

MINUTES OF A PUBLIC HEARING
HELD BY THE TEMPORARY COMMISSION
ON REVISION OF THE PENAL LAW
AND CRIMINAL CODE.

New York State Building
80 Center Street
New York, New York

December 12, 1968
10:00 A. M.

PRESIDING:

HON. RICHARD J. BARTLETT, Chairman

PRESENT:

BENJAMIN ALTMAN, Member of the Commission

HON. JOHN R. DUNNE, Member of the Commission

HON. BERNARD C. SMITH, Member of the Commission

HON. WHITMAN KNAPP, Member of the Commission

HON. EDWARD A. PANZARELLA, Member of the Commission

HON. ROBERT BENTLEY, appearing in behalf of the
Chairman of the Senate
Finance Committee

RICHARD G. DENZER, Executive Director

STAFF:

PETER J. McQUILLAN, ESQ., Counsel to the Commission

ARNOLD HECHTMAN, ESQ., Ass't. Counsel to the
Commission

HELEN E. GORDON, Administrative Assistant to the
Chairman

MR. BARTLETT: Good morning ladies and gentlemen. My apologies for my tardiness. I am Richard Bartlett, Chairman of the Penal Law Commission. We are holding a public hearing today on a proposed Criminal Procedure Law.

Here with me to hear the comments of the witnesses are other members of the Commission, Senators Dunne and Smith, Mr. Knapp and Assemblyman Altman, members of the Staff and Mr. Bentley representing the Senate Committee, Counsel McQuillan, Assistant Counsel Hechtman.

The proposal about which we invite comment today is the most recent draft of the proposed Code. Those of you, and I see familiar faces in the group this morning, who have followed the progress of the Code as we have been working on it, will know that we first drafted a proposed Criminal Procedure Law over a year ago, that we held hearings, I believe, in this room last February, on the proposal as it then stood.

The proposal was introduced as a bill at the '68 Session of the Legislature, but was identified as being for study purposes to afford us an opportunity to further refine the product and to accommodate, to the extent possible, the objections and criticisms that were conveyed to us.

The latest draft -- we call it the "blue book" -- the draft published by Thompson, which is identical with the study bill if I am not mistaken.

Yes. The only change which I would want to call to your attention -- it is not expressed in the study bill -- is a redraft of the Police Officer provisions, which was circulated, I think, to all interested groups in October. It is a reformulation of that part of the proposed Criminal Procedure Law. It is the present position of the Commission.

We, of course, are interested in hearing further comments on that section if you have them, as well as on the

Code as a whole.

Following the conclusion of our hearings, which will be tomorrow, the Commission will again meet, consider the criticisms we have obtained and the suggestions we have obtained at the hearings; consider, too, staff recommendations which they have initiated themselves for improvement and, hopefully, fairly early in the 1969 Session, we will introduce -- we will request the introduction of the proposed Criminal Procedure Law with a proposed effective date of September, 1970.

We hope to be in a position to urge the Legislature to act upon the proposal this year, or in the '69 Session. The delayed effective date serves several purposes, the two most significant being, an opportunity for those who have to work with the Criminal Procedure Law to familiarize themselves with its provisions and, further, affording an opportunity to the Legislature, after such critical examination by bench, bar, police and

so forth, to make further changes if they deem it appropriate, at the 1970 Session before the effective date.

With that brief statement on where we stand, we will now hear from the witnesses, and I don't have a witness list. So, Miss Gordon, if you can tell me who the first one is.

MISS GORDON: Representing the Legal Aid Society, its Director, Edward Carr, Jr.

MR. BARTLETT: Happy to have you with us, Mr. Carr.

MR. CARR: Thank you, Mr. Bartlett, Members of the Commission. I want to say I don't have a very long statement to make today.

I just want to say that, virtually, the entire staff of the Legal Aid Society has studied, with great interest, your latest draft. We have noted, with considerable regret, that the Commission has not adopted very many of the suggestions we made last February in a memorandum that Mr. Mara and

I gave to you then. We have a revised memorandum in the course of preparation now, in which we hope to renew more conscientiously most of those recommendations, and we will get it to the Commission within the next week or so and would hope that a number of our staff members could meet with the staff members of the Commission to go over the recommendations and try and bring home how strongly we feel about them.

I think I can say, generally, and this is a view shared by Mr. Mara and just about the entire staff, the proposed law does not take into account the interests, the legitimate interests as we see them, of the defense in many respects.

I don't want to go into them in detail now. They were covered, most of them, in our memorandum of last Spring and will be covered in, hopefully, a more persuasive version which we will get to you very soon.

MR. BARTLETT:

Fine, Mr. Carr. May

I ask -- the staff will be happy to meet with you, of course. I hope I will be able to have a meeting of the Commission at the end of this month or very early in January. So, we want an opportunity to look over your suggestions.

MR. CARR: We will have them well before the end of the month.

MR. KNAPP: Mr. Carr, one of the suggestions you make is that a provision be made so that after a conviction, the defendant may go back to the Grand Jury Minutes to see if they were adequate, and I asked you a year ago whether you were able to think of a single case where such a thing would be to the benefit of an innocent man.

As of six months ago, you hadn't thought of such a case. Have you thought of one yet?

MR. CARR: No. Actually, our suggestion wasn't that after the conviction -- it wasn't quite in those terms, and I don't know that it is one of our most pressing suggestions, but it was simply that the denial of a motion

to dismiss an indictment on the ground of the insufficiency of the evidence should be appealable.

MR. KNAPP: I appreciate that, but of course, the books are full of cases where guilty men have gotten off on this procedure, and I was just wondering if you had been able to dream up a single case where the procedure would be to the benefit of an innocent man, and as of six months ago, you had none; and I wondered if you had one today.

MR. CARR: Our suggestion did not have to do with something necessary to retrieve the situation for an innocent man. It had to do with the notion --

MR. KNAPP: [Interposing] I understand that some relevance must be given to the facts.

MR. CARR: We do not have any case in which an innocent man can be -- logically it would be very difficult to find one because you pose a case in which the evidence was sufficient and justified.

MR. KNAPP: If that wasn't true, there is no problem.

MR. CARR: So, how would I find an innocent man under those circumstances?

MR. KNAPP: I don't think you can.

MR. CARR: What we were arguing for was the use of the Appellate process.

MR. KNAPP: Don't you agree that some relevance should be given to the fact that could conceivably help an innocent man?

MR. CARR: I think if your suggestion were followed, you would find that these situations would not arise.

MR. KNAPP: But of course, your suggestion is the law today, and they continue to arise.

MR. CARR: Well, that's because trial judges make mistakes, perhaps.

MR. ALTMAN: I am not going to be here tomorrow, and I know Judge Rossback is going to appear about the D.O.R., and I would just like to hear your comments, myself, about how you feel about resuscitating or reviving

the D.O.R.?

MR. MARA: Well, the strange part of it is D.O.R. is used in the Supreme Court in all counties, but it is not used in the Criminal Court.

Now, in the Supreme Court, if they D.O.R. a case, they can, at all times, resurrect it and in the Criminal Courts, on a misdemeanor or a violation, if a case is dismissed, that is the end of the road for the prosecutor.

We have found, because of the congestion in our calendars, that many complaining witnesses get tired of coming down. The case may be a serious case even though it may be a misdemeanor. Judges are reluctant to dismiss the case and, in many instances, the defendant is incarcerated.

Now, if the D.O.R. be resurrected, the defendant could always be prosecuted.

What happens today is, that the complainant comes in on four or five

occasions and then gets tired of coming in, and then stops coming in and the first he knows, the case is dismissed and he starts screaming bloody murder. If the D.O.R. were resurrected, that defendant could be D.O.R.'d and go his merry way. He could come back to the District Attorney and complainant's case could be restored to the calendar.

Now, in many instances of the D.O.R., it was to the benefit of the complaining witness as far as permitting the D.O.R., if the complainant had a broken window, one of the conditions of the D.O.R. would be the defendant pay for the broken window or, if there were doctor bills, he would have to pay the doctor bills and if he didn't, the case would be restored to the calendar. It was something like a conditional release after conviction, but in some of the cases, they are not so serious insofar as the defendant would be concerned. The defendant would be made whole, and I think it would be a wonderful thing to restore the D.O.R., particularly, in the Criminal Court.

MR. BARTLETT: Your recommendation would be in your memorandum, of course?

MR. MARA: Yes.

MR. BARTLETT: Off the record for a second.

[DISCUSSION OFF THE RECORD]

MR. BARTLETT: Thank you.

Representing the New York State Sheriffs' Association, Sheriff McCloskey and Sheriff McMahon of Westchester County. Happy to have you both here today with us. We haven't been together, Sheriff McMahon, for about forty-eight hours.

SHERIFF MC MAHON: Mr. Chairman, distinguished members of the Commission, members of the Staff, I am pleased to have this opportunity to appear before you as the Chairman of the Criminal Law Committee of the New York State Sheriffs' Association, and at the request of Sheriff John J. McCloskey, Sheriff of New York City and President of the Association, who is here with me.

The views herewith

submitted represent the careful consideration of the views of the Criminal Law Committee of the Sheriffs' Association, which included Sheriff B. John Tutuska of Erie County [since December 1st the County Executive of that County], Sheriff John Perhach of Broome County, Sheriff Patrick J. Corbett of Onondaga County, Sheriff Maurice F. Dean of Schuyler County and Sheriff Martin Gilbride of Livingston County.

I am the Sheriff of Westchester County, an attorney, former Assistant Attorney General in the Saratoga Investigation, former Chief of the Criminal Division in the U. S. Attorney's office for the Southern District of New York, and formerly Commissioner of Public Safety of the City of Yonkers. I mention this to underscore that your Sheriffs have had wide experience and substantial service in law enforcement and in combating crime.

As your committee well knows, each of the Sheriffs of our State [with isolated exceptions] are the Chief Peace Officers of their respective counties, charged with

maintaining peace within their respective jurisdictions. The powers and responsibilities of the office are substantial and are specified in common law, the State Constitution and Statutory Law. Their responsibilities these days are complex and onerous.

On behalf of the Sheriffs' Association of this great state, I would first like to congratulate the temporary commission on the outstanding job it has done with the proposals now in second draft form for the proposed new Criminal Procedure Law. Also, the commission should be commended for the number of hearings it has conducted throughout the state, affording an opportunity for all interested parties and organizations to submit their views before this proposal goes to the legislature.

It is not the purpose of the Sheriffs' Association to complain and criticize any executive, legislative or judicial body, but rather to underscore the problems which cry out for remedies, and to submit our

best judgments for your consideration to accomplish our mutual objective.

It is crystal clear that increasing numbers of all types of crimes, particularly serious crimes, are going unsolved, not prosecuted and if prosecuted, not resolved by cumbersome procedural requirements. We are also witnessing an unending series of "trials" or collateral issues relating solely to procedural questions, such as illegally obtained confessions, illegal arrests, search and seizure, etc. If finally convicted, the accused then has available protracted appeals and coram nobis proceedings after incarceration. No one would question the requirement for procedural rules to insure the rights of the accused and mandate proper police conduct. But, at the heart of the problem lies the concept that we must have the procedural requirements in a proper balance and context with the more important substantive issue of the guilt or innocence of the accused on the crime charges. To state it very simply, there can be no end to

the lawlessness sweeping our state and nation, unless and until, we return to the traditional concept that we must have swift and certain punishment for the guilty. The Sheriffs' Association supports discretion with the Court for consideration and leniency for first and possibly even second offenders, when appropriate but we are gravely concerned that the present status of our laws permit too many recidivists to continue a career of crime unimpeded. If we are to overcome rampant crime and lawlessness, particularly our procedural law must come to grips with this stark reality. Your honorable commission as the architects of this procedural law, and the legislature which passes upon it should analyze each of the provisions proposed in the light of this fundamental need.

We respectfully urge the prime objective of the new Criminal Procedural Law should be to speed trials and streamline judicial procedures while still fully and properly protecting the rights of the accused. To this end, we support the improved

jury selection by eliminating individual examination for prospective jurors in favor of questioning after each is in the jury box [185.30]. This resembles the Federal Jury selection which is more expeditious than ours. This will certainly speed trials and provide critically needed additional trial days. In our opinion, this will not adversely affect the rights of the people.

On the other hand, in Article 205, it is felt that the provisions for additional post convictions, pre-sentence hearings will be encumbering, rather than streamlining, the administration of criminal justice.

MR. BARTLETT: Excuse me. You mean the omnibus motion after conviction, after appeal?

SHERIFF MC MAHON: No. I was referring to -- there are about three. I am talking about where the defendant has the right to submit the pre-sentence memorandum and the judge can consider this in conference; and I might say

that we support the idea of the defendant having the right to submit this pre-sentence memorandum and, certainly, we will go as far as agreeing as to the need of a conference by the judge in his discretion. But your article goes much further than this. It opens up the door for hearings, presumably, if there are disputes. You are then -- and the procedure provides for notice for taking testimony under oath, having it recorded by a Court Stenographer and a transcript made a part of the pre-sentence report.

MR. BARTLETT: That is only for the persistent felony offender, the four time offender.

SHERIFF MC MAHON: I think even before that, you have procedures in addition.

205.10, Sub-Division 3 is what we are specifically referring to, and we would point out in this, Mr. Chairman, that here again we are opening up another entire province for more hearings.

You can have,

procedure for conducting a hearing before a person can be sentenced as a persistent felony offender as provided in 70.10 of the Penal Law, with required formalities. By way of background, it should be pointed out that many in our Association and in the ranks of law enforcement, opposed the abolition of mandatory life sentence upon conviction of the fourth felony in the old Penal Law [Baume's Law].

At that time, the arguments advanced in opposition to the abolition were rejected by pointing to the third felony conviction procedure as provided in 70.10 of the Penal Law. With the cumbersome procedure mandated in Section 205.20, we would have grave doubts that many persistent felony offenders would be removed from our society.

The requirements of 205.20 even go so far as imposing upon the people the burden of proof that the defendant is a persistent felony offender as defined in 70.10 "beyond a reasonable doubt by evidence admissible under the rules applicable to the

trial of the issue of guilt".

MR. BARTLETT: Wasn't that exactly
the rule under the old Baume's Law?

SHERIFF MC MAHON: I think this goes
further. I could be in error.

MR. BARTLETT: We think it is the
same because where prosecutor attempted to get
a sentence based upon four felony convictions,
he has to prove that the same person, in fact,
was convicted.

 In any case, we are
not under the impression that we have changed
the law in that regard.

SHERIFF MC MAHON: It is our impression,
and I certainly would like to submit more on
this if I could.

MR. BARTLETT: Surely.

SHERIFF MC MAHON: Now, in addition to
this, Mr. Chairman, we do have certain comments
addressed specifically to certain sections which
I will, with your permission, submit.

 However, I would like
to comment on two of these before submitting

them to you. The first -- and I heard your announcement with respect to the information that was disseminated on a change in the definition of a Police Officer -- I did not have -- I did not see this and so, possibly, this has been or might be inapplicable, I am uncertain; but in any event, we would like to --

MR. ALTMAN: [Interposing] Maybe, you would like to look at the new memorandum and then submit.

SHERIFF MC MAHON: I would only take a moment or two more. Specifically, the Sheriffs' Association is concerned with the 1.20, Sub-division 32 (b), where it gives the Sheriffs, Under-Sheriffs and Deputy Sheriffs of Counties outside of New York City the powers of a Police Officer.

Now, we were, I might say, more than a little curious as to the manner in which the language was expressed in this Sub-division 32(b) and the language which has greatly aroused our curiosity was as follows -- this is 1.20 on the definitions of a Police

Officer, Sub-division 32(b), wherein it states, "For purposes of this chapter, Sheriffs, Under-Sheriffs and Deputy Sheriffs of Counties outside of New York City are deemed members of an authorized County Police Department."

We have Sheriffs in every County. We have, possibly, a half a dozen County Police Departments.

MR. DENZER: That is purely semantics.

MR. BARTLETT: We then talked about members of an authorized Police Department of any City, Town or Police District, and it was our purpose to view the Sheriffs' Department as a Police Department and, indeed, to accord them precisely the same power, full power accorded any other policeman.

SHERIFF MC MAHON: Also, as a second part of this --

MR. BARTLETT: [Interposing] I know that the word "County" Police Department might make some Sheriffs nervous, but we didn't intend to be sneaky about that.

SHERIFF MC MAHON: Also, as a second part of that same subject and, perhaps, you might like to hear further from Sheriff McCloskey, President of our Association and Sheriff of New York City, the Association is opposed to the exclusion of the Sheriff, Under-Sheriff and Deputy Sheriffs in New York City and, perhaps, on that point, if he would like to add some comments, we can do so.

MR. DENZER: As I understand the Sheriffs, they are not law enforcement officers at all, in New York City.

SHERIFF MC MAHON: Can I refer to Sheriff McCloskey to add to that?

MR. BARTLETT: Yes. Why don't you finish first?

SHERIFF MC MAHON: One more point is, further, a request for anticipation, the next sub-division there, commitment to the custody of the Sheriff means to the Commissioner of Correction, where such official exists.

Now, we think -- we are not offering any real criticisms of this --

but things have been brought to our attention which are totally unclear. We don't have the proposed suggested full answers now, but I would request the Commission and the members of the Staff, if possible, to give more consideration to this point.

MR. BARTLETT: We understand that there are only three now, right?

SHERIFF MC MAHON: Well, I think Erie, and I know Onondago is involved in some way with this.

MR. BARTLETT: My understanding was that, didn't Nassau, very recently, change the character of its Sheriff and have created a Commissioner of Correction? New York City, of course, has one, and there is legislation for Westchester.

MR. DUNNE: That is right.

MR. BARTLETT: As far as we know, those were the three. I think it was our point where the Sheriff has the responsibility for maintaining the detention responsibility, then the commission should be to him.

SHERIFF MC MAHON: Right. This is sound. I think where it gets a little bit sticky is something in the area, even with this provision -- with the Department of Correction, there is still going to be commitment to the Sheriff on civil prisoners.

MR. BARTLETT: That wouldn't be covered by the Code.

SHERIFF MC MAHON: Yes. The Family Court prisoners and, possibly, some others. These are the things we are concerned about, and I do think that it does deserve added point.

MR. BARTLETT: We will look into it.

SHERIFF MC MAHON: If I can turn this over to Sheriff McCloskey, I think he can comment on the New York City situation. First, I would like to have this added to my statement.

60.20 Sub-Division 3:
Provides arrest procedures for offenses other than felony pursuant to warrant of arrest in county other than one in which the warrant is returnable. Police officers must inform defendant of right to appear before local

criminal court for the purpose of release on own recognizance or fixing bail. If the defendant does not desire to avail himself of this right, police officers must "request" him to endorse such fact on warrant and take him immediately to the court in which it is returnable.

The Sheriffs'

Association feels there is a serious question as to whether the Miranda warning must be given by the police officer at the outset. It also feels strongly that the "request" and other described procedures are unrealistic and impractical.

70.57 Sub-Division 2:

Provides for an arrest without warrant by persons other than police officers and further that police officer to whom the accused is brought need not take the accused into custody, if the police officer does not believe that there is reasonable cause to hold such accused for the charge made.

The Sheriffs'

Association realizes the sound objection

undoubtedly intended by this provision, but is mindful that the police officer will be put in the difficult role of judging the facts, particularly with conflicting versions presented. It is hoped the police officer's difficulty might be eased by somewhat different language in this section.

175.20 Sub-Division 2:

When the defendant wishes to enter or change a plea this may be done with permission of the court and consent of the people when represented by a prosecutor. If the people are represented only by a police officer the court alone may approve the entry or change of plea.

The Sheriffs'

Association feels the interest of justice would be best served if, in the absence of a prosecutor, the consent of the police officer would be required.

SHERIFF MC CLOSKEY: Chairman, Members of the Commission and the Staff, I prepared a brief letter here setting forth my views about this business of the Sheriffs of New York City. I

think I will just read it; it will, briefly, make my point.

First, I believe it is a mistake to have such an exclusion, and I urge strongly that the exclusionary language be eliminated. It is my guess that it is based on the fact that members of the Sheriff's Office in New York City do not, as a matter of daily routine, engage in criminal law enforcement.

I should like to point out that this is equally true in a number of counties outside of New York City and is associated with local custom and practicality, and not with a Sheriff's basic authority or responsibility.

I should like to point out that the authorities and responsibilities involving sheriffs are involved in a common law. Chapter 44 of the New York City Charter, which abolished the elected officers of sheriffs in counties within the City, simultaneously conferred the functions, powers and duties of the formerly elected sheriffs upon the City

Sheriff, with the exception of certain custodial responsibilities which were assigned to the New York City Department of Correction. Section 901 of the County Law also provides that Article 17 of that law, which relates to sheriffs, generally, also applies, generally, to the Sheriff of the City of New York.

I have no doubt that our long-standing policy of leaving the routine enforcement of the criminal law to the New York City Police Department is sound and have every intention of continuing it. At the same time, our authority and ability to act in the public interest in emergencies should not be impaired or confused. For example, there have been a number of occasions when deputy sheriffs going about their usual duties have come upon violations of the criminal law such as muggings and purse snatchings in the absence of members of the Police Department and have taken appropriate police action, turning the offenders over to police custody at the earliest opportunity.

On a broader scale,

our unquestioned authority to take effective police action was utilized during World War II when at the request of the ten Mayor we discharged extensive responsibilities for the enforcement of OPA rationing and pricing regulations in the local and federal criminal courts. Recently, we were asked by the present Mayor to help in the city's efforts to combat so-called traffic scofflaws who have ignored multiple traffic tickets. We have not actually assumed such duties as yet but we may do so at any time and it is certainly in the public interest that our authority to discharge these or similar useful duties be retained, for example, the authority to execute Family Court arrest warrants as has been urged by several police commissioners, or to discharge other responsibilities not presently foreseeable.

This necessary authority to act can and should be easily assured by the elimination of the proposed exclusionary language. I do not believe that it can possibly be handled adequately in any other way; such as

incorporating other statutes, something that would give people certain authorities within a range of duties covered by those statutes.

Our staff is not so capable of being segregated.

MR. ALTMAN: Wouldn't that be the duties of a municipality in terms of giving you certain rights as police officers within the City of New York? Wouldn't it be the obligation of the municipality in terms of Mayor Lindsay's request to you to establish that for a period of time you are members of the Police Department?

SHERIFF MC CLOSKEY: I don't see why we need be members of the Police Department. Why can't we just be Sheriffs and we can have these authorities, it would be grossly impractical. We haven't the remotest thought of doing that, but to have them inform us in an emergency seems to be very much in the public interest.

MR. BARTLETT: How many full-time public Sheriffs have you got?

SHERIFF MC CLOSKEY: Fifty-three.

MR. BARTLETT: Are they required to

take the training given to the Police Department?

SHERIFF MC CLOSKEY: No. They are given training by the F.B I. It is not taking police training, but they wouldn't normally do police work.

MR. BARTLETT: Don't the regular Deputies of every other Sheriff's Department in the State take the mandated two hundred forty hour course?

SHERIFF MC CLOSKEY: I believe they do.

MR. BARTLETT: Do you issue service side arms? Does the City issue side arms to the Deputy Sheriffs?

SHERIFF MC CLOSKEY: No. The Deputy Sheriffs all have their own side arms.

MR. BARTLETT: You mentioned cases in which the Sheriffs have acted in the absence of the police. Is the requirement of your office that they act as policemen as well as the power they have?

SHERIFF MC CLOSKEY: I haven't formalized that requirement. As a matter of practice, I

have instructed my deputies not to interfere or risk seeming to be interfering in any action of a police nature with the uniform police officer. Sometimes, the officer wouldn't know who was helping and who was hindering. For that reason, I think it would be unwise for them to go out of their way to look for opportunities to play cop.

I am only talking about instances in which, obviously, there is no cop there and some action should be taken.

MR. ALTMAN: You mean when Deputies are actually present at the scene of a crime?

MR. BARTLETT: Of course, they have, at that juncture, citizen's power. It is not unlikely, I am told, that the municipal Police Training Council will define those police officers who are required to take training in terms of 1.20 of the new Code.

How would you feel about the requirement that your men do take the same police training as the rest of the Police Force?

SHERIFF MC CLOSKEY: I have no objection to that, but if the only reason for this elimination of this exclusionary language was the incidence that I described, where the men come upon the crime, if that were the only reason, I wouldn't be advancing the case at all.

I think the more basic point is that which I referred to, when Mayor LaGuardia wanted to get in the price control business, we had authority to act on warrants and didn't have to go to get warrants to give us the power. This business of Family Court activities come up and business of traffic scofflaws come up. I have no way of knowing what may come up today. I think we should maintain this authority. Leave it there to be available in case the need arises.

MR. BARTLETT: The police, without exception, tell us that more has to be done to professionalize police work. It was the view of the Commission that there is a proper and appropriate relation between the power given to a policeman and the responsibility he has and

the training that ought to be required for him to properly discharge that responsibility.

SHERIFF MC CLOSKEY: I agree with this.

MR. BARTLETT: All I am suggesting to you is, that if it is your view that the fifty odd regular deputies of your Department should be policemen, then they, of course, ought to see to it that they fit into that category in all respects.

SHERIFF MC CLOSKEY: This would, perhaps, be constructive. I don't think they need this police training in order to do the emergency things they are called upon to do. I think it would be constructive, nevertheless. I certainly would have no objection to that.

MR. BARTLETT: Do you know the view of the City on this question?

SHERIFF MC CLOSKEY: No, I haven't discussed it with them at all.

MR. BARTLETT: I thank both Sheriff McMahan and Sheriff McCloskey for appearing.

We will next hear from David Fields, representing the New York State

Association for Mental Health.

MR. FIELDS: First, I want to correct the record as to my status today. I am speaking individually, although I am a member of the Legislative Committee of the New York State Mental Health Association and, also, a member on the Committee of Medicine and Law of the Bar Association of the City of New York.

I would like to submit an adoption of my statement by the State Mental Health Association after they have seen it. They haven't seen it yet.

MR. BARTLETT: Good.

MR. FIELDS: I have six major points in a written memorandum, and one or two more to make orally. They don't necessarily refer to your draft.

Is the opportunity open to discuss this, or should I restrict myself solely to your draft?

MR. BARTLETT: If your comments are by way of omission from the draft, then they are certainly appropriate.

MR. FIELDS: I think it relates to the Code.

This statement is concerned primarily with proposed amendments to the Code of Criminal Procedure insofar as it relates to mentally ill persons, euphemistically sometimes referred to as the criminal insane. In general I recommend that this Commission give serious consideration to the proposals made by the Association of the Bar of the City of New York in cooperation with Fordham University School of Law in its 1968 report entitled "Mental Illness, Due Process and the Criminal Defendant".

1. High priority should be given to the problem of time (or term) expired patients in correctional mental hospitals. Specifically, I refer to patients committed to Matteawan State Hospital under Section 662(b) of the Code of Criminal Procedure. There are still a number of such patients in Matteawan who have been there longer than the period of time to which they

might have been sentenced if convicted. These are patients who are still presumed to be innocent. Although they may be too insane to stand trial, it does not necessarily follow that they are mentally ill to the degree which requires confinement. The test of competency to stand trial is not the same as the test for mental competency to get along in the community. The recommendation of this commission regarding the termination of the indictment in such cases should be adopted. Moreover, in order to correct a long existing evil, I submit that this particular recommendation of the commission should be embodied in a separate bill to insure quick passage. It should be noted that the Association of the Bar in its report has a similar, although not identical, recommendation.

I want to add further that the Bar Association of the City of New York, through its Committee on Medicine and Law has had introduced in the past two sessions of the Legislature, through Assemblymen' Minority Leader in Brooklyn, Steingart --

MR. BARTLETT: [Interposing] You are anticipating a little bit, Mr. Fields.

MR. ALTMAN: Was that a Freudian slip?

MR. BARTLETT: We will know more about that the first week in January

[LAUGHTER].

MR. FIELDS: Assemblyman Steingart twice introduced the bill, and I don't know that it ever got out of Committee.

Now, on this point, which I think is the most important one, I understand that even your own recommendation will not have any retroactive effect.

MR. BARTLETT: That is so.

MR. FIELDS: If that is so, it seems to me your Committee has a duty to introduce two bills because I cannot see how you can ignore the plight of patients who are now in Matteawan for a longer period of time than they could have been sent to jail.

Now, there were cases when you were taking the position of the United

States Supreme Court two years ago; there were several hundred patients who were under indictment, and that was the root through which they got to Matteawan, but were fortunate enough to be in a situation where one or two District Attorneys had moved for the dismissal of the indictment and they were there under nebulous reasons. Under the existing attitudes to the law, they remain in Matteawan.

While the Bagstrom case did not deal with that situation, the Department of Correction felt that its rationale applied to all those patients who were no longer under indictment. They were transferred out to civil hospitals. I can't see any difference between that kind of a case and the case of the criminal who has been indicted and the indictment is still in effect, and has been there longer than he ever would have been sent to jail. I can't see that.

Possibly, in the case of the Appellate Division, Second Department rejected that theory. I think it is up to the

Legislature to take it under consideration.

You probably all remember a few years ago that Judge McDonald, a few years ago, found a case in Matteawan where there wasn't even an indictment in a case of stealing a buggy in 1905, and fifty years later, he was still in Matteawan under charges of criminal misconduct. They finally removed him after Judge McDonald brought the case to light -- or someone else brought it to his attention. He finally got the man out.

It seems to me, if your recommendation is not going to be retroactive, there is a need for another bill, an immediate one. I don't think it ought to wait until 1970 to do something. Nobody objects, by the way, to the point I am making. The Special Committee on the Bar agrees completely.

To that extent, it goes beyond your report. It would approve legislation and have immediate effect on this particular problem.

Point two of my written

statement, while the purpose of this hearing is to discuss the Code of Criminal Procedure, it is necessary to examine some aspects of the Correction Law in certain cases. The pattern of procedure cannot always be found in the Code alone. Specifically, I refer to the commitment of youthful offenders to Matteawan State Hospital. The Code of Criminal Procedure provides for the commitment of youthful offenders to correctional institutions. However, it is in the Correction Law, Section 408 et seq, that one finds the provision for commitment of youthful offenders to Matteawan State Hospital if they become mentally ill while in a reformatory. In a recent case, I should say in a recent case of mine, a Supreme Court Judge in Dutchess County held these commitments proceedings to be unconstitutional; as a matter of law a youthful offender is not a criminal and he may not be deprived of any of his civil rights. I believe that it was a legislative accident which resulted in extending the provisions of Section 408 of the Correction Law

to youthful offenders. The whole purpose of youthful offender laws is to give them preferred treatment and to rehabilitate them as rapidly as possible, and no useful purpose is served by permitting their commitment to Matteawan when they become mentally ill, nor would there be any administrative problem if they were committed to civil mental hospitals in the event of mental illness. Some youthful offenders receive suspended sentences and are set free. If they subsequently become mentally ill they are sent to civil hospitals. The fact that they have previously been convicted has no bearing on the matter. Youthful offenders who have been convicted and sent to reformatories and those who are convicted and given suspended sentences should be treated in the same manner if mental illness should ensue.

3. Another problem is that of who should have the burden of proof in proceedings involving the mentally ill in correctional hospitals. Now, I don't think there is anything in the Code about this at all.

MR. ALTMAN: In what way is the burden of proof shifted?

MR. FIELDS: In the Department of Mental Hygiene, in specific cases where they have origin under 662(b) of the Code. Now, under 872, some patients, depending upon where the Commission of Mental Hygiene places them, land in Matteawan, but they can't be kept there more than thirty days without some kind of retention proceeding. That is very similar to the detention procedure under the Mental Hygiene Law.

In those procedures, the institution bears -- it is the State that bears the burden of proof, and they generally start off on the proceeding. The witnesses for the hospital testify first and, then, the patient's case is put in.

In a Habeas Corpus proceeding, it might be the exact same thing. In other words, suppose, at the end of ten days, a patient starts a proceeding. He has the burden of proof or, suppose, in a first

retention hearing, an order is made directly -- he is being held for a year, a month or six months, and before that period, a patient may file a petition or a writ of Habeas Corpus. It is absolutely no different than these proceedings.

MR. BARTLETT: You believe that there is a different standard of proof?

MR. FIELDS: There is a different burden of proof. I can't see why the burden should shift to the patient merely because he says, "Well, I am now in better shape than I was." That is not reason enough.

MR. BARTLETT: You are really saying, then, that no matter how many hearings are held, there might be a whole series of them, each time the burden should be on the hospital or on the institution to justify the retention?

MR. FIELDS: I think this is an idea which is not generally accepted. I think if you adopted that idea, you would be breaking ground with precedent in some cases.

MR. BARTLETT: Do you think wisely?

MR. FIELDS: Yes. I have been

trying cases up in Matteawan and in civil hospitals and I, for the life of me, can't see any reason why this shouldn't be done.

Now, as a matter of fact, there is one part of the law, in the Civil Practice Act, in which you have Habeas Corpus provision, you have them in the Civil Practice Law and Rules. The Civil Practice Law hints that at least the burden going forward is always -- C.P.L.R. provides in part as follows: "The Court shall proceed in a summary manner to hear the evidence produced in support of and against the detention and to dispose of the proceeding as justice requires."

Now, there, it seems to me, the burden of going forward is always on the jailer, and there is no burden of proof. If you read the last phrase, it says "Justice required."

It seems to me that that should be surely in the memorandum. I think, in most cases, that those judges who have been enlightened and sophisticated are

really trying to apply that standard.

What is justice required? A case in mind, one up in the Appellate Division on Habeas Corpus a couple of years ago, and two psychiatrists testified for the hospital and two for the patient, and the writ was dismissed on appeal and, in reviewing the whole record, the Appellate Division said, "We cannot tell from this record, the testimony of the four psychiatrists, whether or not this patient was sane enough to go back for trial."

They were remanding it to the same Judge to have the trial continued, and he was directed to appoint a fifth psychiatrist to help him decide the issue.

Now, basically, I think what the Appellate Division did in that case, and what many Judges do, is to ignore the burden of proof rule no matter where it lies, to try to find out what "justice requires."

I say, there is some support for this in Civil Practice Law rules.

It has become the

practice in Habeas Corpus proceedings to impose the burden of proof of sanity on the patient. On the other hand, in "retention" proceedings it is said that the burden of proof is on the hospital authorities. Since the issues are identical, no matter how the proceedings are initiated, it is difficult to understand why the burden of proof is not always upon those who seek to continue the confinement of a person on the basis of alleged insanity. It is difficult to develop any sound rationale for the conclusion that a person deprived of his liberty should ever have the burden of proof when he seeks his freedom. In fact, the Civil Practice Laws and Rules seem to indicate that the burden of going forward, if not the burden of proof, is on the person who seeks to detain another.

4. In proceedings involving the insane and the mentally ill, as an exception to the Hearsay Rule, mental hospital records are admissible in evidence against the alleged insane person. There is no objection to such admission with respect to

entries which are similar to entries in a general hospital record. But when the entries consist of statements allegedly made by the patient or allegedly made by an attendant or persons other than the doctors on the hospital staff, there is a situation of hearsay based upon hearsay. When such evidence is introduced against a patient petitioning for his freedom, he has no way of negating such evidence unless he were to subpoena every person whose hearsay statement has been incorporated in the record. To do so would result in greatly prolonging the hearings and would undoubtedly result in greatly increased calendar congestion. It would be far better to require a separate record of hearsay statements to be maintained so that a trial court could separately rule on its admissibility without impairing the admissibility of the basic entries in the hospital record. The Code of Criminal Procedure should contain not only provisions for admitting mentally ill accused persons to Matteawan but appropriate safeguards when they seek their

release.

MR. KNAPP: It seems to me you have a good point as to hearsay statements about attendants, but what about statements attributed to the patient, themselves?

MR. FIELDS: Other patients.

MR. BARTLETT: Your point is, that no matter what its character or origin, it is let in under the general exception of --

MR. FIELDS: [Interposing] As a matter of fact, an attorney for the patient could stack the record. I could say, "Send a psychologist to Matteawan," and he can get in to see the statement. I can say, "I would like now to have you make it a part of the report." It is now part of the report to the detriment of the hospital. The psychiatrist is never there, he has never been called; maybe he is unavailable. Under the existing law, that is part of the hospital record that has to be considered by the Judge.

MR. BARTLETT: This, more appropriately, would be accomplished by the

C.P. L. R.; would it not?

MR. FIELDS: I don't know. There are ways of putting a man into the hospital and saying and thinking under 662(b), we set up the machinery to put him in. I think we ought to make sure the machinery is right to get him out.

There is some merit in what you are saying, but all rules of evidence in all procedures, some of them are in the Code and some are elsewhere.

MR. BARTLETT: As you know, our proposed Code would leave very few in the C.P.L.R. In any case, proceed.

MR. FIELDS: You feel, as a general matter, all of these things should go into the C.P.L.R.?

MR. BARTLETT: Yes, unless otherwise provided by statute or civil rules, the rules applicable in civil cases are applicable here.

MR. FIELDS: It is a problem, but if that is the way it is to be handled, I have no objection. The same thing will follow in the next point, point five.

5. One of the practices which has troubled lawyers who represent patients in Matteawan is the apparent violation of the doctor-patient confidential communication privilege. Doctors on the hospital staff, who treat patients regularly testify against such patients in Habeas Corpus and retention proceedings and regularly reveal the statements of their patients. It is urged that by seeking his release the patient has waived the privilege. Yet there seems to be no warrant in law for finding that such a waiver has been made. Psychiatrists who stand in the relationship of treating doctor to patient should not be permitted to testify in court. Outside doctors or other doctors on the hospital staff who have not treated the patient should be required to examine the patient and testify in such proceedings.

Now, there again, that is a matter that seems to be pressing.

MR. ALTMAN:

So that, any testimony of a doctor at the hospital would not be

admissible on the basis of privilege. So that what you are saying is, that only outside psychiatrists --

MR. FIELDS: [Interposing]
Outside the treatment relationship.

MR. ALTMAN: That's right.

MR. FIELDS: There may be others of the same staff. Doctor Johnson, to my view, would always be a competent doctor. He doesn't treat. He has the right to, but he has so many administrative duties. Other doctors may see patients in Building A, but not in Building B. Now, there is a precedent for this to show the attitude of the legislator and the State.

In the Mental Hygiene Law, Section 85 has to do with committing dangerous mental persons from the civil hospital to Matteawan and protective features added, "Such commitment is not to be regarded as proof of any crime." There is a provision that the examining doctors must be from a different institution.

Now, there is some

question whether the testifying doctors in Section 85 are from different institutions, but those who examine and certify in court that the patient should be transferred from Matteawan, are different doctors. It seems to me that Section 85 of the Mental Hygiene Law should be put in here.

MR. KNAPP: I see your point, but the question before the Judge is whether this particular man or woman, is it better for himself or herself to be in a hospital or out of a hospital; and you are excluding from the Judge's consideration the one person who knows most about it.

MR. FIELDS: I am also suggesting that there be excluded a man who has a partisan position.

MR. KNAPP: Why should we assume he is partisan?

MR. FIELDS: I can refer you to very respectable authority on that. I just finished reading a writing in the Law Journal. I would be glad to submit the article. It

didn't occur to me it would be appropriate here. In the first place, I think it is a mistake to assume that the impartial witness in the procedure, if you use it, is necessarily a good one. There are many places in our law where we allegedly bring in the impartial witness, and that is not always the best one.

The psychiatrist and social worker is supposed to be impartial. They want to be impartial, but they are as prejudiced as anybody else and they can't escape it. A psychiatrist has written that it is practically impossible for a psychiatrist to come to any case as an impartial psychiatrist. He comes with his built-in prejudices, whatever they are.

MR. BARTLETT: You are not suggesting that bias commences from the very fact of hiring someone.

MR. FIELDS: Yes.

MR. KNAPP: Why should we presume a partiality just out of the patient relationship?

MR. FIELDS: It is ipso facto too that a psychiatrist comes in to testify, he is biased. If he wasn't biased, the patient wouldn't be there.

MR. KNAPP: You are suggesting he must be mistaken?

MR. FIELDS: I don't say he is mistaken; he is biased.

MR. BARTLETT: There is not much point in getting certain testimony unless they have a point of view, is there?

MR. FIELDS: Of course, they should have a point of view. You are now getting a point of view from the man who has the deepest bias.

MR. KNAPP: This, it seems to me, the Judge should take into account; but still, it is the man who knows most about it.

MR. FIELDS: How do you distinguish this from Section 85? That says that the hospital --

MR. KNAPP: [Interposing] That is a different thing when you are trying to

punish a man.

MR. FIELDS: That is not to punish him. We are merely saying Matteawan is the place to better take care of him. That is not a punishment. At least, that is not the theory.

MR. BARTLETT: All of what you have to say is interesting, and you make some very good points. We will see to it that your statement is also circulated to other agencies other than ours, who have a broader interest in the mental hygiene field.

MR. FIELDS: This has to do with the use of drugs, my next statement.

6. When are indicted patients who have been committed to a mental hospital until they are sane enough to stand trial to be deemed recovered? If such patients are able to control their psychotic reactions by the use of drugs, should they be remanded to the criminal court of origin and permitted to stand trial? Doctors in Matteawan take the position that patients committed under Section 662(b) are not sane enough to stand trial

unless they can get along without drugs. Numerous psychiatrists in the Department of Mental Hygiene take the opposite position. They regard the problem as similar to that of a patient who requires insulin in order to function. Insulin does not cure the disease. Similarly, tranquilizing drugs do not cure basic pathology, but many doctors regard it as a denial of constitutional rights to refuse a patient the right to a speedy trial merely because he requires the use of tranquilizing drugs to get along. Attached hereto is an article on the subject of tranquilizing drugs by an expert in the field.

There is quite a dispute, even within the State, on whether or not an accused person, under Section 662(b) of the Code, who has been committed to Matteawan is to be deemed recovered so he can stand trial if he needs tranquilizing drugs to help him control his psychotic reactions. The doctors say, unless a man is capable of standing trial without the use of drugs, he is insane.

Psychiatrists in the Department of Mental Hygiene who face the very same problem, have said that that is nonsense. The situation should be analogized to the case of a man who suffers from diabetes and needs insulin. Of course, the underlying pathology remains, you should control the symptoms.

MR. BARTLETT: It would be rather hard to deal with that statutorily, wouldn't it?

MR. FIELDS: I think there is a case on this in the Civil Liberties Union.

MR. KNAPP: Speaking for myself, it seems to me you are one thousand per cent right.

MR. FIELDS: Attached to my statement you see an article by C. B. Scrignar, M. D., Assistant Professor of Psychiatry at Tulane University School of Medicine called "Tranquilizers and the Psychotic Defendant." It is his opinion, and mine, to keep them first in Matteawan because he needs tranquilizers and drugs, is unconstitutional. I have, in fact, taken tranquilizing drugs in my day, and I am

sure many judges have and I know many people who have.

MR. KNAPP: Or maybe should.

MR. DUNNE: Do you have the name of that case you are referring to that is in the Court of Appeals?

MR. FIELDS: I would have to dig it up. I sort of got rusty on it in the last six months. I got rid of every case because I was sick and other attorneys have them.

Now, I would like to turn briefly to something you asked, or one of you asked Mr. Carr this morning about the D.O.R. I am not sure what the proposal of the Human Aid Society was, but if it dealt with the proposal to make an order denying a dismissal of indictment upon examination of the Grand Jury Minutes appealable, and if that is the question that was raised here, is there any case that making it appealable would help, I know of such cases.

MR. ALTMAN: Mr. Knapp was interested in that point.

MR. BARTLETT: Appealability.

MR. FIELDS: Is that the issue, appealability, that he had raised?

MR. KNAPP: The question that Mr. Carr and I were discussing, under the present law is appealable. You present a case to the Grand Jury and there is a defect in proof --

MR. FIELDS: [Interposing] It is only appealable after conviction.

MR. KNAPP: Then, there is a conviction and there is adequate proof on the conviction. The law we propose eliminates an appeal at that point from prior order of the judge. You cannot review under the laws we are proposing. You cannot review it, presumably, by hypothesis the erroneous order of the judge that says there was adequate proof before the Grand Jury.

MR. FIELDS: I thought it was Mr. Carr's point that it should be appealable at the first instance.

MR. KNAPP: No, that was not his point.

MR. BARTLETT: The point was, that
after trial --

MR. FIELDS: [Interposing] Then,
let me state the point. I think, in this kind
of case I am about to describe, it should be
appealable in the first instance.

I have been involved
in several cases where mentally ill persons
have been arrested during the course of what
appeared to be the stealing of a car. In both
cases, they were indicted and in both cases
they landed in the hospital, one in Matteawan
and one in Pilgrim State Hospital. In both
cases, they were discharged as capable of
standing trial. In both cases, the District
Attorneys were sympathetic to the degree they
were willing to accept a plea less than the
plea of grand larceny, and went to petty
larceny.

In one, the patient
was so anxious to get it over, against my
advise he took the plea of larceny. There
wasn't any question at any time that he was

psychotic at the time of taking of the car. He wouldn't have taken it otherwise. He is convicted. The other one was also stealing a car. A boy came up from Washington, a Veteran, he thought he was on his way to New London, but landed in Great Neck, Long Island. He saw a car. He had a delusion that some magnificent power had placed it there for his use.

He stepped in. There was a key in the car and he started it up, he started backing it up and back and forth, he banged it up ten minutes after he was arrested and taken to Meadow Brook Hospital in Nassau, transferred to Pilgrim State and, while he was in Pilgrim State, he was indicted for grand larceny. He spent a year trying to prevent that case from coming to trial on the ground that the evidence was clear that he never could be convicted and all they would succeed in doing, if he went to trial and pleaded not guilty by reason of insanity under existing law, he would have to be put back in Pilgrim State Hospital and he lived in Washington, D. C.

The District Attorney

again offered him to take a plea to a lesser offense. This client agreed with me that he should not be compelled to confess to a crime that had not taken place. About a year later, we reached the trial date and the Assistant District Attorney said, "My witness who attempted to arrest him says this guy was nutty as a fruitcake when he picked him up and was entirely irrational. I am going to have to attest to this." You said there was no crime, and yet you want me to urge him to accept a plea to a lesser offense?

He said, "We are bound to. That is a practice of our office. We are bound to do it."

Well, they didn't try to do it. We finally picked out not petty larceny charges, we finally picked out something to do with railroads that had nothing to do with it, but it seemed to apply.

When the Grand Jury show or should show that you are dealing with

a situation where no crime could have taken place, particularly a crime in a non-violent situation -- I recognize in a crime of violence you face a different problem -- but in these cases where it is agreed that the man -- that the evidence shows -- I still think it is unfair to force these men to trial and to take the risk of being sent back to a hospital as the only way out.

MR. KNAPP: I agree with everything you said except I don't think your remedy is going to get you anywhere because the Grand Jury Minutes won't show you anything.

MR. FIELDS: I refer to you a case against Stanley Russell. Should not the District Attorney, when he is indicting a man who is already in the hospital, be required to tell the Grand Jury that? Isn't that for the Code of Criminal Procedure?

MR. KNAPP: The Code of Criminal Procedure can't tell the District Attorney to use common sense. He shouldn't have been indicted in the first place, but the Grand Jury

will merely show, "Did you see the fellow?"

"Yes." "Did you pick him up?" "Yes."

That would be the cop's testimony, and then the testimony of the owner who says it is his car.

MR. FIELDS: I am talking about where they do or could, I think it should be the duty of the District Attorney.

MR. ALTMAN: You would require the District Attorney to disclose those facts to the Grand Jury?

MR. DENZER: Some judges take the position that you should never litigate insanity before the Grand Jury. That is not a matter for the Grand Jury. If you inform them then there is an issue, and they have to make a determination. Many judges will say that should never be an issue before the Grand Jury.

MR. FIELDS: I respectfully take issue with the judges.

Another issue is the Miranda case. How is the mentally ill person who can't defend himself going to be

represented by counsel if the District Attorney indicts him while he is in a civil mental hospital? I think, not only should the District Attorney inform the Grand Jury, I think the District Attorney should be required to inform a mentally ill patient that he is about to be indicted so he can get counsel. He might want to appear before the Grand Jury and he can't go if he is not told about it.

That is another aspect of this thing that seems to be serious, that patients in a mental hospital should be informed that an indictment is about to take place; otherwise, you deny the theory and the thinking of the Supreme Court in the Miranda case.

Last, and this has nothing to do with mentally ill patients, I would like to call your attention to a thought I brought to Judge David Glickman, the Administrative Judge of Suffolk County, and that has to do with, primarily, Justices of the Peace before whom are filed informations by

local people, one against the other, relative to non-serious allegations. I have had several of those where the allegation is violating the landlord-tenant relationship, which constitutes a crime or misdemeanor. The J. P.'s are not lawyers and not aware they have the power to issue summonses.

In the Township of Easthampton, I know of no case where a criminal case was initiated by summons except for ordinances of the Town; but where they allegedly violated laws in the Penal Code, and the plaintiff comes in and says, "Violation of the Penal Code," a warrant of arrest is issued and the cop goes out and picks up his friend and brings him in, and the judge says, "All right, how do you plead?" "Not guilty." The judge says, "You are discharged in your own custody."

I think you need something more than the summonses that you provide, something more than merely providing for it. Perhaps, what you ought to do is require the judge to determine, in some lower

categories of charges from the complainant, whether he wishes to proceed by warrant of arrest or summons.

MR. BARTLETT: That shouldn't be left to the complainant, should it?

MR. FIELDS: In the case of Southampton, a bad check case came up. The person who had been in loss by the transaction went into a J. P. Court seeking some proceeding. He didn't know if he wanted a civil proceeding or a criminal proceeding. The J. P. said, "If you start a civil procedure, you have to go out and get a lawyer. If you file a criminal charge, the police can take care of it." So, he filled out a criminal proceedings and the cop went out and picked up the defendant, and he was released the next day. Then, before the case came to trial, the accused brought in the check, proof of payment of the check before his arrest. Now, the officer is being sued for one hundred thousand dollars for false arrest.

MR. BARTLETT: He didn't have to,

of course, but it seems the best you can do would be to leave it to the judges' discretion. I don't know how we can write statutory rules.

MR. FIELDS: I don't know if they know they have the discretion.

MR. BARTLETT: Perhaps, by 1970 they will know.

We will just take a couple of minutes here. Just a minute, please. We will proceed until one o'clock and reconvene at two.

[WHEREUPON THIS HEARING WAS ADJOURNED AT 11:55 A. M. AND RECONVENED AT 12:10 P. M.]

MR. BARTLETT: We will commence again and our first witness speaking for the New York State Parole Officers' Association is Nathan Grant.

MR. GRANT: Thank you, Mr. Bartlett. I am President of the New York State Parole Officers' Association. My Associate is Mr. Sheppard. He is the Vice-President of the New York Chapter and, also, an attorney. We are both stationed out of the New York Office.

You have heard from Mr. Bernstein in Rochester, and Mr. Abinetski in Albany and, therefore, I will attempt not to repeat what they have already said. I hope, instead, to sum up the position of the four hundred Parole Officers and Senior Parole Officers who are members of our Association. I am also aware of the position Commissioner Jones holds within the Committee, and I am sure he can answer most questions.

We must understand that the Parole Officers are highly trained, highly educated and hold a unique position in the community. The Parole Officer supervises some twenty-five thousand parolees a year, some four hundred fifty thousand contacts are made that same year.

I am convinced that by now you are aware that Parole Officers are not limited to a five day work week or a nine to five work day. Instead, our contacts are twenty-four hours a day, seven days a week. We are constantly called upon to assist other law

enforcement officers and agencies. To say we work closely with the police is putting it mildly. At times, we are the only ones on the scene, and the community is protected without their knowledge.

I can recall when I first became a Parole Officer, some thirteen and a half years ago, the key word was "protection of the community." Today, it seems that the need of the community has taken a back seat. Now, the convicted criminal appears to have more protection. We hear talk about doing away with peace officer status, of parole officers. There is further talk about doing entirely away with Parole Officers and placing them into a unit called Rehabilitation Workers.

I wonder if you realize the consequences of this? To take away peace officer status, you help the criminal and you do a disservice to the public in the form of a failure to provide a deterrent against additional crimes in all of the fields of robbery, burglary, grand larceny, rape, etc.

With crime on the upsurge and law and order disregarded, can you, in all fairness, consider limiting the powers of Parole Officers?

I was pleased to note that you included, under Section 1, Sub-Section 32(a) a continuance of peace officer powers or Parole Officers. While I am not -- and I repeat this -- I am not recommending police powers for Parole Officers, but in view of the function of the Parole Officers and his duties, he would be more likely to be working in areas of high delinquency. Therefore, I feel that a Parole Officer should have some legal protection in his capacity of protecting the community on a non-parole matter and as a private citizen.

I do not know how this could be accomplished. There are two elements of the proposed changes which I have some questions about, and I would like to cite two examples on it.

While on duty doing parole work, all we covered on the Stop and Frisk Law in regard to an individual found in

the company or associating with our parolee?

MR. BARTLETT: You are on duty?

MR. GRANT: Right.

MR. BARTLETT: You are talking about a parolee and you have reason to believe that a third person, at the same place, may have committed a crime?

MR. GRANT: No. Let's be a little more specific, Mr. Bartlett. Let's put it this way: That we observed an individual, being on parole and a warrant has been issued for his arrest, and we, as Parole Officers, have the obligation to arrest this man and we attempt to take him into custody and he is found with another individual. Now, where do we stand? Do we take our man into custody, turn our back on the other man?

MR. BARTLETT: What has the other man done?

MR. GRANT: He has done nothing, but let's assume this man may have a criminal record. We would want to have some identification in view of the fact that one of the specific

rules for a man to be released on parole is the fact he cannot associate with an individual having a criminal record. Do you suggest that we do nothing and, for the record, do you suggest we do nothing and let the man walk the street, and suppose he doesn't let us take him? Suppose we turn our back and this man suddenly assaults one of our Parole Officers?

MR. BARTLETT: Let me ask a question of you. What is your practice now?

MR. GRANT: Our practice up to now is to ask identification of the person associating with our parolee.

MR. BARTLETT: You feel he falls under the Stop and Frisk Provisions at this point, is that right?

MR. GRANT: I am not sure. I would like to have a clarification of the Committee. If you advise me whether we are legally in a position to do that --

MR. BARTLETT: [Interposing] We are not judges, of course, and we would hesitate to give you pronouncements on which you can rely

like this. I think your question is, under the proposal, or is it not, if you would be in the capacity of a police officer at that moment?

My answer would be to you, yes, because it seems clear that under the proposed language of 7051 that you are a Peace Officer acting pursuant to special duty at that moment.

MR. GRANT: Once we question an individual who we would have any jurisdiction over, I wonder how it would sit. It would probably end up in court.

MR. BARTLETT: It might well end up in court, and that's why I am sure you can understand why we would be reluctant to give you any kind of final advise on it. Maybe, you should ask your Commission to set policy on it. I think your real question as to proposed changes, whether you would be acting, in effect, as Police Officers at that time. It seems to me that you would be, then, in execution of your special duties, as we intend them to be.

MR. GRANT: Then, to take it a

step further, we find a parolee who is, also, let's say, wanted by the Division and, in fact, is possibly wanted by the local police, and he found in a car. Now again, we would want to question the driver of the vehicle and get proper identification to see whether, in fact, the car is stolen and who this individual is. It is happening now, but I am wondering whether there is some sort of coverage in any way in the new proposal.

MR. BARTLETT: I, myself, have to answer you in this way -- the situation you describe, again, is one in which you would be acting pursuant to your special duties. It would be in precisely the same classification as a police officer.

MR. GRANT: I don't want to carry this any further. I would give you a number of examples, and I have recently been hearing a number of situations where our Parole Officers have been assaulted, and we have been getting threatening calls at home. It seems to be the feeling of the day that if you have anything

to do with the law and you are the man to react, whether it is in the family or in another way, I am really interested in protecting the members of the Association.

MR. BARTLETT: We are, too.

MR. DENZER: There is nothing in here that prevents a Parole Officer from defending himself against assault.

MR. GRANT: I am wondering whether we have to reach that point.

MR. BARTLETT: The status of a policeman is no different there.

MR. GRANT: We would rather not have to protect ourselves, but have you ever tried to get identification from a man who doesn't want to give it to you?

MR. DENZER: There is not even a provision in here for the police with respect to that. We don't authorize the police to attack people in order to get an identification in some way.

MR. GRANT: Did you say attack?

MR. DENZER: Yes. How do you get

an identification?

MR. GRANT: It is a difficult situation.

MR. BARTLETT: In the two situations you describe to us, Mr. Grant, it is the purport of this draft that you would be able to act in the same capacity as a police officer.

MR. GRANT: I thank you for that. I thought about this thing and I spoke to Mr. Bernstein and Mr. Abinetski. I think you are aware now that we are not asking for actual police officer powers, which has been a change from our initial thoughts on this. I would like to suggest, if this could be properly worked out, that the Committee might set up three categories, one for police officers, a second would be peace officers, who deal with criminal investigations pursuant to their functions. I think there would be three or four groups that fall into that.

The third category, Parole Officers for the remainder. I don't want anybody to jump on me at this point, but

it would be a good idea if we be put into some sort of separate category where we have additional powers.

MR. BARTLETT: I do appreciate the very thoughtful consideration that the Parole Officers' Association has given to this problem. You have recognized that we have a problem, which is important. Any suggestions you have for improvement on the October draft?

MR. GRANT: No. I read that, and Mr. Sheppard has that also. We have no suggestions other than what I brought before you today.

MR. BARTLETT: If questions come up, please don't hesitate to call on us.

MR. GRANT: Thank you.

MR. BARTLETT: Thank you, Mr. Grant. We will now hear from Mr. Brofsky, representing the Triborough Bridge and Tunnel Officers.

MR. BROFSKY: Mr. Bartlett and members of the Committee, on behalf of the Bridge and Tunnel Officers, I would like to thank the Committee for the opportunity to

speaking on a proposed amendment to the Penal Code to admit Bridge and Tunnel Officers to the status of Peace Officers.

With the Committee's permission, I would like to read into the record certain facts and figures. As you are probably aware, the TBTA operates nine bridges and tunnels. The following information is related to one, the Brooklyn-Battery Tunnel.

Since January 1st of this year, it has been necessary to call for police assistance to this tunnel a total of over three hundred times. This requires two police officers to be taken off regular patrol. It is estimated that some six hundred man hours have been lost. That is six hundred hours when citizens of this City have been left unguarded. You may ask, "What was the nature of these police assistance calls?" They run the gamut of abandoned cars, accidents, stolen cars, breaking and entering, hit-and-runs, arrests, assaults and suspicious persons. Multiply this one facility by nine and you can see the

tremendous drain of police manpower in our City.

In a one month study conducted in August, 1966, a total of six hundred one vehicle law violations were observed and reported at this tunnel. They were as follows: 362 crossings of double white line; 70 operating smoking vehicle; 61 disobeying signs; 28 failure to comply; 48 reckless driving; 28 miscellaneous (drunken driving, no registration, no lights, etc.) No action was taken on these violations.

MR. ALTMAN: How long a period is this?

MR. BROFSKY: A one month period. No action was taken on these violations other than having them entered into log books by the Triborough Bridge and Tunnel Authority.

MR. BARTLETT: No summonses were issued?

MR. BROFSKY: No.

MR. BARTLETT: Why was this?

MR. BROFSKY: This you will have to ask the Triborough Bridge and Tunnel

Authority.

MR. BARTLETT: What is your status at the present time?

MR. BROFSKY: We have no status at the present time.

MR. BARTLETT: I take it, if you enter these in your log, you do stop a car?

MR. BROFSKY: Yes.

MR. BARTLETT: You wear a uniform?

MR. BROFSKY: Yes.

MR. BARTLETT: You stop a car and get the necessary information, and look at his license?

MR. BROFSKY: Yes, sir.

MR. BARTLETT: Then, you have some method of reporting that to the authorities?

MR. BROFSKY: Yes, sir.

MR. BARTLETT: That is the end of it?

MR. BROFSKY: Yes. The only time something is done is if an officer witnesses this.

SENATOR SMITH: Why is that?

MR. BROFSKY: That is the policy of

the Triborough Bridge and Tunnel Authority. If a summons was issued and fought, an attendant would have to go to court and they feel this would cost them more money because they would have to have another man replace him.

The constant increase of violations represents a clear need for law enforcement power for Bridge and Tunnel Officers. Traffic control and law enforcement go hand in hand. If the City Police did not have enforcement power, it would make a mockery of our laws. To further prove this point, since the stringent enforcement of vehicle laws on the Long Island parkways, not one fatality has been reported. Accidents have been reduced ninety-two per cent. Of course, it is sad to report that it took a salary dispute to obtain this result.

The present policy with regard to law enforcement has caused considerable confusion among the judiciary, as well as law enforcement agencies, concerning actual jurisdiction under which law enforcement

on TBTA property should be placed.

The case of People vs. Malmud (1957-1958) is an excellent example. The right of the Bridge and Tunnel Officer to give traffic directions was challenged when Mr. Malmud refused to obey the directions of an officer. He was issued a summons. Traffic Court dismissed the charge without prejudice. TBTA obtained a Magistrate's summons. The Court of Special Sessions dismissed the case. TBTA appealed; the Appellate Division reversed the dismissal of the Court of Special Sessions.

MR. BARTLETT: Which reversed?

MR. BROFSKY: Yes. The defendant appealed. The case was sent back to Special Sessions. Mr. Malmud was dismissed on his own recognizance. The case rests. This did not solve the problem of sufficient right to enforce the law. The defendant was found neither guilty nor not guilty. New York City's traffic regulations provide that motorists must obey signals and directions of a Bridge and Tunnel Officer, (section 140). Motorists, and

especially those who are bent on violations, take this to mean, obey only when the City Police are in sight. Without peace officer status, the signals and directions of a Bridge and Tunnel Officer will be challenged as has happened in the past, as is happening in the present and will continue to happen in the future, unless we are given the power to enforce the law.

MR. ALTMAN: If you work for an authority that doesn't want to give you that authority, what do you propose that we do in that respect? Give you the status of police officers even though the Authority doesn't want you to have it?

MR. BROFSKY: In the last session of the Legislature, there was a Bill to give us the power to act as police officers.

MR. ALTMAN: Suppose you are given this police power and the Authority says, "Don't give any tickets." Are you going to do it anyway?

MR. BROFSKY: As police officers,

we have no choice.

MR. BARTLETT: You know the position of the City of New York on this?

MR. BROFSKY: Yes. They have backed our request.

MR. BARTLETT: Have you seen the draft of our October 14th Hearing?

MR. BROFSKY: No, I haven't.

MR. BARTLETT: May I ask that you arrange to get a copy and, then, I would like to hear from you by letter as to how you, yourselves, in the context of that proposal which might resolve your difficulty.

Your men do not now have any police training, as such, do they?

MR. BROFSKY: No.

MR. BARTLETT: You are not issued weapons?

MR. BROFSKY: No.

MR. BARTLETT: Would it be your view that members of the Bridge and Tunnel Authority, if they were given the power of police officers, should have twenty-four hour responsibilities

to enforce the law as the police officers do?
I am talking about off-duty responsibility.

MR. BROFSKY: Yes. It would be a
necessary help to the citizens of this City.

MR. BARTLETT: That is, if you were
trained?

MR. BROFSKY: Definitely.

MR. DENZER: It is well within the
power of the Tunnel Authority to make you peace
officers. All they have to do is create a
Police Force within the Authority.

MR. BROFSKY: We did have that power
when the Authority was first formed.

MR. DENZER: The trouble here is
you are not members of a Police Force of an
Authority.

MR. BROFSKY: That's right, sir.

MR. DENZER: Why not, because the
Authority, itself, doesn't want you to be, is it
not?

MR. BROFSKY: That is true.

MR. DENZER: Why not?

MR. BROFSKY: We feel it is a

question of financial interest. The Authority was chartered under certain stipulations for the health, welfare and safety of the people of this State, and we feel we are failing the people.

MR. BARTLETT: Our draft provides that a member of an authorized Police Department of an Authority is a full fledged, one hundred per cent, twenty-four hour cop and all the Authority has to do is to make you a Police Department. We are wondering whether we are in a position, having clearly spelled out the authority for people to make you policemen, we are in a position to disregard their view and just write you into the law.

MR. DENZER: If they are not willing to do it, why should we?

MR. BROFSKY: I feel it is incumbent upon you as representatives of the people.

MR. BARTLETT: Did you have negotiations recently with the Authority?

MR. BROFSKY: Yes.

MR. BARTLETT: Did this matter come up in the negotiations?

MR. BROFSKY: Yes.

MR. BARTLETT: Was any decision reached?

MR. BROFSKY: No.

At this time I would like to say a few words as to the caliber and qualifications of the Bridge and Tunnel Officers. Over ninety per cent are veterans who served their country honorably in times of war and peace. They must pass a competitive written examination similar to that given police officer candidates.

MR. BARTLETT: Does any part of that examination relate to police work?

MR. BROFSKY: Yes. The last test that I took, there were one hundred questions; seventy-five were the exact questions that police officers have to answer. The last twenty-five were related to the Tunnel Authority. The physical is exactly the same.

The following are some

duties of a police officer. 1) Direct traffic; 2) Serve as part of a uniformed force; 3) Be constantly alert for traffic violations; 4) Fight fires; 5) Serve as part of a public safety force; 6) Be on 24 hour call; 7) Serve as a Civil Service employee; 8) Work in all weather conditions; 9) Work in rotating shifts; 10) Be exposed to physical danger; 11) Pass a stern probationary period.

Of course these are just a few, but these are the very same duties of a Bridge and Tunnel Officer. The similarities are many but there are a few major differences: 1) The Bridge and Tunnel Officer retires after longer service. He retires at less compensation than police officers, Transit Authority Police, Housing Authority Police, or Port Authority Police.

2) He receives less salary than the City Police, etc.

3) Last, and most important, he receives his salary, not from the City Treasury, but from the funds of TBTA. At

therein depriving citizens of needed protection, does not abide by the charter by which the Authority was founded.

The purpose of the Bridge and Tunnel Officers is contained in the rules and regulations of the Authority, which clearly state that, while the principal function of this force is to collect tolls, the principal duty which must take precedence over this function is that the officers must constantly bear in mind the welfare and safety of persons, and the security of property used or being conveyed through or on our facilities. These then have been our sworn primary duties; expediting the movement of traffic, keeping the roadways clean and safe and protecting life and property. This is not the purpose of a "toll collector" but rather the purpose of a Bridge and Tunnel Officer. The time has come to stop forcing the public to pay twice for the policing of bridges and tunnels through taxes to the City and tolls to the Triborough Bridge and Tunnel Authority.

MR. BARTLETT: Does your number of five hundred forty include the total officers?

MR. BROFSKY: Yes. Some work in the toll booths and some work in the tunnel.

MR. BARTLETT: You have some female employees?

MR. BROFSKY: None whatsoever.

All the other public authorities have seen fit to back their uniformed forces with peace officer status. Among them are the Housing Authority, the Transit Authority, the Port Authority, the Buffalo and Fort Erie Public Bridge Authority and the New York State Bridge Authority.

It is pointless to make laws governing the use of the bridges and tunnels and then disregard the need for extending law enforcement powers to those who are charged with carrying out these laws.

In this respect we are in complete agreement with the City Council which in its legislative rules last year voted unanimously on a home rule bill to the State

Legislature, asking that peace officer status be granted to Bridge and Tunnel Officers. This was one of the very few times that both Democrat and Republicans joined together. They are to be commended for their action in the public's behalf.

The State Legislature last year voted almost unanimously (one "nay") for a bill granting peace officer status. The bill had the backing of such illustrious and honorable men as Congressman William Ryan, Eugene Victor, Harry Van Arsdale, Lt. Gov. Malcolm Wilson, leaders of religious and community organizations, the Honorable Jacob Javits, Senior Senator from New York. We were able to present to the Governor at a week's notice a petition carrying the names of ten thousand citizens of the City of New York.

Gentlemen, the time for action has come. Law and order has been the battle cry of the people. It was the campaign theme of all the major Presidential candidates in the last election. You cannot

and I am sure will not deprive the citizens of New York of needed and wanted peace officer status for the Bridge and Tunnel Officers. I thank you.

I just would like to cite one incident that happened ten days ago. At four-thirty in the morning, one of our maintenance men was hit by a truck. The truck made a U turn in the tunnel. Not one of our officers was instructed to pursue this man. There aren't any officers in the tunnel from twelve o'clock at night until six in the morning. Therefore, no one pursued this man. This is a perfect example.

MR. BARTLETT: Of course, the real problem is there was nobody there.

MR. BROFSKY: There was a man on an outside post. He did come out and obstruct him. He went down the West Side Highway the wrong way. This man had no power to do anything.

This is simply to show you how the Triborough Bridge and Tunnel

Authority feels. They do not care.

MR. BARTLETT: Thank you. We would like to hear from you on the other draft.

One more witness before we break for lunch, Mr. Kent Lewis, speaking for the New York State Probation and Parole Officers' Association.

MR. LEWIS: Thank you Mr. Chairman, Members of the Commission. First, I would just like to state that the New York State Probation and Parole Officers Association is the largest professional Association within the correctional field of New York State. I emphasize the word "professional" here. Now, beyond this, our report has also been enforced in its entirety by the three largest line probation authorities in New York State, the New York City Probation Officers Association, The Nassau County Probation Officers Benevolent Association and the Suffolk County Parole Officers with the combined membership of over nine hundred.

MR. ALTMAN: Before you begin, Mr.

Lewis, have you had a copy of our --

MR. LEWIS: [Interposing] Yes, we have reviewed it. This is the first point, that we are in very basic agreement to the most recent proposal of the Commission pertaining to peace officer powers. We feel that many of our original objections have been answered and we thank the Commission for its responsiveness.

There are certain questions which remain in these areas. The first question is under Article 60, Warrant of Arrest, which refers only to police officers executing warrants.

Notwithstanding the above, Section 210.30 indicates that warrants for violation of probation may be issued by the court and executed by Probation Officers. Thus, there would seem to be nonsequitur in that the proposed Criminal Procedure Law states on the one hand that only police officers can arrest on warrants, and on the other hand that probation officers can arrest on violation of probation warrants.

Whereas to resolve the above nonsequitur could require extensive revisions of Article 60, we would instead propose the inclusion of Section 60.10, Sub. 4 - "Exception: warrant for violation of probation - refer to Sec. 210.30, Sub. 2," and to the appropriate laws for parole violations.

Section 70.51 provides for arrest without a warrant by peace officers and defines when such officer is acting pursuant to his special duties in making arrests. Our question is whether it would constitute an integral part of the probation or parole officer's specialized duties to arrest a non-probationer (parolee) acting in concert with a probationer (parolee) in the commission of a crime.

MR. BARTLETT:
Probation Officer?

Witnessed by the

MR. LEWIS:

Yes.

MR. BARTLETT:

No question about it.

MR. LEWIS:

Can he make this
arrest as a police officer?

MR. BARTLETT: Yes. It would be exactly the same as the one given by Mr. Grant.

MR. LEWIS: He is concerned with Stop and Frisk Laws.

MR. BARTLETT: He was talking about the non-parolee situation when you are on duty. The answer to that is yes.

MR. DENZER: As far as warrants of arrest are concerned which, according to this are only executed by police officers; that doesn't affect you at all because you are not talking about warrants of arrest, you are talking about another kind of warrants which you are authorized to execute. That is a probation warrant. You can execute a warrant in order to bring a person in parole violation and so forth. There is no restriction on that. A warrant of arrest is something else with which you are not concerned.

MR. BARTLETT: We attempted to make the difference between these two kinds of warrants.

MR. LEWIS: Article 210,

Sentences of Probation and Conditional Discharge cites within the text two mandatory grounds for violations of probation, commission of an additional offense and failure to respond to a "notice to appear." It is our recommendation that in order to clarify the conditions of probation, a line be added at the end of Sec. 210.10 stating in essence that other conditions of probation shall be as in Sec. 65.10 of the Penal Law.

This may also be superfluous. It is just something we are throwing out for your consideration.

Section 210.30, Sub.5, allows the court, when it has reasonable grounds to believe that the individual appearing before it has violated or is or was about to violate the conditions of sentence of probation or conditional discharge, to commit such person with or without bail. However, under Section 210.50, Sub. 1, the court cannot revoke a sentence of probation or conditional discharge unless it finds the defendant has violated a

a condition of the sentence. Therefore, the court can commit an individual who is or was about to violate the conditions of sentence of probation or conditional discharge, but cannot revoke his sentence. The words, "is or was about to violate..." must either be dropped from Sec. 210.30, Sub. 5, or added to Sec. 210.50, Sub. 1, in order to be valid and consistent.

Since we feel it would be nearly impossible to prove someone "is or was" about to commit a specific act (except in instances such as conspiracy or criminal facilitation, where the act would constitute a new offense, and therefore an automatic violation of the sentence), we recommend eliminating the words "is or was" from Sec. 210.30, Sub. 5.

This Section allows the court, when it has reasonable ground to believe that the individual appearing before it has violated or is or was about to violate the conditions of the sentence of probation or conditional discharge, to permit such person with or without bail -- however, under

Section 210.50, Sub. 1, here the court cannot revoke a sentence of probation or conditional discharge unless it finds that the defendant has violated a condition of sentence. Therefore, the court can commit an individual who is violating such condition but cannot revoke his sentence.

The words "is or was about to violate" it would seem to us, would either have to be dropped from Section 210.30, Sub. 5 or added to Section 210.50, Sub. 1.

Now, we do have a position on this also. We feel it would be nearly impossible to prove that somebody is or was about to commit a certain specific act unless this act were in the nature of a certain specific crime such as criminal anticipation, where the act would automatically constitute a violation of the sentence.

MR. BARTLETT: How about a requirement where the probationee is in the State of New York and he is apprehended at LaGuardia with tickets to Miami. He hasn't

left the State, his intention is about as clear as it can get. He is in line --

MR. LEWIS: [Interposing] If I am the probationer, I am just holding the tickets for some guy who walked by here, with no corroborating evidence.

MR. BARTLETT: That is a different question. At that juncture, he has not, indeed, violated the conditions of his probation.

MR. LEWIS: That is correct. We feel if he can be committed on those grounds, we feel he should be able to have the sentence revoked on the same grounds.

We are also somewhat concerned with Sect. 195.50, "statements at time of sentence", insofar as the court's summarizing factors relevant for purposes of sentence might reveal privileged information and sources. Of far greater concern is the "Pre-sentence conference" as set forth in Sec. 205.10. These conferences which threaten the basic foundations of pre-sentence reports, would result in bland, unsatisfactory probation

reports, a drying up of important sources of information, cross examination of the probation officer and contributors of information to his report and disclosure of confidential material to the defendant and his attorney. It would be even more harmful if these conferences, as permitted, were conducted as public proceedings in open court. Under this proposed system, the probation officer could expect to spend most of his time in pre-sentence conferences, being assailed by high priced defense counsels. The police, school officials, psychiatrists, etc., would refuse to speak to the probation officer, out of fear of lawsuits, loss of time in court hearings, or out of fear of divulging confidential information. In effect, the probation officer would become the defendant and would have to undergo the ordeal of numerous trials each month. With stenographic transcriptions available, each and every one of these hearings could serve as grounds for appeal of a sentence which the defendant considers unsatisfactory. If this is what the

Commission truly desires, and intends, we would recommend that the probation officer merely supply the court with a list of prospective sources of information, and have the court hold its hearing to determine sentence, foregoing the pre-sentence report. We urge and implore the Commission to re-evaluate its thinking in this area based upon its Frankenstein implications for the criminal justice system.

MR. ALTMAN: Do you take the same position as the Sheriffs did?

MR. LEWIS: Not exactly because we view it from a different position. We see it as threatening the entire structure of a pre-sentence report.

MR. BARTLETT: Under that, the only disclosure is the right of the judge to summarize the contents, what he believes to be the relevant contents of the report.

MR. LEWIS: That is in Section 195.50. In Section 210, there can be a hearing with testimony taken under oath.

I am talking about

205.10, which is, as I say, of greater concern to us. We feel this knowledge would result in a very bland, unsatisfactory type of probation report. We feel it would be a drying up, an evaporation of sources of information.

If the probation officer can be put on the stand, he can be made to disclose his sources. This is what we are afraid of.

MR. BARTLETT: Let's just take a for instance. First conviction, probation officer acting honestly submits a report which indicates that this young man has been acting violently in his neighborhood for several years. He gets it from what he believes to be reliable sources. This data is summarized, and the judge informs the defendant and his lawyer that this kind of information is there, and he is seriously concerned about it in connection with the settlement. It is the defendant's position he has never been in a fight in his life.

Now, don't you think we ought to have some machinery by which we find

out what the truth is?

MR. LEWIS: I think the probation officer is charged with finding out those things.

MR. BARTLETT: Aren't you making an assumption?

MR. LEWIS: I am assuming we will be competent, yes.

MR. BARTLETT: Competent and in error is two different things. You know, unless you claim divine inspiration --

MR. LEWIS: [Interposing] That we don't. Would you grant me the possibility of bringing one example to you that during the course of our investigation, a Narcotic Squad Detective says, "We presently have this individual under investigation. We have made one purchase from him and we are setting up another purchase. He will be indicted, subsequently, with a group of people." This information is in our report.

MR. BARTLETT: That's why we won't give the report to defense counsel.

MR. LEWIS: According to

Sub-Division 210, a court may direct --

MR. ALTMAN: [Interposing] "May."

Wouldn't it be your duty, if you have that information on a narcotic's man, that this fellow be indicted and under the request of the judge, the judge delay sentencing of the defendant?

MR. LEWIS: Not really. Our recommendation might be for incarceration of an individual who is presently out on bail.

MR. BARTLETT: Then, the example you gave us is a poor one. I am being a little facetious now. Isn't this presently why we give the judge discretion here? One of the most important things of police work and probation work is protection of sources, of course. You ought to remember that the great cry on the other side is that we should turn over the probation report in toto.

MR. LEWIS: Which we are opposed to entirely.

MR. BARTLETT: Which the proponents will tell you they have done for years in

California and it works.

MR. LEWIS: It would work in New York State also insofar as the fact that the Judge would end up with a very short report and the probation officer would stop in to see him and give him the other details.

MR. ALTMAN: Maybe, that would be an answer.

SENATOR SMITH: Might I make a suggestion to you in that these particular sections, you consider very carefully those bills that were before the Legislature last year in connection with this selfsame pre-sentence conference procedure, and may I respectfully suggest to you that you then count your blessings. This is a much more practical, reasonable approach to this and I argued against, on the floor last year, against the bills that set up the pre-sentence conference procedure which were proposed by others than the Commission here.

MR. LEWIS: There are so many aspects of this Section which are objectionable

to us in that it could be held in the court's discretion in open court.

The fact that the probation officer could be put on the stand, so to speak, and have to testify under oath about the information which he has gathered.

MR. BARTLETT: What is so terrible about that?

MR. LEWIS: This makes the probation officer, in effect, the defendant in a number of actions.

MR. BARTLETT: You can't be required to testify to hearsay. You are going to have to produce witnesses for stuff he has gotten from other witnesses.

MR. LEWIS: Then, we go back to the point of having to bring in the sources.

MR. KNAPP: The illustration you put poses the dilemma. Say a fellow was convicted of a petty crime, which, normally, would get a suspended sentence, and your probation officer comes in with a report that shows he has committed another crime and so,

the judge decides for the crime for which he was committed and would normally give him a suspended sentence, now, based on the probationer's report, he is going to send him away for three years. Isn't he entitled to some testing of that information?

MR. LEWIS: I would say that 195.50 provides for that as well as the submission of a memorandum by the defendant or his counsel. I would say that between those two Sections, this provides -- we are very much in favor of the filing of a pre-sentence memorandum. I would say that those two Sections, the filing of that memorandum plus 195.50 as it is written, would present an opportunity to controvert information.

MR. KNAPP: How can he when he doesn't know what it is? How can you test the acquisition unless you know what the acquisition is?

MR. LEWIS: In 195.50, the judge can summarize the points of his conviction, which can be controverted. I don't feel it

question the parties separately. If the judge wants to speak with that Narcotic's Detective or with the woman across the street who says the child has been doing things, let him have that person and speak with that individual under oath.

MR. BARTLETT: You do agree that we have got to devise some method by which the judge can resolve important discrepancies between the probation officer and between what defense counsel tells him?

MR. LEWIS: I agree with that entirely. Section 195.50, the pre-sentence memorandum and conferences which could be held in Judge's Chambers and even with the testimony being taken under oath, which would not provide a direct confrontation or an adversary procedure. This would be fine, but many of us have sat through violation of probation hearings as a petitioner, and the Probation Officer tends to be beaten around by defense counsel.

See, they complain about us, we complain about them. We feel

they show no quarter to us. They have no understanding of the pressures of our job.

This is an experience where we have probation officers completing ten, or in many cases, fifteen investigations a month. Assuming that only half of those went to the point of this conference, this can be more than a week's time of the probation officer.

MR. BARTLETT: There isn't to be a conference thing of the case?

MR. LEWIS: I say, maybe half of them.

MR. BARTLETT: May I say as to 205, if you have specific language you would like to substitute for this language doubt. I don't want to push you. You do want to talk about youthful offender?

MR. LEWIS: Right. Under the area of Youthful Offender we are, basically, in accord with these provisions.

In this section basically, and particularly in regard to

criteria for eligibility for youthful offender treatment, and sentences, the Commission has done a laudable job. There is, however, one glaring omission, namely, the failure to specify clearly any requirement for a pre-sentence report prior to sentencing. This could be easily clarified by adding a Section 400.50, Sub. 3, reading "The provisions of Article 200, governing procedure in criminal actions upon pre-sentence reports, are, wherever appropriate, applicable to youthful offender actions conducted pursuant to this article."

Furthermore, we regard it to be essential that investigations ordered by the court to determine eligibility for Youthful Offender Treatment, where eligibility is discretionary with the court be performed by the probation services.

In view of the above, we recommend two additions under Section 1.20, "Definitions of terms" as follows:

Sub. 39 - Pre-sentence report means a written report of an investigation, more fully defined in Sec. 200.30,

performed by the local probation service at the direction of the court.

Sub. 40 - Youthful Offender eligibility investigation means an investigation, more fully defined in Sec. 400.20, performed by the local probation service at the direction of the court.

MR. ALTMAN: As a practical matter, isn't that what happens?

MR. LEWIS: As a practical matter, it is what happens; but we do have Up-State Judges.

MR. BARTLETT: Is it in the present law?

MR. LEWIS: Yes.

MR. MARMORA: Yes, that the Probation Department serving that report, is authorized to complete investigations. There are several projects now, Mr. Chairman -- I am Sabotino Marmora. I am Executive Officer of the New York City Probation Officers Association.

Relating to pre-

sentence investigations whereby using a sort of check list or a recommendation of certain characteristics found in each defendant, can recommend to the judge at sentencing, a disposition; namely, they can recommend probation. Now, they are not an authorized service. This has been the agreement between the presiding judges in a Judicial District with the foundation.

We view this as highly unprofessional and we feel that highly untrained people, such as a probation officer, possessing many skills such as psychology, criminology and so forth, be able to complete his investigation.

MR. LEWIS: In certain of the Up-State Counties, Judges who are feuding with the Probation Director, hire, out of court funds, various specialists such as marriage counselors, etc.

MR. BARTLETT: You ought to take the supervision of probation away from the Judicial Conference.

MR. LEWIS: No, someone else did.
I think it is well known to you.

At any rate, just to wrap up, we feel this last problem could be resolved very easily by definition of the term "pre-sentence report" and "youthful offender eligibility investigation" in the Section 1.20 definitions of terms, which would direct that these investigations be performed by the local probation service at the direction of the court.

MR. KNAPP: There will be nothing to stop the judge from listening to anyone he wanted to listen to.

MR. LEWIS: We want the judge to listen to as many people as he can, but if a person is going to be incarcerated in the Department of Correction on the basis of certain material, we want to have this available.

MR. BARTLETT: Thank you very much.
Your comments are very much appreciated and I am glad we have some compatibility under the police officer status.

Thank you very much.

and we will break for lunch and convene at
2:15 P. M.

[WHEREUPON THIS PUBLIC HEARING WAS RECESSED AT
1:00 P. M. AND RECONVENED AT 2:20 P. M.]

MR. BARTLETT: Ladies and gentlemen,
we will get underway in just a minute. May I
ask if Mr. Zappulla is here?

MR. ZAPPULLA: Yes.

MR. BARTLETT: May I see you a
moment?

MR. ZAPPULLA: Yes.

MR. BARTLETT: Ladies and gentlemen,
we will now commence. Our first witness, the
Police Commissioner of Nassau County, Francis
Looney.

COMMISSIONER LOONEY: Once again, I welcome
the opportunity provided by the Revision
Commission to appear at this Hearing to present
my comments concerning the Proposed Criminal
Procedure Law. As I did on the last occasion
when I addressed the Commission, I will speak
in my capacity as a law enforcement
administrator and also, as Mr. Bartlett mentioned,

the Commissioner of Police of the Nassau County Police Department. Also, I will again attempt to direct my remarks to those areas of the proposed law which relate to and concern the law enforcement function.

I am delighted to note that some of the changes incorporated in the second draft of the Proposed Criminal Procedure Law reflect a few of the thoughts I projected at the Hearing held in February which was held out in Mineola. Unfortunately, many of my recommendations were not acted upon and other proposals were only partially adopted or were altered to present a compromise version. Therefore, I am compelled to address myself to many of the same concerns which were dealt with at the time of the previous hearings.

With respect to the controversy concerning the definition of "police officer" it is regrettable to note that the Commission has seen fit to retreat from its original position by expanding the designation to include non-police groups. The Commission's

initial premise that the police officer, as presently defined in Section 154-a of the Code of Criminal Procedure, was the primary and sole law enforcement officer in the State whose functions actually required the broad statutory powers and authority previously bestowed on all peace officers, was sound and realistic. As you know, our State legislators have seen fit to establish minimum educational, physical, medical and training standards for our police officers in order to insure their competency to both carry out their sworn duties and to properly exercise the enforcement powers bestowed upon them. This goal of professional status for law enforcement is certainly not being served by including within the "police officer" classification non-conforming groups or by granting such groups law enforcement powers without the mandation of comparable qualification standards. Therefore, in the interest of professional law enforcement, the Commission should revert to its original position and not dilute the "Police Officer" designation.

draft were for the most part completely ignored. I again submit that with today's emphasis on police professionalism and the mandated state-wide educational and training requirements established for police officers by our legislators, there is no legitimate reason or justification to curtail and restrict the police officers in the exercise of summary arrest powers. The apprehension of criminal perpetrators is a vital function and I don't believe we can afford to impair its execution by the imposition of geographical limitations on police authority, particularly when the offender is not subject to any boundary restrictions.

MR. ALTMAN: Let me just ask you a question. Does that mean that one of your people who happen to be up in Buffalo should be able to make an arrest? Is that correct?

COMMISSIONER LOONEY: That is exactly so. The police officers of the State of New York, the legislators, as I have indicated, mandated standards. They mandated training and,

therefore, if they are sincere in indicating that, I think they should carry it over and say, "Gee, we have set the standards, we have mandated your training, we have confidence in you that you will perform your duty whether you are in Nassau County, Erie County or some other County of the State."

MR. BARTLETT: You would extend this beyond felonies committed in presence, I take it?

COMMISSIONER LOONEY: That is correct. I would extend it to the Village Policemen, the Town Policemen, and give them the same powers that the State Police have throughout the State of New York.

MR. BARTLETT: On duty or off duty?

COMMISSIONER LOONEY: Yes, sir.

MR. BARTLETT: Can you tell us the position of the County of Nassau on this?

COMMISSIONER LOONEY: That is the position of the County of Nassau. That is the law presently on the books that the Nassau County Police Department has in operation.

MR. BARTLETT: What law?

COMMISSIONER LOONEY: The law which established the Nassau County Police gave them State jurisdiction and in its forty-three years of existence, that power has not been abused.

MR. BENTLEY: Who would be responsible for false arrest?

COMMISSIONER LOONEY: The County of Nassau would be responsible. There was only one case in forty-three years where it was explored in the courts.

MR. BARTLETT: You say it was in the Charter?

COMMISSIONER LOONEY: Yes, 451. It was reaffirmed when the new Charter was passed, which went into effect in 1937, restating the powers of the Nassau County Policemen to have State powers of Constable.

MR. BARTLETT: Wait. Does it say that you have the same power of the Constable in the State of New York?

COMMISSIONER LOONEY: That is correct.

MR. BARTLETT: Well, that doesn't

really speak to it.

COMMISSIONER LOONEY: It speaks to it, and Judge Marcus Fritz was the man who prepared that, who gave very learned opinions on it, and under which we operated very effectively for these years; but beyond that, I think -- I am not speaking for Nassau County Policemen alone -- I think we should think of the other police throughout the State, the Village, the Townmen, the City men and give them the same power.

MR. ALTMAN: Why should we have State Police if everyone can be a State Policeman?

COMMISSIONER LOONEY: For better enforcement throughout the State. We are talking about crime in the State and, indeed, throughout the nation. We have roughly three thousand State Policemen. I think it is a lot better to have forty thousand policemen with broad powers throughout the State. If we want to approach the great increase in crime, then we should look not to restrict but to broaden, and I think in view of the fact that you said

a policeman needs certain standards, they should have certain education, then they should have the Statewide power. In fact, the State Police, as you know, and the Legislature knows, they are not even under the Municipal Police Training Council of the State.

MR. BARTLETT: You know that is a facetious remark, though, because the training standards are much more rigid.

COMMISSIONER LOONEY: It might very well be. Likewise, the Nassau County Police has the broadest training in the State today.

MR. ALTMAN: Commissioner, you will have no objection if a Town Policeman from any other place in New York made an arrest in Mineola?

COMMISSIONER LOONEY: I would even encourage him to do that. I further submit that the indicated fear of fiscal liability is more imaginary than real. Not only is there no significant record of abuse of authority or negligent conduct on the part of our police officers in this State, but the number of

successful civil actions resulting in the recovery of monetary damages for police misconduct is almost negligible. Considering the high caliber of our present day policemen and their demonstrated sense of responsibility, the likelihood of malpractice is practically non-existent and I must seriously question, as I have indicated, the legitimacy of the fiscal liability argument.

Therefore, I again must urge the complete elimination of geographical restrictions and place of employment limitations that have been placed on police officer arrest powers. Such curtailments are not only inconsistent on the part of a State which has promulgated state-wide standards for the police position, but are illogical and, in my opinion, without justification. If there is any concern on the part of employing municipalities with respect to civil liability for the actions of its officers outside of the geographical areas of employment, it would be in the best interests of the State to assume

such liability or at the very least to provide the employing municipality with the option of restricting its police officers if it so desires.

MR. ALTMAN: Would you put a dollar sign on the liability? We face a realistic problem in the Legislature. Supposing we want the State to assume liability?

COMMISSIONER LOONEY: It would be very small on the basis of experience.

MR. BARTLETT: Do you have any figures?

COMMISSIONER LOONEY: On our own, in forty-three years, it cost Nassau County seventy-five hundred dollars and, I think, that is a very small amount.

MR. BARTLETT: False arrest claim?

COMMISSIONER LOONEY: A case that was settled rather than go to trial where allegations were made and settlements were ultimately undertaken.

I think, in California, if you go out to California you

will find -- and I have talked to Chief Reddin and many of the other very fine Police Chiefs, and California is one of the leading States in the Union in professional law enforcement -- and they have broad power out there with no difficulty at all.

MR. BARTLETT: You know, of course, you talk as though there is none. You know the proposal contains Statewide authority for felonies committed in the presence of a Peace Officer.

COMMISSIONER LOONEY: We feel it should be broader.

MR. BARTLETT: How much broader?

COMMISSIONER LOONEY: As I have indicated earlier, I think it should be carried right throughout the State.

Let us truly professionalize all law enforcement throughout the State. I think the Legislature is in the right direction now. They have set up standards and mandated training. I think they could recommend increase of salary Up-State.

MR. ALTMAN: How much?

COMMISSIONER LOONEY: I would like to see, at least, a minimum of six thousand dollars for the Up-State communities.

MR. ALTMAN: Are you going to prescribe to another penny or two on the Sales Tax to support that?

COMMISSIONER LOONEY: I think we should. We will have a two per cent Sales Tax in our own County going into effect next March.

MR. ALTMAN: Are you recommending an additional two, three or four per cent so we can have it Statewide?

COMMISSIONER LOONEY: I am not recommending any taxes. I am recommending one thing. In developing a professional Police Department, you have to pay adequate salaries. In our own County, our policemen will be paid eleven thousand three hundred sixty-seven dollars on January 1st, the top paid patrolmen.

MR. BARTLETT: After how many years?

COMMISSIONER LOONEY: When I recommend six thousand dollars, I am not talking about the

fact that I consider that good. That is just above the poverty level. I think, to truly professionalize the law enforcement category, the Legislature is going to have to raise it to, possibly, fifteen thousand a year.

MR. BARTLETT: You know that has been an Executive recommendation for the past three years.

COMMISSIONER LOONEY: We realized we were not able, on a basic level, to get a raise of three or four thousand dollars a year. In the State Police Association, of which I am Vice-President, we refused to accept anything less than a six thousand dollar minimum salary for the policemen Up-State.

MR. BARTLETT: You mean you were offered something less?

COMMISSIONER LOONEY: They mentioned, in the legislative discussions, they would think in the area of forty-five hundred.

MR. BARTLETT: We have gotten you off track here a little bit.

COMMISSIONER LOONEY: On the record, I say

that the police in the State of New York should be paid in the area of fifteen thousand dollars a year.

MR. KNAPP: That, of course, is not in our jurisdiction. The question of authority, isn't part of the professionalism that you are talking about, the responsibility of command, the responsibility of the patrolman to the sergeant and the sergeant to the lieutenant, and the lieutenant to the chief? How can there be this responsibility if somebody on vacation in another County arrests somebody here? He is under no discipline whatever from anybody.

COMMISSIONER LOONEY: We are talking about professional law enforcement.

MR. KNAPP: Isn't part of that law enforcement discipline?

COMMISSIONER LOONEY: It is.

MR. KNAPP: How can you discipline a man who is on vacation in Onondago County or from Onondago County on vacation in Nassau County?

COMMISSIONER LOONEY: Every police officer that takes an oath is sworn in as a policeman.

MR. KNAPP: Isn't he responsible to somebody?

COMMISSIONER LOONEY: You bet he is responsible to someone.

MR. KNAPP: He is in Onondago County. Who is he responsible to?

COMMISSIONER LOONEY: That is not so far away. If an indiscretion is made by our own Police Departments, investigations would be undertaken and disciplinary action would be taken by us.

MR. KNAPP: How is your policeman on vacation going to know what the police up there are doing? If this felony was committed and the person was not arrested, it may be part of the police plan because they are watching the guy do something different.

COMMISSIONER LOONEY: I wouldn't think that.

MR. KNAPP: That never happens?

COMMISSIONER LOONEY: I am talking about cases where a -- for example -- a policeman

were up in Onondago County and he might be staying in a hotel on the fourth floor. A young lady might run down from the fourth floor to the fifth floor and indicate she was brutally assaulted or attacked. I then say he should take action as a policeman in the State of New York.

MR. KNAPP: How does she know he is a policeman?

COMMISSIONER LOONEY: She may have knowledge of that, maybe a convention or something else. I think we should professionalize all the way and not put the cart before the horse.

MR. KNAPP: Part of the professionalism is discipline, I am suggesting.

COMMISSIONER LOONEY: Everything is. The basic part of responsibility is putting policemen in college courses. Six hundred sixty of our men are attending college. That is the basic professionalism, where we are raising the police profession up, and the other will follow suit, whether or not they abide by discipline.

However, the same theory should be carried through and made applicable to Violations; we are thinking of trespassers, disorderly conduct and the like. Inasmuch as the Misdemeanor Complaint is limited to Misdemeanors, a Violation will still have to be presented via the Information which will be deemed a full fledged pleading. Consequently, the same problems relating to the legal sufficiency of the Information will continue to arise and haunt us in the processing and presenting of Violations to the court. In view of the many Offenses which are designated Violations in the new Penal Law and as long as an attempt is being made to plug the gap, the Commission should go all the way by relabelling the Misdemeanor Complaint a Non-Felony Complaint and extend its application as an arraignment vehicle to all Offenses with the exception of Felonies.

MR. DENZER:

Excuse me,

Commissioner, these violations, for the most part, are mostly cases where the police officer

actually observes the commission of it. As a matter of fact, to make an arrest without a warrant, it must be committed in his presence.

COMMISSIONER LOONEY: A civilian complaint or information and beliefs, or the like. We couldn't see the rationale, where you extended it to misdemeanors, why not extend it to the violation?

MR. DENZER: You aren't going to get any violations that weren't committed in the eye of the police officer.

MR. LOONEY: Why not include the violations in there? It wouldn't do any harm at all, and it would do a great deal of good if you indicated non-felony complaints. We can't see any reason for the differentiation at all.

MR. DENZER: You realize, if the officer makes an arrest in one of those cases, it must be for an offense committed in his presence. If he issues a ticket, therefore, it has to be something in his presence.

COMMISSIONER LOONEY: Why would you want

to differentiate between a misdemeanor and a violation?

MR. DENZER: If it is that small, it seems to me he should have the good.

COMMISSIONER LOONEY: If you can do it in the case of a misdemeanor, why should you go before a judge and have him tell you that he cannot arraign the individual? We think it would be good, as I have indicated here.

Also, another welcome addition brought about by the new proposals is the expansion of the non-judicial verification procedure to embrace felony complaints as well as those instances where the complainant is a private citizen. The 1968 amendment to Section 150-b of the Code of Criminal Procedure authorizing superior officers to verify non-felony informations subscribed to by police officers was proposed by the Nassau County Police Department and it is indeed heartening to see its extension in the Proposed Criminal Procedure Law. Since its implementation we have experienced a significant reduction in

police manhours previously consumed in arraignment processing and that, plus the lack of any criticism by the courts with respect to the form, content or quality of police-originated informants is ample justification not only for the expansion of the non-judicial verification process but also for its complete and unconditional acceptance without judicial option. Thus, it is recommended that the procedure be established by the legislature without subjecting its operation to the discretion of the courts. To do otherwise would negate the existing provisions of Section 150-b of the Code which established the non-judicial verification procedure without qualification.

This we view as extremely important. We feel that it should not be left to the discretion of the judge as to whether or not he will accept the police verified complaint. In our own District Court we have twenty judges. As of January 1st, we will have twenty-four; one of those judges,

very likely, could adopt the position that he would like his complaints verified before him, and that would bind the twenty-seven hundred policemen because we would not be in a position to know when he was sitting. Thereofre --

MR. ALTMAN: [Interposing] What is wrong with that? What is wrong with a judge, in his discretion, wanting some more information or wanting to make sure it is verified?

COMMISSIONER LOONEY: He can call the individual police officer in if he wanted that. We are thinking, as a matter of practice, that no judge in the State should have the authority to set up a procedure that all informations, and this, under the law as you propose it, the judge would have the power to say, "I want to verify my own complaints before me."

Then, large Police Departments such as our own and even smaller Departments would be at the mercy -- if I want to use the term loosely -- of the particular judges concerned.

We asked for 150(b).

We got that last year. I know that Senator Dunne is here, was one of the spearheads to get that for Nassau County and, indeed, for all of the police of the State; and I say, let us leave 150(b) as it is at the present time and let us not take anything away from the police in that regard by placing discretion in the hands of a judge.

We know that if a judge is concerned about information, he can always call a policeman in, or anyone that makes a complaint. I think, as you have indicated in that particular section, 50.27, where you give him that power to accept or not accept a verified information, I think it is too broad and I think that it could, if all the judges didn't see the light, defeat that very purpose which we sought this June.

While I am happy to acknowledge the Commission's vision and realistic action in extending the scope of non-judicial verifications and in establishing the Misdemeanor Complaint, it is difficult for

me to comprehend the failure of the Commission to resolve the conflict created by the provisions of the proposed Appearance Ticket procedure.

MR. BARTLETT: Let me just save you a paragraph. We haven't resolved it because we haven't figured out how yet. We are still aware of it and we have to deal with the question of fingerprinting purposes. We have been aware of this from the beginning. We pointed this out in other hearings in the last two weeks.

COMMISSIONER LOONEY: I want to have on the record what I have indicated here clearly expressed.

MR. BARTLETT: I was just trying to save you and us a little bit of time.

COMMISSIONER LOONEY: I noticed that in February, and I didn't see any change. In Nassau County we have been using the appearance ticket for the last seven years, and I think we are the only Department in the State. We are the first in the State that really began its

use and proved its effectiveness and, therefore, I feel we wouldn't want it defeated by tickets being given out on the street without the benefit of the judicious evaluation by a guest officer. So, I rule that Mr. Bartlett's request not be adhered to. As was previously pointed out, the employment of the Appearance Ticket as an on-the-street release vehicle in Misdemeanor situations is precluded by the identification mandates of Section 80.10. It also would be a very dangerous practice as it would prevent a proper inquiry into the criminal record of the perpetrator which is often essential to determine the degree of the crime charged and necessary to ascertain whether the offender is wanted for other crimes. Consequently, to eliminate confusion and controversy over a provision that is unworkable and incapable of practical application, it is again recommended that the Appearance Ticket be limited to station house releases which would insure its judicious use, permit a determination to be made with respect to the need for bail, and at

the same time provide for the necessary and proper identification of the offender.

MR. MC QUILLAN: May I ask you this: The Departmental Rule issued by you, wouldn't that limit the issuance to cases where the defendant is taken to the station house?

COMMISSIONER LOONEY: We are producing here, which I think is two of the finest documents produced in the State, the final Penal Law, etc. I say, let us not leave it to the speculation of attorneys who might later say, or individuals, "You have a right to give me a ticket out on the street without bringing me to the station house."

If we want policemen to carry out procedure, let us indicate it in the law. I want to obviate any future controversy in that.

It is also necessary for me to again bring to your attention the inconsistency in incorporating a specific use of force authorization under the provisions of Section 365.50 with respect to the execution

of Search Warrants, and in Sections 70.40 and 60.60 in connection with arrest activities, while omitting such an authorization under the the Stop and Frisk provisions of Section 70.70 and the Fingerprinting responsibilities of Section 80.10. Evidently the Commission feels that specific statutory authorization to employ is essential in the Criminal Procedure Law in connection with functions that may require its use even though it may be provided for in Article 35 of the Penal Law. If that is the case, then the same reasoning would apply to the Stop and Frisk and Identification functions. By setting forth a use of force authorization in the Procedure Law only in connection with certain enforcement functions and not in others, the drafters have created an issue as to whether force may be lawfully employed in the absence of such authorization even though necessary to perform the required function. This conflict should be resolved by the action of the Commission by either eliminating all use of force provisions in the Procedural Law

and relying on the provisions of Article 35 of the Penal Law or including such authorization in the other functions where it is needed and has been omitted.

In closing, I call your attention to the recommendations and suggestions I have offered dealing with: the vague and expanding definition of the term "police officer"; uncalled for limitations on police officer arrest powers; extending the application of the Misdemeanor Complaint to Violations; unconditional recognition of non-judicial verifications of informations and complaints; practical limitations on the utilization of the Appearance Ticket; and clarification of use of force authorization in the Procedural Law. All of these matters are of a vital concern to law enforcement and the proposals made are made with the conviction that they are essential to a workable body of law that will facilitate both the law enforcement function and the criminal justice system in our State. Thus, I urge the

Commission to give every consideration to their adoption and inclusion in the Proposed Criminal Procedure Law.

Gentlemen, thank you very much and I hope you will give serious consideration to what I have said this afternoon because it is of very vital importance to every police officer that wears a uniform in the State of New York today.

MR. KNAPP: To make sure I understand your position on 50.27, your quarrel is with the Sub-Division 2, which says an instrument may be specified, Sub-Division 1 may be verified in any manner described --

COMMISSIONER LOONEY: [Interposing] That is absolutely correct. We feel it is not necessary at all.

MR. KNAPP: Am I correct in understanding you are not afraid of the judge rejecting a particular complaint that he is concerned with? You don't want him to have a general rule?

COMMISSIONER LOONEY: You are right. When

COMMISSIONER LOONEY: If a judge desires further information, he shall have the discretion to call such a police officer. We have no objection to judicial control. What I am afraid of is some judge may have a feeling on it, and we may be bound by that one fellow instead of the twenty.

MR. KNAPP: Then, the wording "in a particular case" ought to be put in here.

COMMISSIONER LOONEY: I would have no objection if we even had an appeal to the Judicial Conference or Appellate Division. A presiding judge of the District Court today is the same as any other judge. He is an Administrative Judge, but he doesn't have the power to dictate to other judges and tell them what to do. That is what I found. On the basis of this unhappy experience, we urge you to take it out.

MR. BARTLETT: Thank you,
Commissioner.

COMMISSIONER LOONEY: Thanks very much.

MR. BARTLETT: Before calling the

next witness, I would like to note on the record Mr. Sabatino Marmora, for the Probational Officers Association was not able to stay. He asked it be reflected on the record that he associated himself with the views expressed by Mr. Nathan Grant and Mr. Kent Lewis at the morning session.

We will now hear from Mr. Joseph Forstadt, Deputy Commissioner of the Department of Consumer Affairs.

FLOOR: He couldn't stay. He just left because he had a Special Hearing. He is on schedule to speak tomorrow at two o'clock we were told. We got the call this morning. He will be here tomorrow.

MR. BARTLETT: All right, fine. Thank you.

Assemblyman Mondello was not able to come this afternoon. We will now hear from Mr. Louis Zappulla, speaking for the Probation Officers Benevolent Association.

MR. ZAPPULLA: Mr. Chairman, Members of the Committee, this is a request by the

Safety Officers Benevolent Association to add the title of "Police Officer" to every safety officer employed by the State of New York, an addition to Section 1.20.32 of the proposed New York Criminal Procedure Law, so that the result would be that they would be designated Police Officers under that Section.

Assemblyman Mondello asked that I mention to the Commission that he has read the paper which has been submitted to the Commission, that he supports it and that he regrets that he was unable to come here today, but that he would like to send his greetings to the Commission and has indicated he will send a letter of support as soon as he can within the next day or two.

Purpose of the requested addition: The requested addition of Safety Officers is intended to continue their required status as law enforcement agents at State Hospitals and State Educational Institutions.

Statements in

support: 1. New York State Safety Officers are given peace officer status by Section 34.4 of the Mental Hygiene Law, Section 7.14 of the Mental Hygiene Law, Section 355.2.m of the Education Law and Section 455 of the Public Health Law. Each of these laws grants "All the powers of Peace Officers" to the Safety Officers acting as special policemen. In 1968, the Legislature recognized the need for Safety Officers to effectively carry out their police duties and unanimously approved Chapter 750 and Chapter 443 of the Laws of 1968 which removed the one-mile limitation on the peace officer status of Safety Officers in the Department of Mental Hygiene.

I should state I am not going over my entire memorandum. I am just going to give a quick summary of it.

The Safety Officers have been recognized as Police Officers, and the exhibits will substantiate that.

The opinion of the Attorney General in the first exhibit refers

to Safety Officers as "these Institutional Police Officers," and he goes on to talk about having arrest powers the same as any local or authorized police officer.

The State University Administration Manual, Section C-2, says that Safety Officers may be armed and make arrests, and they ought to enforce the vehicle and traffic law.

MR. MC QUILLAN: May I ask you a question on the arms? Safety Officers are not included in 154 of the Code of Criminal Procedure?

MR. ZAPPULLA: No, sir.

MR. MC QUILLAN: They are armed by virtue of what Section?

MR. ZAPPULLA: They are not armed by virtue of any statute. However, the apparent interpretation of the laws governing special policemen, which is the law which empowers Safety Officers to act as special policemen, has been interpreted, at least, by the State University of New York as giving them that

power, and this is in the second exhibit that I referred to which states they have a right to be armed and make arrests, etc.

MR. MC QUILLAN: Is that without a license?

MR. ZAPPULLA: Yes, sir; that is just as being designated "Safety Officer." Under the new 1968 law, it does not cover State University. It only covers the Mental Hygiene Department.

The law says, "They shall possess all the powers of Peace Officers." There still is a question as to what that interpretation would be.

MR. BARTLETT: The difficulty is, the Sullivan Law does not say "Police Officers."

MR. DENZER: We are on kind of dangerous ground here, aren't we?

MR. ZAPPULLA: We hope that the additional requests here might solve some of the problems.

The next exhibit is a publication put out by a Director of one of

the State Hospitals, the Buffalo State Hospital, and refers to the duties of a Safety Officer, he says that their prime area duties are police duties. The Department of Mental Hygiene, Section 1500, Paragraph B states that "All Safety Officers must be designated as special policemen; thereby having the power by Section 34.4 of the Mental Hygiene Law."

MR. BARTLETT: Let me ask this, Mr. Zappulla. You are familiar, of course, with the October draft of these Sections?

MR. ZAPPULLA: To an extent, yes, sir.

MR. BARTLETT: I take it from your requests that you are because your request is that you people be added to 32(a).

MR. ZAPPULLA: No, sir; to 32.

MR. BARTLETT: To 32?

MR. ZAPPULLA: Yes, sir.

MR. BARTLETT: I see.

MR. DENZER: Police officers?

MR. ZAPPULLA: Yes, sir.

MR. DENZER: What is the training

What does that refer to?

MR. ZAPPULLA: That was added in because public employment relations herein, it suddenly turned out, where there was one police officer in the Public Health Department and we included memo.

MR. BARTLETT: Essentially, we are talking about the grounds and buildings police performing those functions at Mental Hygiene establishments and State University Campuses, is that right?

MR. ZAPPULLA: Yes, except there are many training programs that require training not on the campus grounds; going after escaped patients, chasing persons, for example, contraband peddlars at State Universities and so forth.

MR. BARTLETT: What instruction is given the Safety Officers who work for Mental Hygiene in the Penal Law?

MR. ZAPPULLA: As a matter of fact, I see the Chief, possibly, might want to make a statement. I do have here the Safety Officer

Manual, and the subjects covered by this Safety Officer Manual covers Penal Law, they cover the Code of Criminal Procedure and they cover a court interpretation of new laws as they come about, and they cover certain procedure.

SENATOR SMITH: Do you say that the Safety Officers in the Mental Institutions have the authority to transport legally committed prisoners on criminal offenses to and from Institutions?

MR. ZAPPULLA: There are so many questions as to authority various Peace Officers have, and we are seeking to answer those questions. It is maintained by the State University of New York, in their Policy Manual, I think on the same page as an exhibit here, but they do have such authority, although that Policy Manual was written at a time when it says they only have police officer status for one mile from the institution. Nevertheless, the Peace Officer Manual says they may go further.

There are a lot of questions and, apparently, it was interpreted

differently by various departments.

SENATOR SMITH: In the Department of Mental Hygiene, they do not do it, right?

MR. ZAPPULLA: It is done, but in order to make sure the Safety Officer maintains peace officer status, they took away the one mile limitation in 1968.

MR. DENZER: Mr. Zappulla, let me ask you this. Your people do not want, I take it, general police powers beyond what is necessary to execute their duties. Is that correct?

MR. ZAPPULLA: I want to answer that question in the negative because, I believe, that my outline and the memorandum should clearly indicate that they are police officers. All of their duties are police duties. They have been recognized as such. Therefore, if it is the interpretation or the feeling of the Commission that a police officer should have authority twenty-four hours a day, and this authority should extend beyond any particular limits, then the Safety Officers fit under that

category. They are apprehending -- I am sorry to keep on going -- they are apprehending criminals daily in large numbers, as the exhibits will indicate. We have arrests in the hundreds at various institutions.

MR. DENZER: What kind of arrests? I don't mean the crime so much, but arrests of what people?

MR. ZAPPULLA: Those are primarily arrests of outsiders coming onto institution property.

MR. DENZER: They are not going out on the countryside making arrests for robbery unconnected with their grounds?

MR. ZAPPULLA: No, sir. It is only arrests made during the course of duty.

MR. DENZER: You have seen the latest drafts of the Commissioners in this area, I take it, in which peace officers, not necessarily police officers, are given full police powers and arrest powers in the exercise of their particular duties. You have seen that draft, Have you?

MR. ZAPPULLA: Yes, sir; I have.

MR. DENZER: What, beyond that, is needed here for this group of Safety Officers?

MR. ZAPPULLA: There is nothing needed beyond that, anymore than is needed for a police officer to carry out their duties under the present and old law while they are on duty.

MR. DENZER: They are always on duty. Police Officers are always on duty.

MR. ZAPPULLA: The distinction is made that a police officer, being always on duty, would have an obligation to make an arrest wherever he sees a crime committed. We are maintaining that, since Safety Officers are police officers, they are members of organized Police Departments, they have all the facilities of Police Departments -- two-way communication radios, for example, patrol vehicles and headquarters, etc. -- they are in the exact position of any local or municipal police.

MR. DENZER: They are not listed

as police officers in the sense that we are talking about. The question is whether they should be police officers with full police authority to make arrests for any crimes, whether it is in connection with their duties or otherwise. I don't think you should maintain that. And if you don't, I don't see why you are not satisfied with the draft as it is in the latest form.

MR. ZAPPULLA: The draft in its present form does not include Safety Officers anywhere.

MR. DENZER: Assuming they are listed as Peace Officers, not police officers, wouldn't that accomplish everything you want?

MR. ZAPPULLA: Let me say this: It would certainly accomplish a great deal. I don't believe it would accomplish everything that is desired because of the fact that a distinction is thereby made between a Peace Officer -- that is, the Safety Officer under that interpretation -- and the Safety Officer. There is no distinction because, for example,

the draft put out by the Commission, there is indicated the difference here between a Peace Officer and a police officer in that the police officer, under the duties of making arrests for all offenses, is on duty all the time.

Now, a Peace Officer is making arrests for all offenses.

MR. DENZER: Only in the course of his duties. Now, when he goes home at night and goes out to a restaurant or something, he is just like anyone else, he has no obligation to go around acting as a cop, and he certainly is not going to be reprimanded if he doesn't pitch in when some crime is committed nearby. He has no obligation whatsoever. That is a police officer's obligation and, certainly, he is not going to be called to account for not doing anything.

MR. ZAPPULLA: Yes, sir; that is correct. However, since the law is being revised and we expect it is going to be approved in most, if not all areas, we consider

this to be a significant improvement.

The Safety Officer is a police officer. Change the name to Police Officer instead of Safety Officer.

MR. BENTLEY: I see you have got attached to your exhibits here a letter from J. Earl Kelly, Director of Classification and Compensation, refusing reclassification.

MR. ZAPPULLA: That is refusing reallocation.

MR. BENTLEY: That's what this is about.

MR. ZAPPULLA: Not really. The reclassification request is to reclassify back to what they were before. The title, as instituted, was patrolman. My guess is to save money, they took the title of Fireman and combined it into patrolman and instituted Safety Officer. Therefore, he has Fire Marshal duties, police duties and duties with reference to fire apparatus.

MR. BENTLEY: Then, this is all public service with no salary overtones

whatsoever?

MR. ZAPPULLA: No, sir; no salary implications of any kind. We have pensions built in, but they have been covered separately.

MR. BENTLEY: No pension rights in connection with this question?

MR. ZAPPULLA: No, sir. The Director of the Division, himself, interpreted the duties of the Safety Officer as those of a police officer, and he did that by stating that he compares -- that he has compared the duties of the Safety Officer with those of the Municipal Police, and has compared the salaries, and they granted a salary reallocation in 1962 in order to align the Safety Officer's salary with that of the Municipal Police. The conclusion, inescapably, is that they consider the Safety Officer to have the same responsibilities and duties as the official police.

Now, a survey made by the Safety Officer's Benevolent Association

of most of the State University and all, I would say, of the State Hospitals, revealed a breakdown of the duties as follows:

They have seventy-eight per cent police duties, fifteen per cent fire fighting and fire marshals, and inspection duties; five per cent safety inspection and two per cent home inspection.

This might be similar to the New York City Police situation where you have a one to four man who sits as a clerk all day long. He is still a police officer except that with the Safety Officer, one day he will be in the car patrolling, the next day he may be called on fire duty. He must be qualified to carry out all of these functions regardless of whether it is a police function or not.

MR. BARTLETT: But it is true, Mr. Zappulla, that in your instruction in which you suggested that you do get the kind of instruction that a police officer gets, you have a total instruction course of ninety hours, of which

substantial parts deal with the fire responsibility, the particular special kind of problems you face in dealing with patients in mental hygiene institutions and, in all candor, it is nowhere comparable to the two hundred forty hours required by the Police Officers Training Council. That is precisely why I think Mr. Denzer's question to you.

You are suggesting that the right result here -- and I, personally, think I favor it -- is to give you the Peace Officer category which, for the purposes of duty, give you exactly the same powers as every other police officer in the State of New York. You are urging that we amend thirty-two, but it does seem to me that -- you know, you fellows shouldn't feel hurt or upset because you are something different from some other kind of policeman -- but it does seem to me you are really specialists, and you are.

The Parole Officers spoke to us about their special kind of responsibilities. It seems to me that you

people also have special kinds of responsibilities.

MR. ZAPPULLA: It seems to me they are police officers with extra knowledge. They do all the work of the police officer. I would like to mention -- I will only be another few minutes -- the Safety Officer, of course, is subject to twenty-four hour call.

During the last strike of the Department of Mental Hygiene at several State Hospitals, these hospitals that were not on strike, but which were on alert, had the Safety Officers on call all week, seven days a week, twelve hours a day. Each Safety Officer was on duty twenty-four hours a day. I guess he had to take cat naps in between.

The interesting point is that the State Public Police made no arrests. All of the arrests made at every single hospital was made by the Safety Officer and he, alone. Some of the arrests may have been made off the hospital grounds by City Police. All of the arrests on the grounds were

made by the Safety Police.

The crimes Up-State are increasing mor quickly than the crimes in New York City. This has not been given much publicity. Rochester has an increase of sixty-seven per cent, and murder is up one hundred four per cent in Rochester.

MR. BARTLETT: The trouble with that is, it may have gone from three to seven.

MR. ZAPPULLA: In New York City, violent crimes are up eleven per cent. Also interesting is that the United States, in the first six months of 1968 over 1967, crimes went up twenty-one per cent, and this is not to take into consideration the fact that, as an example, aggravated assaults and robberies occur twice as many times as are reported and the President's Commission on crime indicated, and this is the last point, that an important step to attempt to stop the crime spiral is to strengthen law enforcement.

It is submitted that the request being made here to add Safety

Officers to 1.20.32 would strengthen law enforcement in New York State.

Thank you very much for your consideration, gentlemen.

MR. BARTLETT: Thank you, and you may have this back. I was glad to have a chance to look at it.

We will next hear from Mr. Henry Mara, speaking for the Correction Officers Benevolent Association.

MR. MARA: Mr. Chairman, Members of the Commission, I spoke at the last hearing in February on this very controversial subject, as you stated in your last draft here, on the Peace Officer-Police Officer category.

It appears to me that it is a very controversial subject because it seems like it is still up in the air as far as Correction Officers are concerned.

Now, if I go by this last draft, I see that it has reverted back to Peace Officer status and looking at this here draft, it lists the same categories as the

prior Criminal Code -- as the present one, I should say -- and it has Correction Officers listed on a part-time basis. When they say part-time basis, it gives us the authority only while on the job.

Now, Correction Officers have been Peace Officers in the City of New York. I believe, we are one of the oldest law enforcement groups in the City of New York. I believe we are one of the largest Peace Officer groups in the State of New York.

When I say "Peace Officer groups," it is merely Police Officers. Our men are well trained, our men have acted responsibly on the job as well as off the job.

Due to the uniqueness of our job, approximately forty per cent of our Correction Officers live in the ghetto areas, in Bedford-Stuyvesant and East New York, the Bronx and so forth, throughout the City of New York. Now, this is a large percentage when you base it on approximately twenty-two hundred Correction Officers who actually live in these

areas.

Now, these men, unlike a lot of the other Peace Officers, live with these inmates twenty-four hours a day, seven days a week except for their days off. Now, a lot of these officers, as I said, the forty per cent who live in these areas, actually live in the same houses with these ex-inmates, etc. They frequent the same public places and they see them everyday on the streets.

I think that the Correction Officer, being in a unique situation, should be given the category of Police Officer for the simple reason that I think, on account of our uniqueness, that we do show that we are responsible and that, although we do not have the two hundred forty hours of training which the Commissioner had asked us at the last hearing, our Commissioner, Commissioner McGrath has promised he will give us this additional training. Also, the Commissioner has indicated that he would go along with us if the Mayor of the City of New York would go along with us on

this additional training.

I think the question comes up of the responsibility for any arrests that are made off duty. Well, I have been listening to the hearing here today, and I believe that Commissioner Looney in Nassau County, before brought out the fact -- and it is also a fact in our Department -- that I can't recall any liability cases that have come up as far as a Correction Officer is concerned. Now, I have heard a lot of rumors.

MR. BARTLETT: You did hear the Commissioner was very much opposed to your group getting Police Officer status.

MR. MARA: I didn't hear him say that. The point, at that time, was that there be the elimination of Peace Officer status, and there should only be the title of Police Officer. I didn't hear him say anything contrary to our group.

MR. BARTLETT: "With respect to the controversy concerning the definition of 'Police Officer' it is regrettable to note

that the Commission has seen fit to retreat from its original position by expanding the designation to include non-police groups. The Commission's initial premise that the Police Officer, as presently defined in Section 154-a of the Code of Criminal Procedure, was the primary and sole law enforcement officer in the State whose functions actually required the broad statutory powers that authority previously bestowed on all Police Officers..."

I can tell you that a year ago the Commissioner testified at that time, too, that he strongly opposed the extension of Police Officer status to other than regular policemen.

I just raised the point for one purpose. I want to remind you on the basic issue that he and the other Chiefs we heard from, including New York City, have been opposed to this extension.

MR. MARA: I would like to elaborate on that a little bit, Mr. Bartlett.

The Police

Departments, you say, are against having us. I have a letter here from the Superior Officer of the Police Department, who represents six thousand three hundred Superior Officers in the Police Department, which takes in the Captains, Police Lieutenants, Sergeants and Detectives. This letter was addressed to you, Mr. Bartlett, I believe.

[WHEREUPON THIS LETTER WAS TURNED OVER TO THE COMMISSION.]

MR. BARTLETT: You do recall Commissioner Dodd's testimony at the last hearing? He said the administrators of the Police Department. It is true that they oppose the extension of the Association of the Chiefs.

MR. MARA: I think, Mr. Bartlett, it is probably true; but I think the Superior Officers are well qualified to --

MR. BARTLETT: [Interposing] There seems to be a dispute among those representing the regular police. We have testimony on this in Rochester and Albany, as well.

MR. MARA: I can understand

these changes in the Peace Officer status and so forth. There are certain groups which probably should be curtailed or eliminated by, I think, New York with the crime rate being so high and having twenty-two hundred well-trained and responsible Peace Officers at the present time, it would be a waste of time. Here is where no money is involved at all.

I know a lot of times you go up before the Legislature or Commission Members. They worry about the cost, and rightly so; and rightly so, it is a very important factor. It wouldn't cost the City a dime in this case, that you want to limit their powers to a part-time set-up where, especially, at a time like this, where we could use them. I don't say to play cop. A man, as I explained before, doesn't have to play cop when he gets on the subways or travels in the neighborhood and he is faced with these problems everyday of the week. He is confronted with it everyday.

You say any private citizen can take action, and this is true; but

I have to sort of laugh at this because there are not many private citizens who would stick out their neck and take any action when somebody has a knife or gun, a piece of glass or some other weapon. I think it would be ridiculous to expect some private citizen to do this, no more than to expect a Correction Officer to do the same thing.

MR. BARTLETT: But you do expect a Correction Officer to do the same thing.

MR. MARA: But if a man is not sure he is going to be backed up by his own Department or by liability --

MR. BARTLETT: [Interposing] So, this is the key question, the question of liability.

MR. MARA: I don't think it is a big problem either. There have been no cases in the Department of Correction where a Correction Officer has gotten involved where the City was sued because of false arrest or some other matter where the Corporation Council was involved of our Department.

MR. BARTLETT: My recollection is that last year, Mr. Mara -- the figures given us by someone, I don't know whether it was you or Commissioner McGrath -- indicated twenty odd arrests during the previous year, off-duty arrests.

MR. MARA: That is incorrect. I don't recall offhand, but I want to make another point here, although I can show you probably ten in the last month here.

MR. BARTLETT: Do you know how many there have been in the last year?

MR. MARA: No, I don't; but I can state this for the record. It doesn't make any difference how many arrests are made by Correction Officers.

MR. BARTLETT: That wasn't my question. Do you know how many?

MR. MARA: Not offhand. In many cases it is turned over to the Police Department.

MR. BARTLETT: You are required to report these, are you not?

MR. MARA: Definitely.

MR. BARTLETT: So, there are some records somewhere?

MR. MARA: Yes, but nothing is put out for the officer in way of commendation or so forth.

MR. BARTLETT: But they still have the records?

MR. MARA: They should have that.

MR. MC QUILLAN: I understand, five hundred in four years.

MR. MARA: With assist cases and so forth, yes, that could be.

FLOOR: Twenty, I remember the Commissioner had made. These are the ones the Department has been giving commendations out on.

MR. MARA: In the last three months, I have approximately ten here. That is only in the last three months, from all the different arrests they made.

The Correction Officer isn't out there to play cop, and it is not important how many arrests he made. He

can make one arrest, but it may save a life. I think this is the important thing, not how many arrests are made. It is the fact of a deterrent. These ex-cons know us, they recognize us from the jails and institutions, and I believe over eighty per cent of these prisoners are recidivous.

We have the revolving door institution, which I am sure you men are aware of. The prisoners actually recognize us, and I think many crimes are arrested in many areas because they do recognize us. If these powers are taken away from us, it would be an explosive situation in the jails. I think our capacity in the jail is over three thousand.

Our Department is so unique that to take us and give us a part-time status, I think would be a serious mistake on the part of the City or on the part of the State.

As I said before and I must repeat it again, it doesn't cost the City of New York or the State any money to do these

and they say they like the job, but they can't stay on the job because we are losing Peace Officer status.

MR. BARTLETT: Are you serious about this?

MR. MARA: I am very serious. I ask them if carrying a gun means that much to them. Is it prestige? They say it is not carrying a gun, but they want to know they have the protection for their families and themselves.

MR. BARTLETT: You keep coming back to the protection for yourself and your families. I don't mean to downgrade the significance of that at all. I can see it is enormously important, but you lose nothing in that respect. There is no way in which a Police Officer can act more affirmatively than when a private citizen is defending himself.

MR. MARA: We are now going back to the private citizen bit.

MR. BARTLETT: You almost suggest that the rest of society ought to stand with their hands in their pockets.

MR. MARA: I think if you will check the record in the paper, you will see that the rest of society very seldom takes action whenever anything is happening in the City of New York; but in New York City, in the papers recently, I have seen on the subways where people actually ran out of the trains because they were afraid they, themselves, would be injured. I do not blame them one bit.

MR. BARTLETT: My point is, Mr. Mara, what does Police Officer status add in that circumstance?

MR. MARA: This circumstance would give us full powers for misdemeanors as well as felonies.

MR. BARTLETT: I am asking now about what really seems to be at the root of your conviction, that is in defending yourselves and your families.

MR. MARA: And the communities, because the communities know us as Peace Officers. They look to us for assistance.

Some of these I have

right here, a person ran from one floor to another floor in the same house. Are we right to stand back and say, "No, I can't help you," or "I will not do it as a private citizen?"

MR. BARTLETT: You don't have to make a speech about it at all. Just act.

MR. MARA: It is just my feelings on the subject and the feelings of the rest of the Association.

MR. BARTLETT: I think we have your point. We are sorry you don't agree with the Probation Officers, whose category is somewhat similar to yours, that the proposed amendment meets your needs; but we will take into consideration the points you have raised.

Thank you, Mr. Mara.

We will now hear from

Mr. Draffin. Is her here?

FLOOR: Not here.

MR. BARTLETT: Lieutenant Martin?

LIEUTENANT MARTIN: I am Lieutenant John Martin, President of the Superior Officer's Council of the New York City Transit Police

Police Department, representing all Superior Officers from the rank of Sergeant right on up.

I was the former President of the New York State Police Conference, representing over fifty thousand Civil Service career Police Officers in the State of New York. I was also a State Vice-President for two terms. In addition to that, I was President of the Transit Police Patrolmen's Benevolent Association for twelve consecutive terms.

I would like to make the observation that the New York City Transit Police Department is the second largest Police Department in the State of New York. It is larger than the State Police, larger than Nassau County. We are only overshadowed in this State by the New York City Police Department, which is in the neighborhood of thirty thousand members, I believe.

MR. BARTLETT: How many sworn members do you have?

LIEUTENANT MARTIN: Thirty-four hundred

members, approximately.

I would like to make an off the cuff comment relative to the previous speaker, the gentleman representing the Correction Officers' Association. I think he made a very fine point. I would like to add my support to the Correction Officers from our Superior Officers' Council because I feel that here you have a built-in situation whereby the citizens of the City of New York are afforded the protection of three thousand Correction Officers who would be off duty in situations requiring police powers.

The City of New York should take advantage of this built-in police force that would be available to take proper police action in situations requiring it. I would just like to add that support to the Correction Officers' Association.

As relates to my Department, gentlemen, we are very concerned in that the -- first of all, I want to commend the Committee for the very fine work, generally,

that they have done, not only in relation to the Code of Criminal Procedure, but for the tremendous job they have done on the new Penal Law.

As a student, now hopefully studying for the Captain's exam, I find that the new Penal Law is an excellent improvement over the previous Penal Law and, generally, I think the Code of Criminal Procedure would show the same good things as shown in that area.

MR. BARTLETT: For which we thank you.

LIEUTENANT MARTIN: As it relates to our particular Department, the one section that concerns us -- and I would like to refer to some notes that were submitted by a compatriot of ours -- our problem is, that under the new proposal, you sort of limit the duties of the policeman or the powers of a policeman to the geographical confines of his employment. As it relates specifically to the New York City Transit Police Department, that may be

construed to mean in and about transit facilities.

MR. BARTLETT: Is that what it is presently construed to mean?

LIEUTENANT MARTIN: Well, it is kind of an ambivalent thing.

MR. BARTLETT: It is confusing.

LIEUTENANT MARTIN: Presently, we will say if you make an arrest in and about the transit facilities on duty, there would be no problem. Let us assume you are now off duty, presently, as it relates to the present. You would make an arrest as a Peace Officer. Under the new proposal, you would no longer have that Peace Officer status, and you are making an outside arrest, which happened in our Department in a great many situations. You would be making it as a private citizen and you, gentlemen, can appreciate, with less protection than you would do it as a police officer. I support fully what Commissioner Looney had stated in that he feels policemen should have Statewide police powers and not limit it to

the geographical confines.

MR. BARTLETT: Would it suit the Transit Police if you had City-wide jurisdiction?

LIEUTENANT MARTIN: Yes, it would, Mr. Bartlett.

MR. BARTLETT: That would only exclude vacations for personal travel?

LIEUTENANT MARTIN: Yes, sir.

MR. BARTLETT: As I understand it, there is some language in the Transit Authority Law, itself, isn't there, relative to bailiwick?

MR. DENZER: That is the trouble with it. It is so self-limiting.

MR. BARTLETT: I don't think this Commission would oppose an appropriate amendment to that if the fixture of bailiwick, in the City of New York, I would think for all practical purposes, it would obviate your difficulty. I can imagine the problem you have even assuming on duty powers in determining what is in, on or about. How far away do you

have to get from the top of the stairs to be out of the subway?

LIEUTENANT MARTIN: We have situations. We don't have any supplemental passageways that would lead us from a subway station into a courthouse which, conceivably, would be six or seven miles away. A situation would develop where it might require police attention. It would be kind of ludicrous to say, "I am sorry, ma'am. Get the fellow from the Fourth or Fifth Precinct because I am Transit, and you are bleeding to death and don't get it on my uniform."

You know, I don't mean to be facetious, gentlemen, but I want to emphasize a point.

MR. BARTLETT: We have discussed this in the Commission, and we have recognized that the bailiwick problem is a special one for you and, perhaps, if you would be good enough to meet with Mr. Denzer and Mr. McQuillan, we will try to assist you, informally, at least, in trying to find a resolution to it.

LIEUTENANT MARTIN: I appreciate that,

but the proposal is we attempt to amend further 1204 of the Public Authority Law and include in the language in or about transit facilities and the City of New York. That, I would say, would cover the situation very nicely.

There is a strong possibility, then, that you would encounter opposition from some groups up in Albany that might be very strong lobbyists and, conceivably, that bill would be defeated.

MR. BARTLETT: We have to be mindful, too, with this proposal, it would engender the same kind of opposition.

LIEUTENANT MARTIN: I certainly -- as the Commission said -- when you are doing such a fine job, you certainly ought to correct the problem before they occur, not only as it relates to the New York City Transit Police Department, I might add; but you would have the authority of the New York City Police, the Long Island State Parkway Police, the Niagara Frontier Parkway Police. Conceivably, you would have interstate parkways, all of

which are aiding in the authority of the Police Officers, and they all have the same problems we do in locations.

Our duties take us in five Counties in the City of New York, alone, and Long Island State Parkway Police go from Nassau and Suffolk, you know, up to Niagara. I don't know about Niagara, but they take in a large area. Of course, the Port Authority Police.

In those situations, if you do not do something to cover the unique problems without opening a Pandora's box, so to speak, as it relates to other Police Departments.

MR. BARTLETT: I would appreciate it if you would be in touch with the Commissioners.

LIEUTENANT MARTIN: Thank you very much, and just one quick comment that the Commissioner has made, but just to support that -- he has said you would have forty thousand policemen as opposed to three thousand State

Police if you had Statewide police powers. He mentioned that the State of California was a very progressive forward thinking State. They have State powers, and they also have an outside entry bill, which protects them outside of the municipality and the local municipality picks up the tab for it.

In the State of New York, we have such a vehicle, incidentally, that was enacted in 1962 called the Outside Entry Rule. I was State President at that time. It is not a mandatory thing, but a permissive thing. Any Police Officer could affect an arrest under any of the 552 situations, which take in misdemeanors -- that has since been changed a bit -- and any felony. He would be compensated if he sustained any injury occurring within the municipality. This was good and in the public interest. It protected the citizens and the policeman if he took bonafide action.

We are not asking for a license for fellows to get involved in a

legal situation. They are mandated not to. If they make a mistake, they go to jail, if necessary; but we have not had any situation involving false arrests. I don't think that this, really, is a fear that you should have about policemen taking unnecessary or improper action.

Thank you, gentlemen, very much and, again, I want to commend you for a fine job, generally.

MR. BARTLETT: Thank you. Before concluding I would like to read a report submitted by Patrick J. Corbett, Sheriff of Onondaga County.

"Gentlemen: As Sheriff of Onondaga County and in cooperation with our local Magistrates Association, as well as that of the Judiciary, we have great concern over what appears to be conflicts in the present Code of Criminal Procedure, and that of the Correction Law.

"As you all are well aware, the Sheriff derives his authority from

the Constitution of this State, as well as some practices that have been handed down from common law.

"One of the age-old duties of the Office of Sheriff, is that of being in charge of the County Jail, and responsible for its management. Section 500-C of the Correction Law pertains to the custody and control of prisoners, and states in substance that "each Sheriff shall receive and safely keep in the County Jail of his County, every person lawfully committed to his custody for safekeeping, examination or trial, or as a witness, or committed, or sentenced to imprisonment therein, or committed for contempt." It has been said that a "jail" is ordinarily understood to mean a building designated by law or used by the Sheriff for the confinement or detention of those persons who are judicially ordered to be kept in custody, and that it is distinguishable, both in law and common understanding, from a temporary place of detention such as a Police Station, or lock-up.

It is therefore necessary for the Sheriff to have a legal commitment before he can accept a prisoner in his jail.

"We have been instructed by the Department of Correction that the Attorney General has rendered an opinion that "lawful authority" as provided in Section 500-C of the Correction Law, means the authority given by an order, made or granted by a court or judge having competent jurisdiction.

"Now, on the other hand, cities are given the power to establish and maintain workhouses, reformatories, jails and other correctional institutions. They derive their authority to do so pursuant to the General City Laws, Section 20, Sub-Div. 15. It is not necessary for them to have a commitment prior to the detention of a prisoner. Section 737 of the Code of Criminal Procedure, states, among other things: First, that a Desk Officer, Sergeant, or person in charge of a jail or Station House, has the power to admit the individual arrested to bail for his appearance

before a Magistrate at a date not more than one week thereafter. Secondly: The Section states, that a magistrate shall be deemed inaccessible between the hours of 7:00 P. M. and 9:00 A. M.

"At a meeting last summer in our County, between myself, Representative of the Onondaga County Magistrate's Association, and the Honorable Frank Del Vecchio, Supreme Court Justice of the Appellate Division, Fourth Judicial Department, it was originally felt, that because of this Section, it would be permissible for the Sheriff to accept prisoners without a written commitment between the hours of 7:00 P.M. and 9:00 A. M. However, in view of Section 500-C of the Correction Law and the rules and regulations that we have been presented with from the Department of Correction pertaining to the management of County Jails, we run into a problem where the person arrested cannot make bail as prescribed in Section 737 of the Code, and all the magistrates in our County

are deemed inaccessible pursuant to the same Section between the hours of 7:00 P. M. and 9:00 A. M., we wonder, "What are we to do with our prisoner?"

"It is felt by myself, our County Magistrate's Association and Justice Del Vecchio, that this situation can easily be remedied by action on your part, by the proper legislation allowing a Sheriff or person in charge of a County Jail to accept a prisoner lawfully arrested, between the hours of 7:00 P. M. and 9:00 A. M. who cannot make bail, without a lawful commitment.

"We feel that by the proper legislation pertaining to this matter, we will be able to keep more men on road patrol in our everlasting fight against crime, instead of having them tied half the night, awakening a Justice of the Peace, driving the defendant to his residence, going through an arraignment, and then transporting the prisoner back to the County Jail for confinement.

"We greatly appreciate

your consideration in this matter.

"I thank you."

This concludes
today's hearing, and we will convene again at
ten o'clock tomorrow morning, and the Chairman
will try to be on time.

[WHEREUPON THIS HEARING WAS ADJOURNED AT
3:45 P. M.]

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