1974

August 6, 1974

University of Michigan Law School

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Proposed Drug Laws

Uniform Act treats Drug Dependents as Patients

During World War II, self-appointed "reformers" persuaded state and federal officialdom to treat "dope fiends" as outlaws. But 50 years of coercion have failed to curb drug abuse and new medical approaches are being stressed in efforts to help drug dependents.

The National Commission on Marijuana and Drug Abuse pointed out that over the past 60 years the apparent conflict between "law enforcement and "medical approaches" to drug dependence has amounted only to a dispute over tactics. "Law" and "medical" approaches differed only in preferences for legal tools--criminal or civil procedures--designed to force "cures" on drug dependents.

When the Conference began work on the Uniform Drug Dependence Treatment and Rehabilitation Act in 1970, it sought to draft legislation enabling the medical profession to treat patients and not "inmates."

What is Drug Dependence?
When is a person a "drug dependent?" That question must be answered by any proposal designed to deal with drug abuse.

The Uniform Act defines drug dependence as "a state of psychic or physical dependence, or both, arising from administration of a controlled substance on a continuing basis."

It adds that "drug dependence is characterized by behavioral and other responses which include a strong compulsion to take a controlled substance on a continuing basis in order to experience its psychic effects or to avoid the discomfort of its absence."

Most "drug dependents" should receive medical treatment and the Uniform Act establishes treatment alternatives to criminal prosecution.

"Casual users" of illegal psychoactive drugs are not eligible for the treatment alternatives because they cannot be considered physically--or mentally--ill. Therefore, treatment and rehabilitation services would be useless.

This narrow definition of drug dependence means a drug dependent "pusher" might not be prosecuted if he chose to undergo treatment. But an "unhooked" distributor arrested at the same time could face criminal charges.

The decision to make the distinction was based on the determination that many "pushers" sell drugs only to support their own expensive dependence. If such persons are not given the opportunity to overcome their dependence through treatment, they probably will be driven into a life-long cycle of drug use and jail terms.

In contrast, NCCUSL members felt fear of criminal prosecution might deter drug traffic among those who have not surrendered their rationality to drugs. Drafters commented that "limited treatment resources should not be squandered in undirected efforts to apply a therapeutic response to all types of drug use and dependence."

Flexible Treatment Proposals

The "primary purpose" of the Uniform Act is to help patients become "productive, functioning" members of their communities. But the Conference warns there is no single, "best" treatment for drug dependence.

The preface to the act states that while "present disenchantment with prosecution and punishment as a means of dealing with drug dependent persons is well justified... it would be equally mistaken to substitute in their place the equally facile notion that drug dependence is a disease as susceptible to cure as ordinary maladies of the body. The legal system must maximize the flexibility of its treatment personnel to deal with the phenomenon of drug dependence on an individual basis."

To gain maximum flexibility, the Uniform Act

(See Proposals page 3)
creates a comprehensive approach to treatment which includes: diagnosis; medical, psychiatric, psychological and social services; drug maintenance; vocational rehabilitation; job training; career and family counseling; education; and recreation.

Operation of facilities offering only drug maintenance services is forbidden and patients have a right to choose non-drug therapy.

The wide-range of services would be provided through a variety of facilities--emergency centers; full-time residential centers; outpatient clinics; and "half-way houses."

Emergency services would available to all, 24 hours a day in every part of a state enacting the legislation. Such facilities would offer short-term care and social assistance to drug dependents.

They also would be used to treat non-dependents incapacitated by any psycho-active drug, including alcohol. Emergency services would include: helping patients through withdrawal; diagnosis of possible dependence; and referral to treatment and social services. Treatment in emergency centers would be available to all whether admitted by themselves, friends, or police.

In most cases, emergency treatment would be limited to 48 hours. Those needing longer periods of treatment would be transferred to residential facilities; an "intermediate" unit; or treated as an out-patient. Large state-wide facilities would be discouraged and community treatment facilities encouraged.

Despite the scope of the program, drafters of the Uniform Act emphasized that there is no "guarantee" of rehabilitation for drug dependents.

"On a day-to-day basis, withdrawal, stabilization on a maintenance regimen, vocational training and other treatment services improve the capacity of the patient to function and thereby enhance the prospects of ultimate social re-integration. This is a realizable objective and well worth the effort. From the constitutional perspective, the drug dependent person's right to treatment" is not a 'right to cure,' but a right to receive sufficient services to give him a reasonable opportunity to overcome or control his dependence and become a productive, functioning member of the community."

**Volunteer treatment preferred**

Though success cannot be guaranteed, the drug dependent who asks for help is the best prospect for successful rehabilitation. Yet many states have erected legal obstacles courses which discourage volunteer treatment.

The Uniform Act eliminates all obstacles to volunteer treatment. It permits any "adult or minor person" to seek emergency treatment for symptoms of drug use, or to ask for a diagnosis to determine dependency. Minors are mentioned specifically to eliminate any legal compulsion for the medical personnel to tattle to parents about drug use.

The legislation also insures that volunteers retain their "civil rights and liberties." This includes a right to refuse to take part in ex-
Prof. Alfred F. Conard, a member of the University of Michigan law faculty since 1954, has been named to the distinguished Henry M. Butzel Professorship at the Law School.

The appointment was approved Friday (July 26) by the Regents. Conard will hold the professorship for a five-year term, succeeding Prof. Paul G. Kauper who died in May after serving as Butzel Professor for two consecutive terms.

In recommending the appointment, U-M Law Dean Theodore J. St. Antoine noted Prof. Conard's contributions in personal injury law, European corporation law and American legal education.

"Prof. Conard is one of the broadest-gauged, most original and most forceful thinker in American legal education," Dean St. Antoine said. "He will be a worthy successor to Paul Kauper as Butzel Professor."

Conard currently serves as chairman of the editorial advisory board of the Bobbs-Merrill Company and as editor of the corporation law volume of the International Encyclopedia of Comparative Law. From 1968-71 he was editor of the American Journal of Comparative Law and in 1972 he co-edited one of the standard casebooks in business law, "Enterprise Organization."

Prof. Conard served as president of the Association of American Law Schools in 1971 and has been a leading advocate of clinical law programs as part of the law school curriculum.

His study on "Automobile Accident Costs and Payments," completed in 1964 in collaboration with U-M Prof. James Morgan, served as a pioneer work in the "no-fault" compensation movement.

Among other activities, he was holder of a Guggenheim Fellowship and served as a visiting professor at the Salzburg Seminar in American Studies. He has been associated with many legal organizations, including the Order of the Coif and various units of the American Bar Association.

Prof. Conard joined the U-M faculty in 1954 after teaching at the University of Missouri, University of Kansas City, and University of Illinois. A graduate of Grinnell College of Iowa, he received a law degree from the University of Pennsylvania in 1936 and a master of laws and doctor of the science of law degrees from Columbia University.

The Butzel Professorship, named for an 1892 U-M law graduate, carries an annual stipend which is derived from an endowment Butzel willed to the University.

BOOKS

BOOK REVIEW

Raoul Berger's IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS, first published in 1973 by the Harvard University Press, will be on the stands as a Bantam paperback in August, in an amplified edition containing a new preface on high crimes and misdemeanors and a critique of the Presidential defense strategy. The critique appeared earlier this year in the Yale Law Journal.

Berger's book explores the scope of the power of impeachment lodged in Congress and fully probes historical sources to arrive at the meaning of high crimes and misdemeanors. In his new preface, Berger discusses the Constitutional separation of the impeachment and removal process from indictment and criminal trial.

In the critique, he writes of Presidential counsel James St. Clair's defense argument; saying "Mr. St. Clair has resolutely closed his eyes to adverse facts throughout, to the impact of the American separation of removal on impeachment from criminal trial by jury of 'all criminal " (see REVIEW page 5)
prosecutions', if, as he argues, the removal proceeding must be regarded criminal in nature."

Raoul Berger is Charles Warren Senior Fellow in American Legal History at the Harvard Law School and is regarded as the nation's leading authority on impeachment and executive privilege.

want ads

This column is available for notices by members of the law school community.


Wanted:
Someone to stay in my furnished apartment (3 blocks from the Law School) Aug. 15-27 while I am away -- free of charge with full use of air conditioning and all facilities. Call 663-9591.

WHY WE OPPOSE VOTES FOR MEN

1. Because man's place is in the army.
2. Because no really manly man wants to settle any question otherwise than by fighting about it.
3. Because if men should adopt peaceable methods women will no longer look up to them.
4. Because men will lose their charm if they step out of their natural sphere and interest themselves in other matters than feats of arms, uniforms and drums.
5. Because men are too emotional to vote. Their conduct at baseball games and political conventions shows this, while their innate tendency to appeal to force renders them particularly unfit for the task of government.

-Alice Daer Miller, 1913.

MASTERPIECE

Richard MACKENSWORTH
V.
AMERICAN TRADING TRANSPORTATION CO.
Civ. A. No. 73-93.
United States District Court, E. D. Pennsylvania.
Cite as 367 F. Supp. 573 (1973)

A seaman, with help of legal sages, Sued a shipowner for his wages. The defendant, in New York City (Where served was process without pity) Thought the suit should fade away, Since it was started in Pa. The District Court there (Eastern District) Didn't feel itself restricted And in some verse by Edward R. Becker, J., Let the sailor have his day. The owner, once to earn freight fare, Sent ship to load on Delaware. Since it came to reap in port, 'Twas turnabout to show in court, With process so to profit tied. Motion to dismiss denied.

1. Process »62
   Long-arm service is a procedural tool Founded upon a "doing business" rule. 42 Pa. S. § 8309.

2. Courts »12(2)
   A New York shipowner which, to its later dismay Loaded a ship in Philly, Pa. In the year of Our Lord 1972 Could be served in a suit there by seafarer who Claimed that his wages were long overdue, Since the loading, in the learned court's ken of it Was a single act done for pecuniary benefit And thus doing business (for profit to boot) Within the state's long-arm statute.

(see VERSE page 6)
3. Courts =12(2)
Under the Commonwealth statute providing that in cases of persons elsewhere residing, "The doing of a single act * * * for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts."
No future intention is needed
When "pecuniary profit" is heeded;
One acting from profit ambition
Need not contemplate repetition.
42 Pa. S. § 8309(a)(3).

4. Courts =12(2)
Lest the long-arm statute make all nervous
It was amended to avoid guess
And to extend long-arm service
To the full reach of due process.
42 Pa. S. § 8309.

5. Constitutional Law =385(6)
A New York shipowner who
Once sent its vessel over the blue
For loading in Philly, in '72
Could be sued there, to its rue
In accord with process due
Under International Shoe.


OPINION AND ORDER
EDWARD R. BECKER, District Judge.
The motion now before us has stirred up a terrible fuss.

1. In nautical terms, the wage statute is stowed at § 594 of 46 U.S.Cole.
And what is considerably worse, it has spawned some preposterous doggerel verse.
The plaintiff, a man of the sea, after paying his lawyer a fee, filed a complaint of several pages to recover statutory wages.
The pleaded facts remind us of a tale that is endless.
A seaman whom for centuries the law has called "friendless" is discharged from the ship before voyage's end and sues for lost wages, his finances to mend.
The defendant shipping company's office is based in New York City, and to get right down to the nitty gritty, it has been brought to this Court by long arm service, which has made it extremely nervous.

[1] Long arm service is a procedural tool founded upon a "doing business" rule.
But defendant has no office here, and says it has no mania to do any business in Pennsylvania.
Plaintiff found defendant had a ship here in June '72, but defendant says that ship's business is through.
Asserting that process is amiss, it has filed a motion to dismiss.
 Plaintiff's counsel, whose name is Harry Lore, read defendant's brief and found it a bore.
Instead of a reply brief, he acted pretty quick and responded with a clever limerick:
"Admiralty process is hoary
With pleadings that'tell a sad story
Of Libels in Rem—"
Mackensworth v. American Trading Transportation Co. 375

The bane of sea-faring men
The moral:
Better personally served than be sorry."
Not to be outdone, the defense took the time
to reply with their own clever rhyme.
The defense counsel team of Mahoney, Roberts, & Smith
drafted a poem cutting right to the pith:
"Admiralty lawyers like Harry
Both current and those known from lore
Be they straight types, mixed or fairy
Must learn how to sidestep our bore.
For Smith, not known for his mirth
With his knife out for Mackensworth
With Writs, papers or Motions to Quash
Knows that dear Harry's position don't wash."
Overwhelmed by this outburst of pure creativity,
we determined to show an equal proclivity.
Hence this opinion in the form of verse,
even if not of the calibre of Saint John Perse.
The first question is whether, under the facts,
defendant has done business here to come under Pennsylvania's long arm acts.3
If we find that it has, we must reach question two,

3. Designed to relieve the plaintiff's service burdens,
Pennsylvania's latest long arm law may be found at § 8309 of 42 Purdon's.
4. That decision of the Supreme Court of Courts
may be found at page 310 of 336 U.S. Reports. [66 S.Ct. 154, 90 L.Ed. 95]
5. The words of the statute are overly terse, still we will quote them, though not in verse:

whether that act so applied is constitutional under Washington v. International Shoe.4

Defendant runs a ship known as the SS Washington Trader,
whose travels plaintiff tracked as GM is said to have followed Nader.
He found that in June '72 that ship rested its keel
and took on a load of cargo here which was quite a big business deal.

[2] In order for extraterritorial jurisdiction to obtain,
it is enough that defendant do a single act in Pa. for pecuniary gain.
And we hold that the recent visit of defendant's ship to Philadelphia's port
is doing business enough to bring it before this Court.

[3] We note, however, that the amended act's grammar is enough to make any thoughtful lawyer stammer.
The particular problem which deserves mention
is whether a single act done for pecuniary gain also requires a future intention.

[4] As our holding suggests, we believe the answer is no,
and feel that is how the Pa. appellate cases will go.
Further, concerning § (a)(3)'s "shipping of merchandise"

(a) General rule—Any of the following shall constitute "doing business" for the purposes of this chapter:

(2) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts.
(3) The shipping of merchandise directly or indirectly into or through this Commonwealth.
42 Pa. S. § 8300.

(see verse page 8)
the future intention doctrine has already had its demise. We do not yet rest our inquiry, for as is a judge's bent, we must look to see if there is precedent. And we found one written in '68 by three big wheels on the Third Circuit Court of Appeals. The case, a longshoreman's personal injury suit, is Kane v. USSR, and it controls the case at bar. It's a case with which defendants had not reckoned, and may be found at page 131 of 394 F.2d.

In Kane, a ship came but once to pick up stores and hired as agents to do its chores a firm of local stevedores. Since the Court upheld service on the agents, the case is nearly on all fours, and to defendant's statutory argument Kane closes the doors. Despite defendant's claim that plaintiff's process is silly, there have been three other seamen's actions against defendant, with service in Philly. And although they might have tried to get the service corrected, the fact of the matter is they've never objected.

[5] We turn then to the constitutional point, and lest the issue come out of joint, it is important that one thought be first appended: the reason the long arm statute was amended. The amendment's purpose was to eliminate guess and to extend long arm service to the full reach of due process. And so we now must look to the facts to see if due process is met by sufficient "minimum contacts." The visit of defendant's ship is not yet very old, and so we feel constrained to hold that under traditional notions of substantial justice and fair play, defendant's constitutional argument does not carry the day.

This Opinion has now reached its final border, and the time has come to enter an Order, which, in a sense, is its ultimate crux, but alas, plaintiff claims under a thousand bucks. So, while trial counsel are doubtless in fine fettle, with many fine fish in their trial kettle, we urge them not to test their mettle.

6. See Aquarium Pharmaceuticals Inc. v. Industrial Pressing and Packaging (E.D.Pa. 1973). Prospects for suit on a single goods shipment are decidedly greener because of the Aquarium decision of Judge Charles R. Weiner, holding that, in a goods shipment case no future intention is needed; the message of Aquarium we surely have heeded. Anyone who wishes to look Aquarium up can find it at p. 441 of 358 F.Supp.

7. We thus reject the contention that one of the judicial vices is too much reliance on stare decisis.


9. See Aquarium Pharmaceuticals Inc. v. Industrial Pressing & Packaging, supra, at 444.


11. See id.
because, for the small sum involved, it makes more sense to settle.

In view of the foregoing Opinion, at this time we enter the following Order, also in rhyme.

ORDER
Finding that service of process is bona fide, the motion to dismiss is hereby denied. So that this case can now get about its ways, defendant shall file an answer within 21 days.

SPORTS

KIBURZ' CLUTCH HIT LEADS PRO BONOS TO PLAYOFF BERTH

Pinch hitter Joan Kiburz slammed a two-out run-scoring single in the bottom of the seventh inning Friday night to power the Pro Bonos to an 8-7 come-from-behind victory over the Village Corner Kids. The win lifted the P.B.'s, a co-rec team of law students, into the 2-1 division playoffs.

Manager Sue Mack and her team watched with astonishment and disgust as the V.C. Kids' pitcher intentionally walked slugger Bill Abbott on third and first base open. Pinch hitter Kiburz, wearing a dress and sandals and wielding one of the most feared bats in the co-rec league, rewarded the opponents' shabby tactics by lining the first pitch sharply to left to drive in the winning run.

(The above article was prepared by an R.G. correspondent who prefers to remain anonymous. However, the editor offers kudos to Depauw graduate Joan Kiburz for her performance.

In her honor we are printing the first lines of her Alma Mater's fight song: "De Paw, De Paw, Where is De Paw?" "De dog has De Paw! Arf, arf, arf!"

TREATMENT OF JAIL OPTIONS

The volunteer approach to treatment is stressed (See PROPOSALS page 10)
even when a drug dependent is caught up in the criminal process. The Uniform Act not only offers the option of treatment, instead of jail, to most drug dependents faced with criminal charges, but encourages exercise of the option.

Incentives to undergo treatment are offered at every stage of the criminal process—from arrest through sentencing. The legislation was drafted "to blend law and therapy in a way which is clinically meaningful and constitutionally permissible.

Different approaches are provided for three different types of crime:

(1) A drug dependent charged only with possession, use or other "consumption-related" offense involving a dangerous drug, classified as a "controlled substance," may elect to start at any time.

(2) A dependent charged with non-violent crimes such as shoplifting, or burglary, may enter treatment at any time but only if the option is offered by a prosecutor or judge.

(3) Drug dependents charged with crimes defined as "violent"—such as murder, rape or kidnapping—could not be offered the treatment option to avoid jail. But authorities could make participation in a treatment program a condition for parole. The act also requires that treatment facilities be provided for jailed drug dependents.

Only 10 states now offer treatment regardless of the crime involved. The Uniform Act "extends treatment to all persons charged with crime. Distinctions are made regarding the relationship between treatment and the criminal process, not regarding the availability of treatment."

The concept of treatment in lieu of criminal prosecution is commonly called "diversion." The process begins with a determination that an arrested person is drug dependent.

This diagnosis of dependence can be made at any time an arrested person is in custody. For example, he may be receiving emergency treatment because of incapacitation when the determination is made. Or the dependence might turn up during a later screening, which can include urinalysis.

When a person is found to be drug dependent, he may consult a lawyer and his physician before deciding whether to volunteer for treatment in lieu of prosecution. If the charge is directly related to his dependence, he may demand to under-

(See PROPOSALS page 11)
go treatment rather than face prosecution, early in the criminal process, or jail, after conviction.

If the defendant is charged with a non-violent crime not directly related to his dependence, the prosecutor may offer treatment in lieu of prosecution before trial and a judge may offer the same diversion opportunity after conviction.

For defendants in both possession and non-violent crimes, the total voluntary commitment would be up to 18 months, or the maximum sentence for the crime involved, whichever is shorter. Drafters of the Uniform Act said existing laws permitting commitment for treatment until a patient is "cured are patently unconstitutional. The 18-month ceiling reflects the judgment of many medical experts that this period of control is sufficiently long to serve the state's interest in establishing leverage for treatment and yet not so long as to be unattractive to persons charged with criminal offenses."

At least once every six months, physicians must determine if a patient has progressed to the point where he can receive out-patient, instead of institutional care. And a volunteer facing criminal charges could choose at any time to abandon treatment and take his chances with the criminal process.

The Uniform Act also allows dependents charged with "consumption," or non-violent, crimes to start over with a clean slate after treatment. Provisions requiring authorities to expunge criminal records of drug dependents who complete their treatment programs are intended to serve as a rehabilitation aid as well as an incentive to opt for treatment.

The treatment option also includes safeguards of confidentiality nearly as strict as those for volunteers facing no criminal charges. Of course, those facing charges must make relevant records available to authorities trying to determine how the patient is progressing.

Drug dependents shouldn't be jailed

Drafters of the Uniform Act commented that under existing state laws, "treatment is sometimes offered to convicted persons in lieu of traditional criminal punishment either by sentencing or a separate 'civil commitment,' procedure. Yet, the promise of treatment in such cases is often not matched by the attributes of confinement. The committed person may fare as badly as a patient as he would as a criminal since treatment facilities have often been jails by another name.

Indeed, he may fare worse since a person can in some jurisdictions be committed for purposes of treatment for a period longer than he could have been sentenced for the underlying criminal offense."

It should be emphasized that the Uniform Act is designed to offer treatment to all drug dependents. The drafters noted that many states striving "to assure that offenders deserving of punishment receive their just desserts′ have excluded from treatment those who "would best be served by concentration on their drug dependence."

Such exclusions include drug dependents who are: accused of crimes carrying long sentences; convicted a fixed number of times; or compliers of a record of prior commitments for treatment. Most states also specifically forbid use of treatment options for persons charged with "the property and drug distribution crimes which tend to be very closely related to the defendant's drug-dependent status and his need for treatment."

Since most states profess their criminal justice systems are aimed primarily at rehabilitation, the Uniform Act does not include provisions designed merely to punish drug dependents.

Administration of Uniform Act

Experts believe states should interlock efforts to deal with abuse of illegal "drugs of dependence," such as heroin, with similar efforts to help victims of the leading, but legal, "drug of dependence"--alcohol.

The Drug Dependence Treatment and Rehabilitation Act, completed last year, complements the Uniform Alcoholism and Intoxication Treatment Act, completed in 1971. The
Conference urges every state to create a single agency to direct and administer programs dealing with both legal and illegal "drugs of dependence."

Consolidation would facilitate coordination of the whole range of prevention, treatment and rehabilitation programs. It also would recognize the growing problem of "mixed dependence" on alcohol and illegal drugs.

Both treatment and welfare services could be used to help alcoholics as well as illegal drug dependents. Educational programs could attack both problems.

Such a coordinated, treatment-oriented approach to victims of all drug offers the best hope to states seeking a humane and effective solution to this smoldering problem.

- Uniform Law Memo 
  Spring/Summer 1974

controlled substances act

There are drugs that depress, drugs that stimulate and drugs that cause hallucinations. All types can be dangerous. Most experts believe dangerous drugs should be controlled. The Uniform Controlled Substances Act completed by the Conference in 1971 was designed to provide states with the legal machinery for exercising the needed controls.

Drafters of the act sought to provide "an interlocking trellis of federal and state law to enable government at all levels to control more effectively the drug abuse problem." About three fourths of the 50 states have adopted the Controlled Substance Act which establishes eight criteria for judging the need to control a "substance":

1. Actual, or relative, potential for abuse.
2. Scientific evidence of pharmacological effect.
3. Current scientific knowledge.
4. Historical and current use.
5. Scope, duration and significance of abuse.
6. Risk to public health.
7. Potential to produce psychic, or physiological, dependence.
8. Potential for use in manufacturing a substance already under control.

These criteria provide a net for state agencies to seize out all substances which requires at least some controls. Since some drugs are more dangerous than others, the Controlled Substances Act also creates a five-tier schedule of tests to determine the extent of controls needed for each drug, or "substance."

"Schedule I" drugs are under the most severe controls. By definition these both have a "high potential for abuse" and "no accepted medical use in treatment" in the U.S., or they lack "accepted safety for use in treatment under medical supervision." Included in this list are narcotics as heroin and hallucinogens such as extremely powerful amphetamines and LSD.

"Schedule II" substances also have a high potential for abuse" and "may lead to severe psychic or physical dependence," but they also have "currently accepted medical treatment...or currently accepted medical use with (see ACT cont'd page 14)
Circuit Court Actions

Following are the results of proceedings in Washtenaw County Circuit Court:

Dennis C. Chaney, 23, of Detroit — stood mute to a charge of attempted breaking and entering with intent to commit larceny — not guilty plea entered by the court — pre-trial hearing set for Aug. 22.

Jerry Jordan of Cassidy Lake Technical School — stood mute to a charge of escape from prison — not guilty plea entered by the court — pre-trial hearing set for Aug. 8.

Cleveland Brown Jr., 18, of Detroit — stood mute to a charge of armed robbery — not guilty plea entered by the court — pre-trial hearing set for Aug. 15.

Duncan E. Waite, 21, of 1012 Fountain — stood mute to a charge of delivery of LSD — not guilty plea entered by the court — pre-trial hearing set for Aug. 22.

Allan E. Bryant, 23, of Belleville — pleaded guilty to a charge of larceny from a motor vehicle — sentencing set for Aug. 15.

Michael D. Echols, 20, of Detroit — pleaded guilty to a charge of unarmed robbery, amended from armed robbery — sentencing set for Aug. 22.

James H. Bartley, 43, of 117 S. Harris, Ypsilanti — pleaded no contest to a charge of malicious destruction of a building — sentencing set for Aug. 15.

Chester L. Van Horn, 29, of 1124 W. Michigan Ave., Ypsilanti — stood mute to a charge of larceny in a building — not guilty plea entered by the court — pre-trial hearing set for Aug. 22.

Charles Franklin, 20, of 2800 Jackson Ave. — stood mute to a charge of larceny in a building — not guilty plea entered by the court — pre-trial hearing set for Aug. 22.

Donald Weatherspoon, 24, of 201 Stephens Dr., Ypsilanti — stood mute to a charge of attempting to obtain a controlled substance by misrepresentation or fraud — not guilty plea entered by the court — pre-trial hearing set for Aug. 22.

Lee Larabee of Plymouth — stood mute to a charge of delivery of heroin — not guilty plea entered by the court — pre-trial hearing set for Aug. 22.

John Ringelberg, 27, of 358 S. Fifth Ave. — stood mute to charges of forgery and uttering and publishing — not guilty plea entered by the court — pre-trial hearing set for Sept. 5.

Dollie F. Richardson, 19, of 4 Kilbrennan Ct. — stood mute to a charge of larceny in a building — not guilty plea entered by the court — pre-trial hearing set for Aug. 22.

Frank Jones, 56, of Southern Michigan State Prison at Jackson — pleaded guilty to a charge of possession of heroin, amended from sale of heroin — sentencing set for Aug. 22.

Carol B. Biroly, 34, of 9335 Scio Church Rd. — sentenced to three years probation and $450 fine and costs for possession of stolen property over $100.

Cynthia L. Karalla, 18, of 3744 Dexter Rd. — sentenced to three years probation, $550 fine and costs and 45 days in jail with credit for time already spent there for receiving or concealing stolen property.

Michael F. Harris, 30, of 1141 Lathers, Ypsilanti — stood mute to a charge of felonious assault — not guilty plea entered by the court — pre-trial hearing set for Oct. 31.

Michael McDonnell of 231 Dakota, Ypsilanti — sentenced to five years probation, $200 fine and costs, and $100 restitution for attempted larceny from a motor vehicle.

Ira D. Hutchinson, 18, of Milan — sentenced to five years probation and $350 fine and costs for larceny from a person.

Stanley Elia, 19, of Detroit — sentenced to five years probation, $150 fine and costs, up to $35 restitution and 12 days in jail for illegal use of a credit card.

Debra S. Wright, 19, of 1515 Ridge Rd., Ypsilanti — stood mute to a charge of breaking and entering into an occupied dwelling with intent to commit larceny — not guilty plea entered by the court — pre-trial hearing set for Aug. 27.

JUDGE KEITH WILL SPEAK

U.S. District Judge Damon J. Keith will be the main speaker at the University of Michigan's summer commencement Aug. 18.

An estimated 2,700 U-M students at the Ann Arbor campus expect their degrees this summer. The graduation ceremony will begin at 2 p.m. in Hill auditorium. A reception for the graduating students, their relatives and friends will follow in the Michigan League.

Judge Keith, who was appointed to the federal bench of the Eastern District of Michigan in 1967 by President Johnson, is noted for many rulings, including the 1971 decision that the President and the U.S. attorney general have no right to order wiretap in domestic security cases without court authorization.

CHEERS AND JEERS

A decided contrast in attitudes toward students is exemplified by the performances of two U-M professors.

Cheers: To Tax I Professor Doug Kahn for the tremendous achievement of marking his exams in two days. When asked why he marked them so quickly, Mr. Kahn responded, "I can remember when I was in law school. I didn't like waiting a long time to get my grades."

Jeers: To Professor Yale Kamisar for taking two months to evaluate his criminal justice exams. Apparently, his attitude regarding law students is similar to his opinion of "the goddamn cops."

-George A. Pagano
"Schedule III" substances have "a potential for abuse less than substances listed in Schedules I and II"; are used in medicine; and carry only a "moderate" potential for creating dependence. Less strict controls are applied to these drugs which include some amphetamines and barbiturates.

"Schedule IV" drugs have less "potential for abuse" than Schedule III. Included in this list are many tranquilizers and long-acting barbiturates. Prescriptions are required for all Schedule IV drugs.

"Schedule V" drugs are defined as having low potential for abuse relative to Schedule IV. Controls of these drugs are designed to allow restricted over-the-counter sales, though individual states may insist that prescriptions be required for these drugs.

The Controlled Substances Act also creates a system for registration of persons manufacturing, distributing, or dispensing, controlled substances and provides a structure for assessing criminal and civil penalties for violations. Drafters of the legislation did not recommend maximum length for sentences, or amounts for fines. But they did call for higher sentences and fines in crimes involving Schedule I and II narcotic drugs. The penalty structure also includes higher penalties for making and selling than for using "controlled substances." Those charged only with "possession" of a controlled substance would face only "misdemeanor" charges under the legislation.

A VIEW FROM BROOKLYN: PROBLEMS IN CRIMINAL COURT POLICY. FROM THE HARVARD LAW SCHOOL BULLETIN JUNE 1974.

By D. Lloyd Macdonald
Assistant Director, Center for Criminal Justice. Harvard Law School.

Recently the Law School's Center for Criminal Justice completed a project examining some of the decision processes and case outcomes in the Brooklyn Criminal Court in New York. The Center's immediate interest in the Brooklyn Court arose from our continuing evaluation of the Addiction Research and Treatment Corporation--a major drug treatment, methadone maintenance and social support program in the Bedford---Stuyvesant section of Brooklyn. Although modest in both design and expectation, the study provided an interesting view of the workings of a major metropolitan court.

I have selected findings from the study which relate to several policy problems shared by courts throughout the country. These are reflected by the following questions.

How was the court organized to deal with different kinds of crime and offenders?

How did the judges and prosecutors perceive their professional responsibilities and objectives toward addict and non addict defendants?

What is the nature of the process which leads to disposition and what factors are most influential in determining case outcomes?

Two students who had just completed their first year at Law School worked with us during the summer of 1973 to interview officials and observe court operations. Because of cooperation by the District Attorney's Office, the clerk of courts, the judges, and the Legal Aid Society, the researchers were able to accompany prosecutors and public defenders to the bench and were thus able to observe and document the decision process at close hand.

The organization of the Court. All

(see BROOKLYN page 15)
narcotics cases are routed to a special courtroom where the court clerk and other staff are familiar with treatment resources available for defendants. Also there is a special mechanism for linking defendants charged with drug offenses or with histories of drug abuse to treatment programs. This is the Court Referral Project.

In addition to programs for the addicted defendant, the court has programs to divert other defendants from the court. They are designed to minimize the stigmatizing impact of court processing and to link defendant's needs more directly with social programs. Among these are the non-money bail program of the Pre-Trial Services Agency, the Youth Counsel Bureau, and the Court Employment Project, which arranges for conditional suspension of prosecution during which defendants are given jobs or training. These programs are reforms which have been recommended by study groups since the 1967 Crime Commission.

Attitudes and Expectations of Court Officials. Prosecutors and judges were optimistic about the successful treatment of addiction. When combined with their perception of addicts as a class of defendants with especially serious social and psychological problems, this attitude made judges and prosecutors receptive to dispositions based on treatment prospects.

However, when the offense charged was a violent crime, the fact that the defendant was an addict became immaterial. Thus, beyond a certain point the addict defendant was perceived and dealt with as was any other defendant. A number of court officials reported, however, that major changes in this respect are occurring. They say that increasing numbers of prosecutors and judges believe that treatment considerations in all cases, even those involving violent crime committed by non-addicts.

The disposition process. Trials were rare. We found the plea bargain to be the essential form of disposition in Brooklyn.

The Courtroom prosecutors and the defense lawyers were the major participants in the bargaining process. As to participation by judges, there was considerable variation, but the judges in the Brooklyn Criminal Court frequently take an active role in plea bargaining. This is contrary to the


What was most striking in our observations of the disposition process, however, was the degree to which the descriptive term, "bargain", with its images of the marketplace, the succession of offers and counter-offers amidst bluffs and outward earnestness, accurately captures the texture of justice in Brooklyn. Furthermore, the disposition of criminal cases, like bargaining in the open air market, has a coherence provided by a structure of parties, goods, and currencies.

The coherence of the Brooklyn plea bargaining process is found in the recurring significance of three factors: the defendant's prior record, the offense charged and the defendant's social history. Their effect on disposition provides a structure to the plea bargain dynamic which many commentators have doubted.

Despite the order lent by these three factors, dispositions are not predictable. For any final decision it is necessary to have the agreement of three people—judge, defendant, and prosecutor—and each is given wide discretion by the roles traditionally assigned and by their agencies' management policies. Given the emotions and competing values that surround the task of dealing with crime, it should not be surprising that variation of outcome between cases is essentially similar to the variation of the courtroom participants' personal and professional qualities. Thus, although we know the factors which most importantly determine outcome, we are not able to anticipate the exact disposition.

The greatest influence, however, on case outcomes was one which applied across the board: the pressure of the calendar.

The Brooklyn Criminal Court is very busy. In 1972, its 19 judges handled in the vicinity of 55,000 cases. We found the situation in court to be as described by Abraham Blumberg in his book, Criminal Justice, where both "due process" and the "crime control" models of the criminal process conceptualized earlier by Herbert (see BROOKLYN page 16)
We also observed the calendar's impact on the court's supposedly separate functions of fact-finding and sentencing. The verdict of guilt or innocence ought to be a threshold stage distinct from sentencing. Instead, our researchers observed that the pressure of the calendar seemed to telescope the two functions together, and the weight of the evidence influenced both simultaneously. In those cases which were not dismissed outright, guilt appeared assumed; the evidence's strength was just another factor contributing to the kind and severity of sentence.

Our outcome data for 254 cases showed that large percentages of cases end in dismissals and community treatment and that relatively few defendants are imprisoned:

<table>
<thead>
<tr>
<th>Case</th>
<th>Referral to Grand Jury or Prison Sentence</th>
<th>Community Dismissal Treatment (probation etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FELONIES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-Drug</td>
<td>17%</td>
<td>50%</td>
</tr>
<tr>
<td>-Non-drug</td>
<td>32%</td>
<td>31%</td>
</tr>
<tr>
<td><strong>MISDEMEANORS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-Drug</td>
<td>7%</td>
<td>67%</td>
</tr>
<tr>
<td>-Non-drug</td>
<td>7.4%</td>
<td>63.2%</td>
</tr>
</tbody>
</table>

On the court's organization. I noted that the Brooklyn Criminal Court was structured to provide special attention to addict defendants. This appears sensible, although recent evidence raises some doubt that problems posed by addict committed crimes are generically different from those posed by non-addict crime. Specifically, it no longer appears that crime by heroin addicts is a direct function of their addiction and that once addiction is cured, crime by the former addict will cease. There is reason to believe that heroin use represents only one additional deviance in longer criminal lifestyles of addicts. To the degree these propositions are accurate, the rationale behind court specialization for addicts is weakened.

On the officials' attitudes and expectations. Since the study's primary interest was in the court's handling of addict defendants, our data may reflect an unrepresentative view of the court officials' attitudes and expectations. Nevertheless, the data highlighted several issues of general significance.

The tendency of judges and prosecutors to be concerned for addict defendants' treatment is sharply different from their earlier stance which led them to deal with addicts as morally defective and a peculiar threat to public safety, thus requiring lengthy incarceration."

"Because the field research was done during the summer of 1973, the data does not reflect the possible impact of New York's new and more severe drug law. However, several interviews in Brooklyn in February of this year indicated very little had changed.

To avoid being misled by appearances it is important to ask what is actually behind this change in attitude. What do prosecutors and judges believe they are achieving (see BROOKLYN page 17).
by their new stance vis a vis the addict defendant? I suggest that there are two possible rationales which, while they may co-exist, ought to be kept distinct in our minds. One is that the prosecutors and judges view treatment as offering a greater potential for controlling heroin use than was possible with the earlier punitive measures. Thus, the shift simply represents a change in the instruments which the court utilizes in carrying out a social control function to minimize heroin use.

The alternative explanation of the change is fundamentally different. It is that for various reasons, not important in and of themselves, prosecutors and judges no longer believe that heroin use represents a moral scourge which earlier justified the state's strongly coercive intervention. Instead, the decision of whether to use heroin or not is seen as falling increasingly within citizens' own realms of choice. In such circumstances, the propriety of the state's intervention declines and the court's posture becomes closer to a regulatory one.

My guess is that the social control motive is dominant.

Beyond these considerations there is a certain irony that this change is occurring at a time when there is a growing disillusionment with treatment as a court objective. Growing out of the disappointing record of efforts at rehabilitation and of the potential for abuse offered by the wide discretion of such treatment-orientated measures as California's indeterminate sentence, some commentators recommended a move backward toward the retributive model of sentencing. Such a model molds a sentence as a function of offense seriousness, and is said to offer at once more predictability and more definite limits on the duration and severity of official intervention in offenders' lives. It is premature to say whether such a model is desirable, although it is clear that the mixture of rehabilitative and retributive rationales can create confusion, inefficiency and injustice.

On plea bargaining and its outcomes. Unfortunately, the real-world significance for Brooklyn of the above discussion may be somewhat limited. Our data on how cases are actually decided and sentences fashioned suggest that the impact of such distinctions are lost by the influence of larger forces.

The literature in law reviews and elsewhere on plea bargaining has emphasized the costs which the practice has exerted on defendants and their rights. A feature, however, which is frequently ignored is the distorting impact of bargaining on the effectiveness of the court's sentencing function. There is currently healthy scepticism about the utility of imprisonment; however, with outright dismissal rates at 32%, community supervision rates at 51% and incarceration or Grand Jury referrals at 17%, it is time for those concerned with effective justice to reflect and ask the hard question: Are dispositions if this kind responsive to any of the competing purposes of sentencing, whether they be retributive, rehabilitive, incapacitative or deterrent?

Looking at the Brooklyn Criminal Court, the answer to that question is "no," if only because these considerations which those purposes suggest become obscured: Offense seriousness, prior record, and the defendant's social history do retain a marginal significance but only within the narrow parameters established by the calendar. The Brooklyn Criminal Court in resorting to punitive sanctions so infrequently may by force of circumstances, if not by design, be functioning very effectively. What relevance that has to the values of due process, however, or what implications it has for the thoughtful management of our court institutions is more problematic.

suggest that the impact of such distinctions are lost by the influence of larger forces.