tax Act of 1937.¹² In the mid-sixties, the Drug Abuse Control Amendments to the Federal Food, Drug and Cosmetic Act¹³ which controlled amphetamines, barbiturates, and hallucinogenic drugs, such as LSD, began to differentiate between the possessor and the trafficker. On October 27, 1970, President Nixon signed into law the Comprehensive Drug Abuse Prevention Control Act of 1970,¹⁴ which, *inter alia*, provided for a penalty of up to 15 years for illegal distribution or trafficking of narcotic control substances such as heroin, morphine or methadone.¹⁵ The Act also provided a lesser felony sentencing structure from zero to 15 years for illegal distribution of non-narcotic control substances such as marihuana, LSD, amphetamines and barbiturates.¹⁶ Simple possession (or possession for one's own use) of any controlled substance, whether it be heroin or marihuana, was reduced to a misdemeanor penalty of up to one year in prison and/or a fine.¹⁷ In so doing, the drafters clearly differentiated

ment in which people come naturally to expect that they can take a pill for every problem—that they can find satisfaction and health and happiness in a handful of tablets or a few grains of powder.

Id. at 927.

9. 21 U.S.C. §§ 801-86, 901-04, 951-66 (1970).
10. *Id.*
11. Act of Dec. 17, 1914, ch. 1, 38 Stat. 785; Act of Feb. 24, 1919, ch. 18, §§ 1006-07, 40 Stat. 1130; Act of Nov. 23, 1921, ch. 136, §§ 1005-07, 42 Stat. 298. This act was the primary law controlling narcotic drugs and was based on the federal government's constitutional power to tax as a deterrent to crime.
12. Act of Aug. 2, 1937, ch. 553, 50 Stat. 551.
13. Act of July 15, 1965, Pub. L. No. 89-74, § 3(b), 79 Stat. 228; Act of Oct. 24, 1968, Pub. L. No. 90-639, § 2(a), 82 Stat. 1361.
14. 21 U.S.C. §§ 801-66, 901-04, 951-66 (1970).
15. 21 U.S.C. § 841(b)(1)(A) (1970).
16. 21 U.S.C. § 841(b)(1)(B) (1970).
17. 21 U.S.C. § 844(a) (1970). *But see* H.R. 5946, 93d Cong., 1st Sess. (1973); S. 1300, 93d Cong., 1st Sess. (1973) (Nixon Administration's legislative proposal of March 20, 1973 to Congress suggesting minimum penalties of 10 years to life for possession or distribution of more than 4 ounces of heroin or morphine. Trafficking in "small amounts" (less than 4 ounces) under this proposal is punishable by 5 to 15 years imprisonment). *See also* Radio Address by President Nixon on Law Enforcement and Drug Abuse Prevention, 12:30 p.m., March 10, 1973, in which he stated:

Our new code will give us tougher penalties and stronger weapons in the war against dangerous drugs and organized crime. . . .

One area in which I am convinced of the need for more immediate action is that of putting heroin pushers in prison and keeping them there. . . .

... I am confident that the vast majority of Americans will support immedi-

between the possessor of a substance intended for private use, either to satisfy addiction or for personal enjoyment, and the possessor who intended to distribute, deliver or manufacture controlled substances.¹⁸ However, no further differentiation was attempted within the first-mentioned category (simple possession) to segregate experimenters from addicts.

The only exception to the strict prohibition against distribution was provided for the individual who distributed a small amount of marihuana without remuneration.¹⁹ The inclusion of this section in the Act was intended to exclude individuals who possess marihuana at parties or social gatherings from the trafficking or distribution category.²⁰ The drafters purposefully avoided defining what constituted a "small amount," leaving this determination for the federal district courts on an ad hoc basis.²¹

The Act never attempted to differentiate between the addict-trafficker who trafficked to sustain a habit and the addict-trafficker who trafficked for profit, except insofar as the Act provided no minimum mandatory penalties for either category of offender.²² The prior applicable federal statutes²³ contained mandatory minimum sentence provisions. However, this non-discretionary penalty structure was abandoned as a result of extensive efforts by the Bureau of Prisons and others within the Department of Justice who believed that the mandatory sentencing provisions failed to act as an effective deterrent, and supposedly presented difficult problems for prison authorities.²⁴

ate passage of the heroin trafficking legislation I will propose to the Congress next week.

....
This is tough legislation, but we must settle for nothing less. The time has come for soft-headed judges and probation officers to show as much concern for the rights of innocent victims of crime as they do for the rights of convicted criminals.

18. 21 U.S.C. §§ 841-51 (1970).

19. 21 U.S.C. § 841(b)(4) (1970).

20. *Id.* Under this section a penalty of up to not more than one year imprisonment, a fine of not more than \$5000, or both, can be imposed for distribution of a small amount of marihuana where no money was received and no in-kind exchange of drugs took place. *But see* H. R. 5946, 93d Cong., 1st Sess. (1973); S. 1300, 93d Cong., 1st Sess. (1973).

21. *But see* Exec. Order No. 11,641, 3 C.F.R. 367 (Supp. 1973): Presidential Statement on Drug Abuse of Jan. 28, 1972 (creation of the Office of Drug Abuse Law Enforcement in the Department of Justice) which related to prosecution of street-level traffickers.

22. 21 U.S.C. § 841 (1970). *But see* H.R. 5946, 93d Cong., 1st Sess. (1973): S. 1300, 93d Cong., 1st Sess. (1973).

23. Narcotic Control Act of 1956, ch. 629, 70 Stat. 567.

24. *Hearing on S. 1895, S. 2950 & S. 2637 Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 91st Cong., 1st Sess. (1969). John N. Mitchell, then the Attorney General, speaking generally in support of the Controlled Substances legislation and specifically to removal of the mandatory minimum penalties of the Harrison Narcotic and Marahuana Tax Acts stated:

I personally believe in sentences which are reasonably calculated to be deterrents to crime and which also will give judges sufficient flexibility to tailor the sentences to the requirements of the drug violator or the narcotics addict.

The drafters of the Act believed that by eliminating the mandatory minimum sentence, the trial court could more appropriately handle the situation of an addict-trafficker trafficking to sustain his habit by either placing the defendant on probation with strict conditions, imposing a short sentence or suspending the sentence entirely. At the same time, the addict, whether incarcerated or not, could be directed by the court to treatment. The Narcotic Addict Rehabilitation Act of 1966²⁵ supposedly provided the principal avenue to treatment. Alternatively, the addict-trafficker who had trafficked for profit could be dealt with more harshly under the same penalty structure. Addict-traffickers could be afforded treatment opportunities while incarcerated by utilizing Title II of the Narcotic Addict Rehabilitation Act.²⁶ The Federal Controlled Substances Act also provided for a felony charge of from ten years to life for individuals who are participants in or organizers of a criminal syndicate;²⁷ however, the question of addiction relating to this type of felony is never raised. The only questions which can properly be asked under this Act are:

1. Has the individual violated any provision of the Federal Controlled Substances Act?
2. Is such a violation part of the continuing series of violations of the Act?
3. Are such violations undertaken in concert with five or more persons with respect to whom the defendant occupies a position of an organizer or a supervisory position?
4. Does the individual obtain a substantial part of his income from these violations?²⁸

Extensive Congressional inquiry into the question of how properly to treat the addict-trafficker produced neither innovative legislative approaches nor the establishment of flexible sentencing parameters.²⁹

Prison is not the only logical alternative. In some cases, it may be advisable to use Federal rehabilitation programs, halfway houses and private medical treatment while on probation or parole. Perhaps the most promising alternative is to approach the narcotics violator in relation to his function; the professional trafficker who should be given as severe a sentence as possible; the casual and intermittent user who is perhaps only experimenting out of curiosity; or the mentally or physically ill addict who, without additional help, cannot break a confirmed habit.

Id. at 216. *But see* Letter from then Attorney General Kleindienst to Congress, March 20, 1973 [transmitting Heroin Trafficking Act of 1973 now H. R. 5946 and S. 1300, 93d Cong., 1st Sess. (1973)].

25. 18 U.S.C. §§ 4251-55; 28 U.S.C. §§ 2901-06; 42 U.S.C. §§ 3411-26, 3441-42 (1970).

26. 18 U.S.C. §§ 4251-55 (1970). *But see* H.R. 187, 93d Cong., 1st Sess. (1973), formerly H.R. 15,760, 92d Cong., 2d Sess. (1972). *See also Hearings on H.R. 8389 and related bills Before subcomm. No. 4 of the House Comm. on the Judiciary*, 92d Cong., 1st Sess., ser. 14, pt. 1, at 147 (1971) [Statement of Dr. Jerome H. Jaffe, then Special Consultant to the President for Narcotics and Dangerous Drugs].

27. 21 U.S.C. § 848(a)(1) (1970).

28. 21 U.S.C. § 848 (1970).

29. *Hearings on H.R. 11701 & H.R. 13743 Before the Subcomm. on Public Health and Welfare of the House Comm. on Interstate and Foreign Commerce*, 91st Cong., 2d Sess., ser.

Congress chose instead to leave this area entirely to the discretion of the trial court who would have the benefit of a pre-sentence report prepared by the probation office.³⁰

Furthermore, in the area of simple possession, there seemed to be a general consensus that since the federal law enforcement effort would focus upon high or mid-level trafficking areas and not at the simple possessor or user levels, an across-the-board misdemeanor penalty of up to one year in prison and/or a fine was considered to be a sufficient and rational response to this problem.³¹ In addition, the Act provided for the expunging or non-entry of a guilty plea for first offenders of a simple possession conviction, provided that the defendant successfully completed a probationary period of not more than one year.³² Since federal legislation has failed to produce clear guidelines, it is necessary to review the states' activities to see what has been enacted.

B. State Activity

A survey of state legislation shows that thirty-six states have now adopted the Uniform Controlled Substances Act, which generally reflects the concepts developed in the Federal Controlled Substances Act.³³ The State Uniform Controlled Substances Act³⁴ generally

91-45, pt. 1 (1970); *Hearing on Controlled Dangerous Substances, Narcotics and Drug Control Laws Before the House Comm. on Ways and Means*, 91st Cong., 2d Sess. (1970); HOUSE COMM. ON INTERSTATE AND FOREIGN COMMERCE, COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970, H.R. REP. NO. 1444 91st Cong., 2d Sess. pt. 1 (1970); SENATE COMM. ON THE JUDICIARY, CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969, S. REP. NO. 91-613, 91st Cong., 1st Sess. (1969); *Hearings on S. 1895, S. 2590 & S. 2637 Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 91st Cong., 1st Sess. (1969).

30. FED. R. CRIM. P. 32(c)(1).

31. 21 U.S.C. § 844(a) (1970). *But see* Exec. Order No. 11,641, 3 C.F.R. 367 (Supp. 1973); Presidential Statement on Drug Abuse of Jan. 28, 1972 (creation of the Office of Drug Abuse Law Enforcement in the Department of Justice) which related to prosecution of street-level traffickers.

32. 21 U.S.C. § 844(b)(1) (1970).

33. The following states have adopted the Uniform State Controlled Substances Act: Alabama [CODE OF ALA. tit. 22, §§ 258(25)-(60) (Supp. 1972)]; Arkansas [ARK. STATS. §§ 82-2601 to -2633 (Supp. 1971)]; California [CAL. HEALTH & SAFETY CODE §§ 11000-651 (Supp. 1972)]; Connecticut [CONN. GEN. STAT. ANN. §§ 19-450a to -504j (Supp. 1973)]; Delaware [DEL. CODE ANN. tit. 16, §§ 4701-32 (Supp. 1972)]; Idaho [IDAHO CODE §§ 37-2701 to -2751 (Supp. 1972)]; Illinois [ILL. ANN. STAT. ch. 56 ½, §§ 1100-1603 (Smith-Hurd Supp. 1972)]; Iowa [IOWA CODE ANN. §§ 204.101-.602 (Supp. 1973)]; Kansas [KAN. STAT. ANN. §§ 65-4101 to -4140 (1972)]; Kentucky [KY. REV. STAT. S. 274, at 237, March 25, 1972 (Temporary Issue 1972)]; Louisiana [LA. STAT. ANN. §§ 40:961-.995 (Supp. 1973)]; Maryland [MD. ANN. CODE art. 27, §§ 276-302 (Supp. 1972)]; Massachusetts [MASS. GEN. LAWS ANN. ch. 94C, §§ 1-48 (Supp. 1973)]; Michigan [MICH. STAT. ANN. §§ 18.1070(1)-(67) (Supp. 1972)]; Minnesota [MINN. STAT. ANN. §§ 152.01-.20 (Supp. 1973)]; Mississippi [MISS. CODE ANN. §§ 41-29-101 to -175 (1972)]; Missouri [MO. STATS. ANN. §§ 195.010-545 (1972)]; Nebraska [REV. STAT. NEB. §§ 28-4115 to -4142 (Supp. 1972)]; Nevada [NEV. REV. STAT. 453.011-.361 (1972)]; New Jersey [N.J. STAT. ANN. §§ 24:21-1 to -45 (Supp. 1972)]; New Mexico [N.M. STAT. ANN. §§ 54-10-13 to -39 (Supp. 1972)]; New York [N.Y. PUBLIC HEALTH LAW §§ 3300-96 (McKinney Supp. 1972) and N.Y. PENAL

differentiates between the trafficker who is a distributor or possessor with intent to distribute and the simple possessor—the possessor of controlled substances for private use. However, a number of state legislative bodies considered that the language of the Federal Controlled Substances Act³⁵ and the State Uniform Controlled Substances Act³⁶ was not sufficient to differentiate between the experimenter or chipper, the addict-user, the addict who traffics to sustain his habit, the addict who traffics for profit and the non-addict trafficker.³⁷

Some states reasoned that further differentiation of the categories of possessors of illicit substances was necessary. One state, Arkansas, attempted to shift the burden of proof in possession with intent to distribute situations. The Arkansas statute creates a rebuttable presumption that an individual who possesses quantities of controlled substances in excess of certain delineated amounts possesses the substances for purposes of illegal distribution.³⁸ In essence, a defendant in possession of quantities above the stated statutory amount is required to show affirmatively that his intent is solely possessory.

LAW §§ 220.00-.60 (McKinney Supp. 1972)]; North Carolina [N.C. GEN. STAT. §§ 90-86 to -113.14 (Supp. 1971)]; North Dakota [N.D. CENTURY CODE 19-03.1-01 to -43 (1971)]; Oklahoma [OKLA. STAT. ANN. tit. 63, §§ 2-101 to -610 (1973)]; Pennsylvania [ACT 64, 1 PA. LEG. SERV. 165 (Purdon's (1972))]; Rhode Island [GEN. LAWS R.I. §§ 21-28-1 to -67 (1968), as amended §§ 21-28-1 to -68 (Supp. 1972)]; South Carolina [CODE OF LAWS S.C. 32.1501.5-.69 (Supp. 1971)]; South Dakota [S.D. COMPILED LAWS 39-17-44 to -155 (Supp. 1972)]; Tennessee [TENN. CODE ANN. §§ 52-1408 to -1450 (Supp. 1972)]; Utah [UTAH CODE ANN. §§ 58-37-1 to -19 (Supp. 1971)]; Virginia [CODE OF VA. 54-524.2 to .109:1 (Supp. 1972)]; Washington [REV. CODE WASH. ANN. 6950.101 to -608 (Supp. 1972)]; West Virginia [W. VA. CODE 60A-1-101 to -605 (Supp. 1972)]; Wisconsin [WIS. STAT. ANN. §§ 161.001-.62 (Supp. 1973)]; Wyoming [WYO. STAT. 35-347.1-.55 (Supp. 1971)].

34. UNIFORM CONTROLLED SUBSTANCES ACT (promulgated by the National Conference of Commissioners on Uniform State Laws, Aug. 6, 1971, St. Louis, Mo.).

35. 21 U.S.C. §§ 801-86, 901-04, 951-66 (1970).

36. UNIFORM CONTROLLED SUBSTANCES ACT.

37. NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, FIRST INTERIM REPORT 12 (1972).

38. ARK. SESS. LAWS act 590 (June 1, 1972). Article IV reads as follows:

(d) Rebuttable Presumption

Possession by any person of a quantity of any controlled substance listed in this subsection in excess of the quantity limit set out herein, shall create a rebuttable presumption that such person possesses such controlled substance with intent to deliver in violation of Section 1 (a) and (b) of this article.

Heroin	100 milligrams
Opium	3 grams
Morphine	300 milligrams
Cocaine	2 grams
Codeine	600 milligrams
Pethidine	2 grams
Hydromorphone Hydrochloride	40 milligrams
Methadone	100 milligrams
Marihuana	1 oz.
Hashish	6 grams
Lysergic Acid Diethylamide (LSD)	200 micrograms
Depressant Drug	20 Hypnotic Dosage units
Stimulant Drug	200 milligrams

Not surprisingly, this particular section is presently under constitutional scrutiny in the Arkansas Supreme Court.³⁹

While the Arkansas statute differentiates between the simple possessor and the possessor for purposes of trafficking through this rebuttable presumption, some states create the same presumption through the use of quantity limitations.⁴⁰ On the other hand, the Connecticut legislature differentiated between a drug-dependent individual and a non-drug-dependent individual by providing a greater penalty for sale by the non-addict.⁴¹ Under the Connecticut statute, if the defendant is a drug-dependent person at the time of his arrest, the Act provides that conviction of possession for sale of a narcotic drug must result in a mandatory penalty of five to ten years in prison.⁴² However, if an individual is not a drug-dependent person at the time of his arrest, conviction for sale or for possession for sale will result in a mandatory prison term of between 10 and 20 years, double the penalty for a drug-dependent person.⁴³

By failing to recognize a distinction among categories of possessors of controlled substances—namely, addicts, users, and casual experimenters, both federal and state laws preclude clear direction for either the courts, prosecutors, or defense counsel.

IV. PURPOSE OF DISPOSITIONAL ALTERNATIVES

A. Direction for the Legal Community

If some direction is to be found, it will be through an understanding of the function of alternatives to sentencing and disposition of drug and drug-related cases involving addicts and users. The avenue to such understanding of what available alternatives exist for dealing with substance-abusing defendants is to be found through a review of the various alternatives which are available within a given criminal justice system. Such alternatives have often been described as "diversionary projects"⁴⁴ which, in certain instances, must be considered a

39. *State v. Cantu*, Crim. Docket No. 75673 (Ark. Cir. Ct.), *writ denied*, Docket No. 5817 (Ark. Sup. Ct. March 26, 1973).

40. *E.g.*, IND. STAT. ANN. §§ 35-3301 to -3341 (Supp. 1972) [possession of 2.5 grams or less of marijuana not more than 90 days in prison; 2.5 to 10 grams, not more than 180 days in prison; 10 to 30 grams, not more than 1 year in prison; 30 to 500 grams, 1 to 5 years in prison].

41. CONN. GEN. STAT. ANN. §§ 19-443 to -504 (Supp. 1973).

42. *Id.* § 19-480(a) (Supp. 1973).

43. *Id.* § 19-480 (Supp. 1973). While the underlying concept in the Connecticut statute is an attempt to differentiate between the addict trafficker and the non-addict trafficker, there is really no differentiation between the addict who traffics to maintain his habit and the addict who traffics for profit. Also, the maximum mandatory penalties are so high that the addict trafficker does not really benefit from the reduced maximum penalty.

44. Address by Paul L. Perito, former Deputy Director, SAODAP. American Public Health Association, Minneapolis. Minn., Oct. 13, 1971.

misnomer. The term "diversion" is often misinterpreted to mean escape only from the possible criminal sanctions of detention or prolonged incarceration, whereas the contrary is true in most major urban centers.^{4 5}

It should be understood at the outset that various alternatives to sentencing and disposition exist both on a statutory and programmatic basis. More often than not, the alternatives are informal and lie within the broad discretion vested in federal district and state trial courts.

The key goals or objectives of dispositional alternatives of treatment and rehabilitation within our criminal justice systems are a reduction in the cyclical pattern of criminal behavior and a hopeful reduction in drug-seeking and use patterns of addict-defendants.^{4 6} An equally important goal is a decrease in the mortality and morbidity rates associated with compulsive intravenous heroin use.^{4 7} In light of the fact that in most urban centers, court systems are so inundated by drug and drug related cases, incarceration is the exception rather than the rule.

The ABA standards suggest that "whenever the nature and circumstances of the case permits, the lawyer for the accused should explore the possibility of an early diversion of the case from the criminal process through the use of other community agencies."^{4 8} Thus, if defense counsel is aware that some alternative approach exists which would substantially increase the likelihood of reduction in the criminal pattern of the addict-defendant or reduction in his drug-using behavior, counsel has a duty to his client and to the bar to explore such alternatives with the prosecutor. One of the critical factors in the

45. NEW YORK STATE COMMISSION OF INVESTIGATION, NARCOTICS LAW ENFORCEMENT IN NEW YORK CITY 45-46 (1971). Although it is generally believed that treatment for the addict-defendant is an approach which allows individuals to avoid incarceration, it is clear that in major metropolitan areas like New York, available statistics support the opposite conclusion. Namely, that treatment alternatives for such addict-defendants are not in lieu of incarceration, but rather in lieu of non-incarceration. For example, in 1968, 64.6% of all misdemeanor arrests for possession were either dismissed or acquitted in the New York Criminal Court. In 1969, 64.4% were dismissed. In 1968, over one-third of all felony narcotic cases were dismissed and in 1969 the figure rose to 36%. The Narcotics Division of New York City police noted that in the "upper echelons" in narcotics traffic, *i.e.* organized crime figures and other major violators, 63.2% of arrests of this group resulted in dismissal in the period from June, 1969 to March 26, 1971. See also address by Paul L. Perito, former Deputy Director, SAODAP, American Bar Association National Institute of Prosecution and Defense of Drug Cases, New York City, N.Y., Sept. 30, 1972 and Los Angeles, Calif., Oct. 13, 1972.

46. Address by Paul L. Perito, *supra* note 45.

47. *Hearings on Crime in America—Heroin Importation, Distribution, Packaging and Paraphernalia Before the House Select Comm. on Crime*, 91st Cong., 2d Sess. 176 (1970) [Statement of Dr. Milton Helpert, Chief Medical Examiner, City of New York]. See also S. NIGHTINGALE, PHYSICAL AND MENTAL PATHOLOGY DUE TO DRUG ADDICTION (to be published 1973). Dr. Nightingale is Chief of Treatment and Rehabilitation, Special Action Office for Drug Abuse Prevention.

48. AMERICAN BAR ASSOCIATION, PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING IN THE PROSECUTION FUNCTION AND THE DEFENSE FUNCTION [DEFENSE FUNCTION 6.1 (a)] 295 (approved draft, 1971).

determination of effective alternatives to sentencing and disposition of drug related cases is the availability of a wide range of treatment alternatives within a given criminal justice system. If a range of treatment alternatives exists, it is then possible to make an informed judgment as to which approach is the most effective and appropriate in reducing recidivism, modifying the particular drug-using pattern of behavior, and developing an evaluation of effectiveness in terms of cost benefit to both the client and society. Basically, defense counsel should be able to explore with his client practical alternatives to both incarceration and non-incarceration. If the prosecutor can be assured that there are program modalities and approaches which offer a substantial success probability in terms of both rehabilitation of the addict's criminal activity patterns and a reduction of his drug-using behavior, then the prosecutor will be more likely to accept one of these alternatives rather than processing the drug offender through normal procedures.^{4 9}

B. Cyclical Syndrome

It is intriguing to note that the number of people using heroin doubled during the period from 1965 to 1969,^{5 0} which curiously corresponds with the implementation of the Bail Reform Act of 1966^{5 1} and the impact of several noteworthy Supreme Court decisions which expanded procedural protections afforded defendants in criminal cases.^{5 2} This is not to suggest that we have a *post hoc ergo propter hoc* situation; rather it indicates that most addict-defendants during the period in which the heroin users doubled were most often arrested, arraigned and immediately released on bail or released as a result of dismissal of the pending charges.^{5 3} Consequently, addict-defendants in

49. Address by Dr. Jerome H. Jaffee, Director, SAODAP, and Special Consultant to the President for Narcotics and Dangerous Drugs, American College of Neuropsychopharmacology, San Juan, P.R., Dec. 12-15, 1972. See also Address by Dr. Jerome H. Jaffee, American Bar Association Convention, San Francisco, Calif., Aug. 6, 1971. See also Address by Paul L. Perito, *supra* note 45.

50. Statement of Paul L. Perito, former Deputy Director, SAODAP, presented before the National Commission on Marihuana and Drug Abuse, Miami, Fla., Oct. 26, 1972.

51. 18 U.S.C. §§ 3041, 3141-43, 3146-52, 3568 (1970).

52. *Harrison v. United States*, 392 U.S. 219 (1968); *Bruton v. United States*, 391 U.S. 123 (1968); *Sabbath v. United States*, 391 U.S. 585 (1968); *Katz v. United States*, 389 U.S. 347 (1967); *Brooks v. Florida*, 389 U.S. 413 (1967); *Berger v. New York*, 388 U.S. 41 (1967); *United States v. Wade*, 388 U.S. 218 (1967); *Warden, Maryland Penitentiary v. Hayden*, 387 U.S. 294 (1967); *Cooper v. California*, 386 U.S. 58 (1967); *Klopfer v. North Carolina*, 386 U.S. 213 (1967); *McCray v. Illinois*, 386 U.S. 300 (1967); *Sims v. Georgia*, 385 U.S. 538 (1967); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Malloy v. Hogan*, 378 U.S. 1 (1964); *Murphy v. Waterfront Commission*, 378 U.S. 52 (1964); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Massiah v. United States*, 377 U.S. 201 (1964); *Campbell v. United States*, 373 U.S. 487 (1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Wong Sun v. United States*, 371 U.S. 471 (1963); *Mapp v. Ohio*, 367 U.S. 643 (1961); *Rogers v. Richmond*, 365 U.S. 534 (1961); *Chapman v. United States*, 365 U.S. 610 (1961).

53. NEW YORK STATE COMMISSION OF INVESTIGATION, *supra* note 45.

most metropolitan areas spent little time in prison and thereby avoided an interruption of their compulsive drug use patterns of behavior.⁵⁴ In some cases, addict-defendants have waited as long as three, four and five years after release on bail to return to court for trial and, in the mean time, continued the uninterrupted cycle of theft, purchase and use of drugs.

From 1965 through 1970, in jurisdictions such as New York and Washington, D. C., an addict-defendant's chances of actually going to trial (much less to jail) on a felony or a misdemeanor charge were rather limited. For example, in 1968, of the 27,292 narcotic related arrests by the New York City police, almost 65%, or 17,666 arrests were for misdemeanor violations including narcotic possession and drug loitering.⁵⁵ Of that figure, about 12,800 were for possession of narcotic drugs and the other 4,800 were for drug loitering.⁵⁶ After the cases had been processed into the criminal justice system, almost 65% of the misdemeanor possession cases were either dismissed by the judge or on the motion of the District Attorney, or acquitted in trial.⁵⁷ Even more compelling is the fact that, in 1970, over 90% of the drug loitering cases were dismissed.⁵⁸ In 1969, when the number of arrests rose to 48,482,⁵⁹ and in 1970, when there was a further rise to 72,848,⁶⁰ the dismissal rates remained constant. The dismissal rate of the drug loitering cases in that period rose to 94% of the 8,000 arraigned individuals in New York County.⁶¹ A review of the incarceration figures in New York for misdemeanor violations reveals that 31%⁶² of *all* misdemeanor convictions in 1968 and 1969 resulted in non-jail sentences which included fines, probation, conditional and non-conditional discharges. When jail sentences were imposed for

54. U.S. DEP'T OF JUSTICE, B.N.D.D., *supra* note 3. This report found that of the nationwide sample, 64% of the defendants had prior felony arrests, 40% had prior drug arrests, 11% were free on bail awaiting trial from 3 months to one year and 37% were free on bail from 6 months to one year or more. It also found that of the kilogram level dealers sampled, over 66% were free on bail more than 3 months, 25% were free on bail from 6 months to one year, and 16% were free on bail more than one year. The report cited numerous examples of major drug trafficking which occurred in post-arrest situations.

55. NEW YORK STATE COMMISSION OF INVESTIGATION, *supra* note 45, at 45-46.

56. *Id.*

57. *Id.* at 42. In 1968, the total disposition of possession misdemeanors was 11,264. Of these, 3,296 were dismissed by the judge, 3,527 were dismissed on motion of the District Attorney and 458 were acquitted for a total of 7,281 (or 64.6%) dismissals or acquittals. The discrepancy between the 17,666 misdemeanor arrests and the disposition of only 11,264 of these arrests in 1968 is a result of court backlog and the fact that arrest and disposition may not occur in the same year.

58. *Id.* at 43.

59. *Id.* at 40.

60. *Id.*

61. *Id.* at 44. In 1970 in New York County, 7,594 of the 8,078 arraignments for drug loitering (or 94%) resulted in dismissal. Of the 7,594, a complaint was not ordered in 5,838 cases and 1,766 others were dismissed on motion of the Assistant District Attorney.

62. *Id.* at 45.

misdemeanors in that period, 88% to 90% of the jail sentences were for less than six months.⁶³

The figures for felony dispositions in New York demonstrate slightly stronger court action. In 1968, over one third of all felony cases were dismissed,⁶⁴ and in 1969 that figure rose to 36%.⁶⁵ The 36% dismissal figure remained constant through March of 1971, when these figures were compiled by the New York State Commission of Investigation for inclusion in their report of April 1972.⁶⁶ It should be noted that 99% of the convictions of defendants originally arrested on felony charges relating to drugs were brought about as a result of plea bargaining. In most cases, however, such plea bargaining resulted in the charges being reduced from felonies to misdemeanors.⁶⁷ The Commission summarized this problem by stating:

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.⁶⁸

During the past six years, most apprehended users and addicts spent little time in jail and consequently were back on the streets doing whatever they did before they were arrested, with little chance of conviction, or if convicted, with little chance of extended incarceration. The addict-defendants were not being offered any form of treatment for their addiction, which meant that the cyclical syndrome (drug use-crime) continued unabated.

63. *Id.* at 41.

64. *Id.* at 45.

65. *Id.* at 46. This computation does not include cases held over for consideration by Grand Juries.

66. NEW YORK STATE COMMISSION OF INVESTIGATION, *supra* note 45.

67. *Id.* at 46. 90% of felony indictments for narcotics violations resulted in convictions. However, 1,645 of the 2,493 defendants (66%) that entered pleas were sentenced for misdemeanors. In 1969, 88% of felony indictments resulted in convictions, including 52.2% of felony defendants who pleaded to misdemeanors.

68. *Id.*

C. Defense Counsel's Dilemma

Given the realities of court congestion and the statistical likelihood that a felony or misdemeanor drug or drug related charge will either be reduced, or possibly dismissed by the court or prosecution, counsel is faced with a perplexing ethical dilemma. On the one hand counsel must take cognizance of the substantial probability that his client (if a simple possessor or user) is unlikely to be incarcerated for any extended period of time. On the other hand, counsel must not ignore the likelihood that, in the absence of an appropriately supervised treatment program, his client will continue his drug-seeking behavior and criminal activity.⁶⁹ Counsel should not immediately opt for non-incarceration or release without supervisory probation or treatment if he believes that such release will immediately endanger the physical well-being of his client. Even though counsel can reasonably be assured that an overloaded court system or a busy prosecutor's office might preclude detention or supervision of any variety, the alternative supervisory treatment or allied alternatives should be given serious consideration. In those areas where treatment alternatives do not exist, or exist only in very limited form, as in most areas of the country outside the major metropolitan centers, counsel has a duty to an addicted or substance-abusing client, as well as to the bar, to encourage and effect the availability of various treatment alternatives within the local criminal justice system.⁷⁰

V. AVAILABLE STATUTORY AND INFORMAL TREATMENT ALTERNATIVES

There are a variety of dispositional alternatives available in most criminal jurisdictions which, when used by the court in conjunction with the prosecutor and defense counsel, will encourage addicts or substance abusers to seek treatment. While some of these alternatives result from statutory mandates, most are informal procedures

69. STRATEGY COUNCIL, EXECUTIVE OFFICE OF THE PRESIDENT, *supra* note 6, at 5. Recent data gathered by the Special Action Office for Drug Abuse Prevention supports the conclusion that the mortality and morbidity rates associated with intravenous heroin use have decreased in 25 urban centers. However, the possibility of a narcotic addict dying from or having his health seriously impaired as a result of viral or serum hepatitis, skin abscesses, septicemia (blood poisoning), tetanus (lock jaw), pneumonias, sub-acute endocarditis or necrotizing angitis (breakdown of blood vessel walls), is still substantial. The danger to an addict's life or health is often increased when the heroin purity in a particular injection is low and the adulterants or diluents used in cutting the heroin are high. This is especially true when the adulterants are strychnine, flour, quinine sulphate (not quinine hydrochloride) or lye.

70. See Appendix I *infra*. Counsel should contact either the Special Action Office for Drug Abuse Prevention, the Office of Drug Abuse Law Enforcement (Department of Justice), or the Law Enforcement Assistance Administration and attempt to arrange for a TASC project or some other viable treatment system depending on local needs and existing facilities.

developed by courts, prosecutors and defense counsel over a substantial period of time. Initially, it might be helpful to focus upon some formalized or statutory programs for the treatment of the addict-offender.

A. Statutory Alternatives

Civil commitment, as set forth in Title III of the Narcotic Addict Rehabilitation Act of 1966,⁷¹ is an example of a statutory method of enforced treatment. In addition, Titles I and II of NARA⁷² provide for, among other things, commitment to treatment facilities in lieu of prosecution or as an adjunct to sentencing for various categories of federal criminal offenders. Similar statutory provisions are found in states such as New York,⁷³ California,⁷⁴ and Massachusetts.⁷⁵ But practically speaking, none of these statutory systems has had a far-reaching effect in fostering treatment of addicts who come in contact with the criminal justice system.⁷⁶

Statutes such as the federal⁷⁷ and state⁷⁸ Controlled Substances Acts allow a judge the discretion to suspend the sentence of a first offender-simple possessor conditional upon, *inter alia*, a requirement that the defendant participate in a relevant treatment program. While the court can exercise continuing jurisdiction and supervise the defendant's progress in treatment, the difficulty with these statutes is that they encompass only a narrow segment of the drug-abusing criminal population.⁷⁹ For example, first offender programs are generally not open to addict-pushers, who account for a substantial amount of drug related crimes. Another category of offenders excluded

71. 42 U.S.C. §§ 3411-26 (1970).

72. 28 U.S.C. §§ 2901-06 (1970) involves civil commitment in lieu of prosecution while 18 U.S.C. §§ 4251-55 (1970) permits sentencing to commitment facilities for treatment. 28 U.S.C. § 2902 (1970) provides for civil commitment under the Surgeon General for treatment for a 36-month period from which the drug offender cannot voluntarily withdraw. Successful completion of the treatment results in dismissal of charges.

73. N.Y. MENTAL HYGIENE LAW § 218(4) (McKinney Supp. 1971).

74. CAL. WELF. & INST. CODE §§ 3000-150 (West 1972).

75. MASS. GEN. LAWS ANN. ch. 123, §§ 38-55 (Supp. 1971).

76. For example, in the first three years of operation of the NARA program, only 688 persons were committed under Titles I and II. While the state programs have numerically been used more widely, they have not been used up to their potential as an alternative form of disposition in a criminal case. For a detailed discussion on this point see Note, *Addict Diversion: An Alternative Approach for the Criminal Justice System*, 60 GEO. L.J. 667, 677 n.49 (1972). See also STRATEGY COUNCIL, EXECUTIVE OFFICE OF THE PRESIDENT, *supra* note 6, at 28.

77. 21 U.S.C. §§ 801-86, 901-04, 951-66 (1970).

78. UNIFORM CONTROLLED SUBSTANCES ACT.

79. 21 U.S.C. § 844(b) (1970). This section provides that a person not previously convicted of violation of any law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances who is found guilty of simple possession may be placed on probation with appropriate conditions for a period not to exceed one year. If probation is successfully completed, the court shall discharge the person and dismiss the proceedings without adjudication of guilt.

from treatment in some jurisdictions is addicts who commit violent crimes.⁸⁰ Frequently these programs have age limitations which also severely restrict their proper utilization.⁸¹ Consequently, too few appropriate individuals qualify for these statutory alternatives. Such alternatives, when properly utilized, encourage a treatment approach to a defendant's drug problems rather than relying solely on a punitive-deterrent approach. Our present systems fail to recognize the nature of the medical-social disorder which besets a compulsive drug user. Thus, the majority of drug offenders processed through most criminal jurisdictions is not affected by statutory programs available as dispositional alternatives in both the pre and post-trial situation.

B. Informal Alternatives

There are, however, a number of discretionary procedures which do have an effect upon many individual drug offenders.⁸² In most jurisdictions, a decision to use judicial or prosecutory discretion is made on an *ad hoc* basis and usually does not reflect a general policy commitment of a particular court or prosecutorial system.⁸³ The creative use of judicial power can be applied at any stage of the criminal proceedings: arraignment, pre-trial release, trial, pre-sentencing, sentencing or probation.

1. Pre-trial Release

Procedures for determination of bail and pre-trial release vary in each jurisdiction and are often regulated by statute. The federal practice is governed by the Bail Reform Act of 1966⁸⁴ and allows for considerable flexibility and discretion by the trial judge.⁸⁵ Traditionally, money bail has been used most often to effect the pre-trial release, but most jurisdictions now have at least some provision for release on personal recognizance.⁸⁶ Basically, there are three means by

80. *E.g.*, 18 U.S.C. §§ 4251-55 (1970).

81. *E.g.*, 21 U.S.C. § 844(b)(2) (1970) limits expunging of the record of the offender at the time of the offense to persons *not over* 21 years of age. For state limitations, see NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, FIRST INTERIM REPORT (1972).

82. These dispositional alternatives have not been amenable to systematic analysis because they vary not only in each jurisdiction, but also with individual judges and prosecutors within given jurisdictions.

83. Ultimately, the only real incentive a judge can use to encourage treatment for a drug offender is the possibility of incarceration. This option can be articulated in many ways at different points during processing and adjudication of a criminal case. Ancillary to the power of the court to incarcerate, a judge also has limited power to modify the actual disposition of a criminal case, subject in certain instances to agreement by the prosecutor and/or defense counsel.

84. 18 U.S.C. §§ 3041, 3141-43, 3146-52, 3568 (1970).

85. 18 U.S.C. § 3146 (1970).

86. *Id.*

which a judge may order treatment as a condition of release pending trial:

- (a) In jurisdictions which allow for release on recognizance, a judge can order that release be conditioned upon enrollment in a community treatment program. In such jurisdictions, it is vital that the treatment program have an affiliation with the court so that accurate record-keeping and reporting procedures can be effected.
- (b) A judge can release a drug offender to the custody of an institutional custodian. In those situations, the custodian (*i.e.* a treatment program or designated representative of a program) would be responsible for providing necessary treatment and supportive services while also assuring the court that the defendant will appear for calendar court dates. Third party custody programs have found limited acceptance in New York City,⁸⁷ Baltimore,⁸⁸ and more extensively in Washington, D. C.⁸⁹ In most cases, an individual judge must be persuaded that a particular community treatment program can develop an adequate rapport with a defendant to insure that he will return for further court proceedings without the necessity of requiring a surety bond.
- (c) A judge can set a surety bond with the provision that upon institutional detoxification, completion of withdrawal or acceptance into a drug-free or methadone maintenance program, the bond will be reconsidered and the defendant will be released.

The coercive power supporting orders such as these are: (1) the threat of a revocation of the release order and setting of a high surety bond; (2) the threat of issuance of a contempt citation for failure to obey a court order; (3) the threat of using the pre-trial record of non-compliance at sentencing with a resulting refusal by the judge to suspend sentence and place the defendant on probation. Court control of the defendant would be reestablished by service of a bench warrant by a marshal or sheriff. The key to success in treating addicts in this situation is not the coercive power of the court alone, but the fact that the court develops and utilizes its power to return defendants to the criminal justice system if they fail or refuse to respond to treatment. A

87. *E.g.*, Brooklyn Court Referral Program.

88. *E.g.*, Baltimore informal pre-trial release program.

89. A.B.A. SPEC. COMM. ON CRIME PREVENTION AND CONTROL, THE CASE FOR THE PRETRIAL DIVERSION OF HEROIN ADDICTS FROM THE CRIMINAL JUSTICE SYSTEM (1972). The American Bar Association created the Special Committee on Crime Prevention and Control in 1968 for the purpose of "studying the problems of crime and securing action for its prevention and control." *Id.* at 1. The Committee was funded jointly by the Ford Foundation and the American Bar Endowment and was chaired by Edward Bennett Williams. In September 1971 a six-month pilot project for addict diversion was commenced in the District of Columbia in conjunction with the Superior Court, the Chief of Police, and the Narcotics Treatment Administration of the District of Columbia.

reliable and effective tracking system is absolutely necessary in order to assure the court that the defendant-addict is staying within the parameters of the court-directed release. Unless the court is assured that its orders are being carried out, a particular treatment alternative will soon lose credibility and will atrophy as a result of judicial non-use.⁹⁰

The most extensive pre-trial release program which requires treatment of narcotic addicts is administered by the District of Columbia Narcotics Treatment Administration and the Superior Court of the District of Columbia.⁹¹ This program provides for release on recognizance if treatment is obtained. The D.C. Bail Statute provides for, among other things, an additional charge to be placed against a defendant for failure to abide by the conditions of release.⁹² The court's coercive power, if properly utilized, can assure that the addict-defendant will continue in treatment until release is either medically appropriate or justified by lapse of jurisdiction.

2. Trial

In other jurisdictions, with the support of the prosecutor, a judge can adjourn court proceedings and promise a dismissal of the criminal case on the condition that a drug offender enter and remain in a treatment program. A further coercive control can be imposed by permitting a defendant to enter a guilty plea to the pending drug charge with the agreement that if the defendant successfully completes the required treatment scheme, the plea would be withdrawn and the case dismissed. Of course, this particular procedure raises several constitutional questions which are beyond the scope of this article.⁹³

A more informal method which is sometimes used by the court to encourage treatment of addict-defendants is to grant continuances of the criminal case so long as the defendant remains in treatment and is not discovered to be involved in further criminal or drug related

90. Conversations between staff members of the Special Action Office for Drug Abuse Prevention, and New York City Correction Officials (1971-1972). It should be recognized that low-cost non-hospital ambulatory detoxification has been found to be safe and efficacious for a large number of heroin addicts and hospital beds need not be a limiting factor. Detoxification is either completely drug-free or accomplished with tranquilizers. In New York City, prisoners confined in the Manhattan Men's House of Detention (the Tombs), the Brooklyn House of Detention, or the Juvenile Remand Shelter at Riker's Island are offered methadone detoxification within the facilities.

91. ABA-Narcotics Treatment Administration of D.C. Program, *supra* note 89.

92. *E.g.*, 18 U.S.C. § 3150 (1970); D.C. CODE tit. 23, §§ 1327, 1329 (1972).

93. A problem which is beyond the purview of this article is whether a plea entered by a defendant as a result of formal plea bargaining falls within the constitutional requirement of "voluntariness." It is respectfully submitted that the time has come for the courts to recognize that a defendant usually enters a plea to a lesser included offense because of the inherent advantages to him, *i.e.* reduced sentence or suspended sentence or an otherwise favorable disposition. The time might well have come for us to abandon the traditional concept of "voluntariness" in favor of a concept of *reasonable advantages* to both the defendant and the system. See Note, *supra* note 76, for discussion on the speedy trial problem.

activities.⁹⁴ Most often, this procedure is used in juvenile courts and provides an added dimension of control because the addict-defendant must appear before the judge regularly. If the addict-defendant does not continue in treatment or absconds from the treatment program, the court will refuse to grant a further continuance and begin the trial.

3. Post-trial

In addition to the civil commitment statutes which allow for incarcerated or out-patient treatment in lieu of a criminal sentence, a judge may also use his own discretion either to suspend sentence while the drug offender is enrolled in a treatment program or to postpone sentencing altogether.⁹⁵ Usually this form of discretion is implemented by placing the addict-defendant on conditional probation; but, if the judge chooses, the court can exercise control over the addict-offender's activities personally or place this power in the hands of a treatment program director instead of the traditional probation approach.⁹⁶

Another alternative to incarceration is to refer a drug offender to a treatment program during the pre-sentence investigation. The court can advise the defendant-offender that if favorable progress is reported by the treatment director who acts as a custodian, then the court might be inclined to consider favorably a suspended sentence and probation rather than a period of extended incarceration.

Sentencing alternatives are generally determined by the resources available to the jurisdiction's probation department and available programs in the particular department of corrections. A judge's discretion is limited to choosing the alternative which is most appropriate to the charge and most likely to deter the offender from subsequent criminal activity and drug use. A judge may choose to suspend sentence and impose probation with the condition that the individual receive treatment for his addiction. Failure in treatment or termination without judicial acquiescence would result in revocation of probation and imposition of a period of confinement.

If half-way houses are available, a judge may also sentence a drug offender under a work release statute, which would allow the addict-offender an opportunity to reside at the half-way house and therefore be relieved of institutional confinement. However, in most jurisdictions, half-way houses are usually used in conjunction with parole programs and are under the jurisdiction of the department of corrections or the local parole board.

In some instances, the court may determine that a period of

94. *E.g.*, Maryland Stet-Docket Approach.

95. See NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, INTERIM REPORT: COMPILATION OF CURRENT DRUG DEPENDENCE TREATMENT AND REHABILITATION LEGISLATION IN THE 50 STATES AND 5 TERRITORIES (1972), for extensive discussion of state civil commitment laws.

96. *E.g.*, ABA-Narcotics Treatment Administration of D.C. Program, *supra* note 89.

incarceration is necessary to properly effect the rehabilitation of the addict-offender. In some jurisdictions, it may be possible for the court partially to suspend sentence in favor of a post-incarceration period of mandatory outpatient treatment. During this post-incarceration period, the court usually maintains control over the addict-offender. This alternative is most beneficial in those cases where an addict-offender is being sentenced for a misdemeanor offense which has no provision for parole. This dispositional alternative would also facilitate a return to the community, thereby allowing the addict-offender the opportunity of utilizing community-based social and rehabilitative services.

In viewing our multiple criminal justice systems, it is obvious that the informal use of diverse dispositional alternatives for encouraging treatment of addict-offenders presents a serious problem of inequity since such alternatives are often applied in an uneven and unsystematic manner. Where treatment programs exist, addict-defendants will be offered reasonable alternatives. Where they do not, however, no such opportunity can be afforded. A structured uniform approach is necessary to assure that addicts and substance abusers who come in contact with our criminal justice systems will be afforded access to the most appropriate treatment and dispositional alternatives relative to the nature of the crime, the criminal record of the individual, if any, and the type of abuse or addiction involved in the individual case.

VI. FEDERAL EXECUTIVE INNOVATION—

*TASC (Treatment Alternatives to Street Crime)*⁹⁷

The TASC or Treatment Alternatives to Street Crime approach is a formal program initiated in 1971 by the federal government under the directive of the White House Special Action Office for Drug Abuse Prevention.⁹⁸ With the support of the Law Enforcement Assistance Administration, the Special Action Office initiated a program in concert with the state and local communities in order to provide treatment for addicts and substance abusers within the context of existing federal, state and local jurisdictions. TASC was not intended to be a traditional intervention program. It involves a structured procedure whereby the opiate-dependent person is identified shortly

97. TASC (Treatment Alternatives to Street Crime) is a project conceived by the Special Action Office for Drug Abuse Prevention in the Fall of 1971. It provides for a structured working link between the local court, prosecutors, police and drug treatment clinics with a view to reducing the rearrest cycle experienced by many addicts. The Special Action Office was established with the major objective of coordinating federal drug abuse prevention efforts. TASC represents a major coordinative effort between law enforcement and treatment activities. While it is too early to evaluate the efficacy of the TASC project, much enthusiasm for this effort has been registered by a number of major American cities which are implementing TASC.

98. *Id.* See also Appendix II *infra*.

after arrest. The court then may give the addict-offender the option of entering treatment if the prosecuting attorney and the defense counsel concur. If he so elects, trial may be deferred and the arrestee must enter treatment. In some cases it might be preferable to wait until after conviction and then refer the addict to treatment as a condition of sentencing. A clinical diagnosis will be made as to the appropriate treatment modality for the client. Finally, to insure that the offender is complying with the conditions of his release (which would normally be satisfactory progress in a treatment program), a tracking system will follow the defendant and report periodically to the court and the prosecutor on the individual's progress in treatment.

The emphasis in TASC, therefore, is the establishment of a formalized method for channeling addicts within the criminal justice system into appropriate treatment through a coordinated effort of the court, the prosecuting attorney, defense attorney and the treatment facilities. The entire treatment alternatives concept will eventually involve the efforts of the Law Enforcement Assistance Administration as well as state and community treatment programs funded by federal, state and local governments working through the state and local criminal justice systems. The goals TASC was designed to fulfill are: (1) to aid in the decrease of the incidence of drug related crime with the attendant cost to society; (2) to reduce the case load of the judiciary by removing individuals from the criminal justice system before trial; (3) to interrupt the drug-driven cycle of street crime—to arrest—to court—to street crime by providing the possibility of treatment for drug addicted arrestees; and (4) to decrease the problems in detention facilities resulting from the tensions caused by arrestees who are addicted and manifesting acute signs of withdrawal or seeking illicit drugs in prison. The decrease in tension within the prison facility was especially noticeable when methadone detoxification was brought into the Tombs Detention Center in New York.⁹⁹

A program similar to TASC is the Brooklyn Court Referral Project, which has existed on a quasi-formal basis since January of 1972.¹⁰⁰ Between arraignment and sentencing, the potential candidate is screened by the prosecuting attorney, the defense attorney, legal aid, and the judge. If the individual is an addict of 16 years of age and has not committed a violent crime, the defendant will be referred to a treatment modality, ranging from Spanish-speaking, religious oriented groups, to the Phoenix House encounter-therapy, to a methadone maintenance program. The individual participant groups work in conjunction with the Court Referral Program and assume the role of monitors for subjects who are turned over to their program. The various groups report directly to the court.

99. Conversations *supra* note 90.

100. Conversations with administrators of Brooklyn Court Referral Project (1972). For a more detailed discussion, see Note, *supra* note 76, at 679 n. 53.

A more formalized system of pre-trial diversion is the TASC and pre-indictment programs now in operation in the Philadelphia Municipal Court.¹⁰¹ Both programs have several similar aspects. In the TASC program, after an individual is arrested and transported to the central lockup, the background of his criminal charges and addiction will be assessed. The court bail programs interviewer then conducts a normal bail interview. In addition, the interviewer asks the arrestee a series of questions relating to his drug use history.

In the TASC program, the interviewer does not determine the eligibility of the individual for TASC per se, but only eligibility for bail or release on personal recognizance. The pre-indictment program has similar eligibility criteria; however, the defendant must have no prior conviction for the crime with which he is currently being charged.

In TASC, if the bail interviewer determines that the defendant meets the criteria for release on his personal recognizance, he briefly explains the TASC program to the defendant and asks for his consent for entry into the program. His findings and recommendations are forwarded to the District Attorney's office, the public defender (or private defense counsel), and to the municipal court judge sitting in preliminary arraignment court. The District Attorney is responsible for including the information from the bail interviewer and determining if the defendant meets the criteria for TASC.

The criteria for the TASC program are:

1. A documented narcotic addiction or frequent use;
2. A current charge of drug possession (not possession with intent to traffic), or a minor property crime related to drug use;¹⁰² and
3. A past criminal history which includes only convictions or open cases for drug possession and a maximum of one conviction or open case for a minor property crime related to drug abuse.

If the District Attorney decides that the defendant meets the criteria, he so advises the defendant's counsel. The defendant's counsel is then required to advise his client that participation in the program is voluntary and the defendant must waive his right to speedy trial and/or preliminary hearing. The defendant's counsel normally advises his client that acceptance in the program and successful completion will result in the commonwealth withdrawing prosecution of the case, but that failure will result in reinstatement of the pending case.

Finally, the defendant's counsel must advise his client that if he absconds from treatment he may face an added charge of violation of bail or violation of condition of release on personal recognizance. Once

101. For a more detailed discussion of the pre-indictment program in the Philadelphia Municipal Court, see Note, *supra* note 76, at 681-84.

102. As the program matures, the number of offenses and types of crimes included may be expanded.

the defendant has agreed to enter the program, the District Attorney informs the court at arraignment of his recommendation, and the court formally advises the defendant of his rights and accepts the waiver of a speedy trial form. At that time, the court sets bail or places the individual on personal recognizance and issues a subpoena directing him to appear for an Accelerated Rehabilitative Disposition hearing. This hearing will take place approximately 21 days after arraignment, at which time the defendant's continuation or removal from the program will be determined.

Both the pre-indictment program and the TASC program utilize an informal hearing process at the Accelerated Rehabilitative Disposition (ARD) hearing. The participants in the hearing are usually the judge, deputy District Attorney, the defendant and his counsel, the staff members from the rehabilitation or treatment program, and occasionally the complaining witness. The ARD hearings are designed to serve two primary functions:

1. A diagnosis of the defendant's addiction status and determination of the best treatment modality to meet his needs; and
2. A thorough investigation on the facts of the case, the nature of previous violations, the defendant's present family, residence and employment status.

In certain cases, approval or restitution to a private complainant may be required before the individual is allowed into treatment. If the judge agrees to the diversion program, the individual is placed on probation for a minimum of one year and a maximum of not more than the maximum jail sentence for the particular offense for which the arrest was effected.

When a defendant successfully completes the probationary term, the District Attorney will move to have the case dismissed by petitioning the court for a *nolle prosequi* of the defendant's charges.

There are certain conditions which the addict-defendant must fulfill once he enters into treatment. If he refuses to continue treatment, absconds from the program, violates the established rules, fails to be excused from treatment on two consecutive days or has three unexcused absences from treatment in a fourteen-day period, the District Attorney's office and the court is informed of such failure through the TASC case tracking system. The District Attorney is responsible for serving notice on the defendant and for scheduling a preliminary hearing date ten days from the date of notification. If the defendant is rearrested on a different charge, the District Attorney, through the court computer system, will determine that the defendant is presently on probation and in treatment. At that time, prosecution of the original charge may also be reinstated, depending on the nature of the second charge.

The crucial factor in this particular program is the TASC case tracking system (feedback mechanism) by which the court and District Attorney are informed of failures in the program and are able then to reinstitute criminal charges accordingly. The viability of this particular system will eventually determine whether programs of this type are workable.

VII. CONCLUSION

While the phrase "criminal justice system" is used repeatedly in focusing attention upon the process which affects individuals who violate the criminal law, it unfortunately may not accurately characterize the process as it currently exists. If there is a so-called "criminal justice system," any part of the "system" should be the subject of coherent analysis. As has been noted, the treatment alternatives available to the courts are limited, uneven, inconsistent and often tragic in their diversity. This maze of alternatives is, at best, confusing to both a defense attorney laboring under a responsibility to provide his addict-client with the best advice, as well as a prosecuting attorney attempting to minimize future criminal activity and decrease drug seeking anti-social behavior. It is even more confusing and frustrating to a court attempting to effect the proper administration of justice. The ultimate effect is both direct and indirect damage to society as a whole as a result of the inherent inequalities in our criminal justice systems. The non-recourse to a variety of institutional and non-institutional treatment alternatives within our criminal justice systems effects a perpetration of gross inequities, especially in light of the overwhelming number of addict-defendants that are processed through its systems.

It is probably fruitless, at this juncture, to engage in academic global planning for systems that will probably not change immediately to any significant degree. It is probably more fruitful to examine and hopefully enlighten those members of the practicing bar who are involved in the defense or prosecution of drug and drug-related cases. If participants in the process are aware of the alternatives as they now exist, notwithstanding their limited nature, such recognition will probably bring about enlarged, increased use and hopefully significant and enlightened modification. However, it is recognized that this examination and implementation is only an initial step. Carefully planned, effective treatment programs should be a goal sought by members of the defense bar, prosecution and the courts. Such alternatives will benefit not only the criminal justice system, but more importantly, society as a whole. However, these programs can only be effectively implemented through the cooperative efforts of law enforcement and prosecuting officials, the bar, the judiciary, and a sensitive and responsive treatment community. The results will obviously benefit all.

APPENDIX I

The following memorandum in aid of sentence was distributed by George P. Lamb Jr.* as part of his presentation to the American Bar Association National Institute on Prosecution and Defense of Drug Cases in New York City, September 29, 1972. This document was devised by Mr. Lamb to place pre-sentence information before the sentencing court in a light most favorable to the defendant. Where the client is an addict and no formal diversion program exists, this memorandum can prove invaluable. It affords counsel the opportunity to have his client enrolled in a drug treatment program or to suggest enrollment at sentencing. The court is then given a viable alternative to incarceration of the client.

UNITED STATES DISTRICT COURT

UNITED STATES	}	Criminal No. 000
v.		
OSCAR ERIC OLSON		

MEMORANDUM IN AID OF SENTENCE

Comes now the defendant, Oscar Eric Olson, by his counsel, George P. Lamb, Jr., and states to the Court as follows:

PETITIONER: Oscar Eric Olson

ADDRESS: 1515 16th Street, N.W., Washington, D. C. (Temporary)

DATE OF BIRTH: The petitioner was born in Cheyenne, Wyoming on November 7, 1947 and is 24 years of age.

MARITAL STATUS: Petitioner is married to Birgitta Eklund Olson; they were married in Utah in April, 1970. Petitioner and Birgitta Olson were introduced through mutual acquaintances from Augustana College. As a result of this marriage relationship no children have been born.

FAMILY BACKGROUND: The petitioner is the son of Lars Allen Olson and Hilda Blomquist Olson. They reside at 456 Hillandale Lane, Eureka, Montana. Mr. and Mrs. Olson have one son, the petitioner, and one daughter, Erica May Olson, age 20. Mr. Olson is a first generation Swedish immigrant who, through his own efforts, was able to become a Certified Public Accountant. He is a strong man who has worked very hard for that which he has accumulated. His daughter, Erica, age 20, suffers from birth defects. She has been extremely slow to learn although she did complete high school. She is emotionally and financially dependent upon her parents, contributing minimally to her own income by the operation of a small yarn shop in Spillum, Montana. The father had placed great reliance upon his son to produce and proudly bear the family name. This hope was greatly shattered by the fact that petitioner flunked out of Augustana College in 1967 and was charged with a criminal offense in 1968. As a

* Mr. Lamb is a member of the Washington, D.C. law firm of Lamb, Eastman and Keats. He is a member of the District of Columbia Bar and is a member of the Washington Area Council on Alcoholism and Drug Abuse.

result Mr. Olson suffered two severe nervous breakdowns although neither required hospitalization. The doctors have stated that another episode could be fatal. The petitioner, after dropping out of college in 1967, came to Washington, D. C. and with some rocky times has only recently developed a closer more meaningful relationship with his mother and father. The petitioner now is able to talk to his father on a man-to-man basis. The father respects his son for his settling down, his marriage and his steady effort in the field of employment and creativity. Because of the father's nervous condition neither the father nor the mother have been advised of the petitioner's current predicament. As Oscar Olson told the United States Probation Officer at his initial interview, he hoped that it would not be necessary to inform his parents of his current situation. The petitioner has stated that if necessary he would immediately volunteer for jail rather than cause further distress. By all appearances the relationship between mother and father, sister and brother is a mature one, with the recognition on the part of the petitioner of his responsibility toward the entire family. The family visits regularly and they communicate by telephone as well as by letter.

EDUCATION:

The petitioner graduated from Eureka High School in Montana in 1965 with a B average. Thereafter he attended college at Augustana College, Rock Island, Illinois from 1965 to 1967. Because of his inability to adjust, however, he was dropped from the roll for his poor grades. He thereafter attended Wyman Junior College in Montana, for the Spring term of 1968. For his efforts he received a B+ average. In the Fall of 1968 the petitioner came to Washington, D. C. and was admitted to George Washington University. He had approximately a 2.8 average on a 4.0 scale, but dropped out in the Spring of 1969. As a result of the instant offense the petitioner has not returned to college.

MILITARY SERVICE:

The petitioner was classified as 1-A for selective service and apparently as a result of the high number, number 379, was not called for induction.

CRIMINAL RECORD:

In 1968 in Wyman, Montana the petitioner was charged with breaking and entering which was subsequently reduced to a breach of peace. He was fined \$100 and was at the time 20 years of age. This is the only offense on the petitioner's record other than the instant offense.

EMPLOYMENT:

The petitioner, in his early years, had a variety of part-time jobs. The first position of any significance which the petitioner had was the opening of Fun Fads, 1320 Connecticut Avenue, N.W., Washington, D. C. This was a casual wear store which operated from September, 1969 at this address until March, 1971. The store manufactured and sold casual clothing produced by the petitioner and other young people who worked at the store. As a result of the construction of the Metro the building which housed

Fun Fads was torn down. In March, 1971 the store moved to 3314 M Street, N.W. in Georgetown where the same type of goods were made and sold. As a result of a dispute between Mr. Olson and his partner in July, 1971, Mr. Olson left Fun Fads and after a brief vacation sought and obtained employment which he now holds with Funtown Casual Wear which has two stores, one at 3105 O Street, N.W. and another at Slippery Rock Shopping Center. Mr. Olson is still making casual clothes at the Slippery Rock store while his wife, Birgitta, is a full time employee at the Funtown store. Mr. Olson has maintained this employment since July, 1971 and attached, as Exhibit A, is a letter from his employers indicating his full cooperation, his expertise, his willingness as a worker and his usefulness as a citizen. It is expected that if the court permits Mr. Olson to remain at liberty that both he and his wife will continue to work for Funtown Casual Wear.

INSTANT OFFENSE:

The petitioner was charged in criminal no. 1984-70 in a ten count indictment charging miscellaneous violations of the Dangerous Drug Act and the Marijuana Tax Act. The petitioner, after being fully advised by counsel, entered a plea to Count I which charged the violation of 18 U.S.C. 371, carrying a maximum of five years. Count I alleged a general conspiracy among the co-defendants named in the indictment, to sell, to deliver and to process for sale and delivery depressant and stimulant drugs. The Court is well apprised of the general factual pattern as was presented during the course of the motion and pre-trial, but for purposes of this report certain aspects of the case should be considered. A reading of the Grand Jury Testimony of Arthur Locke, a named but uncharged co-conspirator, gives one a general understanding of the scheme. It is important to note that the entire conspiracy lasted four months in 1969; that all of the participants charged in the indictment and those named and un-named as co-conspirators within the indictment were college students ranging in age from 19 to 23, the petitioner himself at that time being 21 years of age. Pure coincidence at the George Washington University cafeteria brought these people together at a time when the whole issue of the taking of depressant and stimulant drugs was a hotly contested one, not only as a matter of law, but emotionally amongst the college students. In the general conspiracy a variety of names were set forth, some of whom were known to the petitioner, Olson. Jonathon Green, deceased, had a contact in California who had available to him quantities of "Mescaline" and had agreed to make the contact in California with Wilson Wright. It was generally believed by the conspirators in the early Summer of 1969 that LSD had many potential problems—it could cause genetic damage; chromosome damage; indefinite "trips"; the quality of the product could not be established and generally because of the severe tactics used by the Bureau of Narcotics and Dangerous Drugs the college community in general avoided the use of LSD. On the other hand, the underground community believed

that Mescaline, an organic substance extracted from Pyote cactus caused a pleasant high not altogether unlike Marijuana; that there were no known medical, physical or psychological side-effects from its reasonable use and they further believed that the use of such a drug was purely for enjoyment. Wilbur Wright, in conjunction and consort with Jonathon Green, indicated that he had a chemist in California who manufactured synthetic Mescaline of such excellent quality that it was better than the organic substance and that no difficulties would come from its use. It was primarily in the sale of this alleged "mescaline" that the overall conspiracy evolved. It turned out that when the substance was ultimately examined by the Bureau of Narcotics and Dangerous Drugs chemist that the substance called "Mescaline" was in fact LSD mixed with PCP. This, however, was unknown to all of the conspirators during the course of the conspiracy. In the beginning the "Mescaline" was personally delivered and "fronted" by Wright to Olson and Green. Olson and Green then divided the quantity amongst Harry O'Shea, deceased, and Herb Klein. Olson, Locke, Klein and O'Shea then distributed it generally throughout the underground community. In early September, Jonathon Green left town and Harry O'Shea transferred his buyers to Locke whose partner was Edmund Fitz. At that time Olson strongly urged Locke to transfer his buyers to Herb Klein who had as his partner Jerry Kramer. Olson did, in fact, complete the transfer and had no further direct sales in the street. Locke continued to sell regularly to support a Porsche automobile he acquired out of the proceeds of his activities. Locke continued to sell until November when he was arrested on a charge of selling directly to an undercover police officer. Klein and Kramer were arrested at about the same time and charged with sales to police officers; actually engaging in a shoot-out with members of the Police Department. When the raid took place on November 25, 1969 all Mescaline traffic ceased and all funds which existed were used for bond and attorneys fees. Any other profits which may have existed were seized by the local Police Departments. Klein and Kramer went to trial; one received three months in jail and the other received 1½ years in jail, a significant portion of which was a result of the carrying of a deadly weapon and assault on a police officer. Locke was charged in the District of Columbia with sale of LSD. The charge was subsequently dismissed after he entered a plea to possession of LSD, a misdemeanor, in the Court of General Sessions. He was placed on probation on that charge. Later, in May, 1970, it became known that a Grand Jury investigation was considering the instant offense. At that time petitioner Olson provided the names of young students who were involved in the conspiracy and directed that all efforts be directed toward elimination of criminal charges against these students despite the fact that this would result in increased apparent criminal liability to him. As a result, John A. Keats, Esq., now my partner, and I collaborated and assisted these witnesses in appearing

before the Federal Grand Jury, the majority of whom were the key witnesses against Mr. Olson. With the exception of Arthur Locke who entered a plea to a misdemeanor, none of those who testified before the Grand Jury were charged in criminal informations or indictments in any jurisdiction.

**PROGRESS SINCE
APPREHENSION:**

It is important to note that Oscar Olson immediately after being notified of the pending indictment against him voluntarily surrendered to the United States District Court and was placed on bond in the instant offense. In addition, from November, 1969 to date he has steadfastly remained away from the drug scene, has not been involved nor arrested on any subsequent charge. With the ominous pendency of an indictment against him from November, 1969 until March, 1971 the petitioner struggled to keep his store, Fun Fads, earning a living for his wife and himself. As a result of the Metro, Olson was given notice that his store was to be torn down. He worked at the Connecticut Avenue store until it had to be closed and then moved with a new partner to the store on M Street. Because of the business dispute with his partner Olson struck out on his own and became an employee at Funtown Casual Wear, where he now works. It may be of significance to the Court and might be helpful in its deliberation to read the attached affidavits of the defendant and his wife which only touch the surface of the anxiety, harrassment and surveillance which occurred to them during the last two years. More importantly, in the early part of 1972 this office was notified by the Police Department that it had received information that there was a contract out for the execution of Oscar Olson. At about the same time the petitioner received the same information. According to information received through the Police Department a "hit man" was arrested in Baltimore whose intention it was to kill Olson. In the early Fall of 1971 the Olsons moved from the house on Hall Street to a small farm which they rented in Sunnyvale, Virginia. As a result of the change of hands of the farm the Olsons were required to move from the farm and now reside with their sister-in-law at 1515 16th Street, N.W. The reason for remaining there is that the imminent possibility of incarceration does not allow them to execute a lease for new premises. It is fair to say that though drugs are all around and though the rumors fly, Mr. and Mrs. Olson have done their very best to function within a society as normal citizens despite the sword which hangs over their heads. In addition, they have held their marriage together and both worked regularly and endeared themselves to their employer. They have performed in a unique and exemplary manner.

**COMMUNITY ATTITUDE
TOWARD THE OLSONS:**

Attached are letters from friends, acquaintances and business associates who have known the Olsons over the last few years which give a fair indication of their attitude toward them. Mr. Olson has accepted his

responsibility and in so doing has been accepted by the community as a struggling young citizen.

**PROBATION PLAN:
RESIDENCE:**

The petitioner and his wife, as indicated above, reside with friends. If the Court were to place the petitioner on probation supervision the defendant would immediately locate suitable residence in the area subject to the approval of the United States Probation Office. This could not be done as a result of the strong possibility of incarceration on the charge before the Court.

PROBATION ADVISER:

Because of the contact which I personally have had with the Defendant and my strong feeling toward him as a citizen I would like to accept the position of probation adviser. I feel and have felt for some time because of the great work load placed upon the United States Probation Officers that they cannot apply as much time to some as may be necessary to the direct supervision of probation candidates. Because of my personal acquaintance since the Fall of 1969 to date with the Defendant I feel that the relationship is one which places me in a unique position not only to advise the Defendant as an attorney, but to advise him as a citizen. I have been greatly impressed by the Defendant's attitude toward those who were involved with him, his truthfulness, his candidness, his honest effort, often to his own detriment, to assist all those who were involved with him, to assure that they, if in any way possible, would not be charged criminally. I am well known to the Court and I place myself at the disposal of the Court and will continue my supervision and contact with the Defendant to assure the best I can that he performs in society as a useful productive and proper citizen. I accept this as a moral responsibility and I take upon myself the responsibility to communicate with and cooperate to the fullest extent with the United States Probation Officer whomsoever he may be and to use my best offices to assure compliance on the part of the Defendant with any conditions set by this Court or subsequently set by the Probation Office as condition of his probation. I will bring to the Court and to the Probation Office any violation of any condition or any violation of the law which comes to my attention and I will maintain regular contact with him so that I will know if any of the above occur, though it is my strong belief that such will not occur.

EMPLOYMENT:

As has been indicated, the Defendant works at the Slippery Rock Branch of Funtown Casual Wear and Mrs. Olson works at the Georgetown store. If released upon probation he will continue in this employ. The letter from the Defendant's employer, co-owner of the store, is a clear indication of their willingness to maintain and employ, in spite of his criminal conviction, the Defendant.

CONCLUSION:

WHEREFORE, for the foregoing reasons counsel for the petitioner respectfully prays that the Court

sentence this petitioner to five years in the penitentiary, the maximum for the offense, to suspend all of the sentence and place the petitioner on probation pursuant to the provisions of the Young Adult Offender Act under 5010 (a) of the Youth Corrections Act. Conditions to this probation be that the petitioner seek with the approval of the United States Probation Department, a residence subject to the approval of the United States Probation Office, that he continue to reside with his wife, that he continue to be employed at Funtown Casual Wear and that if such becomes necessary to change employment, to seek the approval of the United States Probation Officer; to stay out of any and all places known to have narcotics activity; to not have association with those known to be involved in the use of controlled substances; and not use any controlled substances whatsoever; and such other conditions as the Court may deem appropriate. Failure to comply with any of these conditions would result in the service of the five year sentence.

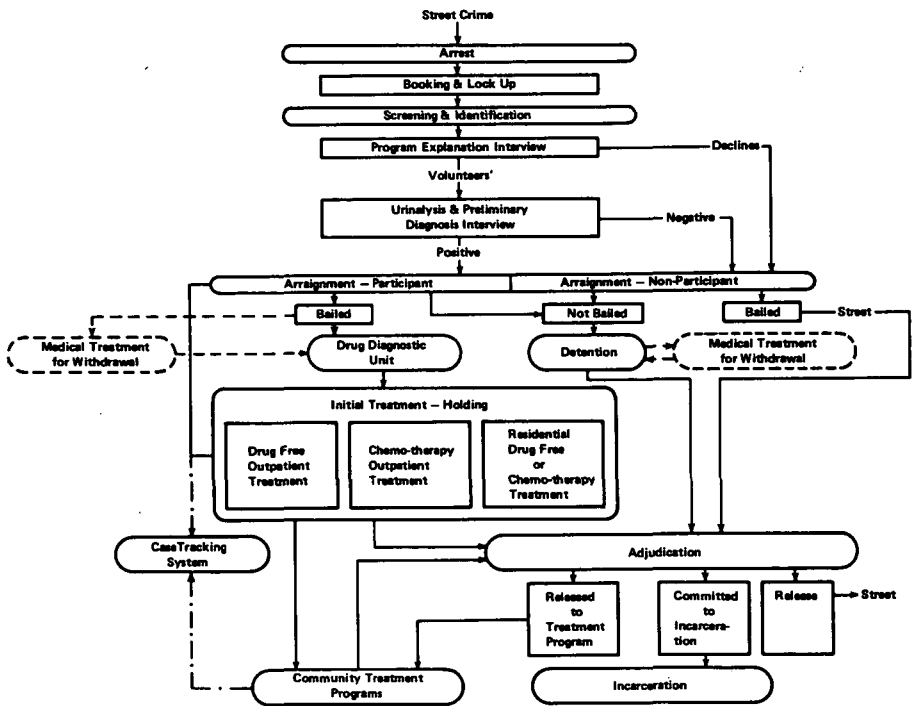
Respectfully submitted,

GEORGE P. LAMB, JR.

APPENDIX II

(Source: Special Action Office for Drug Abuse Prevention)

TREATMENT ALTERNATIVES TO STREET CRIME CASE FLOW CHART



LEGEND:

- Current Elements
- New Program Elements
- New Program Elements, if required
- Flow Process Points

- Case Flow
- Case Flow, if required
- Information Feedback

TASC SYSTEM DYNAMICS 30 DAY CYCLE

