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draft of

STATEMENT OF PRINCIPLES

SAN FRANCISCO CITIZENS COUNCIL ON CRIMINAL JUSTICE

GREGORY STOUT, CHAIRMAN

organized by the community activities department of

FAMILY SERVICE AGENCY OF SAN FRANCISCO

and

under consideration for sponsorship by

AMERICAN FRIENDS SERVICE COMMITTEE
FAMILY SERVICE AGENCY OF SAN FRANCISCO
NORTHERN CALIFORNIA SERVICE LEAGUE

(These groups have been working closely together on this and their boards are considering sponsorship of the Council as of 2/9/70. Some other organizations have been asked to become co-sponsors in the initial phase of the study. Other organizations will be urged to join in co-sponsoring the new organization to be formed as an entirely separate entity, with representatives from many groups on its board of directors.)

JAN — also see back cover

STATEMENT OF PRINCIPLES

SAN FRANCISCO CITIZENS COUNCIL ON CRIMINAL JUSTICE

We believe that some of the existing modalities of the system of criminal justice are failures, others are inefficient and ineffective. Incarceration itself is not a deterrent in most cases; it does not provide opportunities for the offenders to better themselves; neither does incarceration protect the community since almost all offenders are released back to the community.

We also believe that in instances where crimes have been committed against a person, property, or the government, criminal sanctions are appropriate. Apart from these areas, the employment of criminal sanctions is usually inappropriate. When criminal sanctions are utilized, however, it should be within the context of extreme caution. Such a change in our system of criminal justice would require that existing private and public modalities would have to assume a far greater responsibility for dealing with the problems which have been the subject of criminal sanctions in the past.

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REDUCING THE KIND OF CONDUCT THAT SHOULD BE CRIMINAL IS USEFUL, BUT IS NOT ANYWHERE NEAR AS CENTRAL TO THE PROBLEMS OF CRIMINAL JUSTICE AND CORRECTIONS AS THIS PAPER SEEMS TO ASSUME

Implementation of these long range goals will require vigorous efforts at the federal, state, and local legislative levels. At the same time, we propose the implementation of several immediate goals at the local level which would reduce the harshness and unnecessary rigors with which the present system of criminal justice affects the individual and which generates disrespect for the law in all aspects of society and makes schools of crime of our institutions. These immediate goals are listed as follows:

1) to reduce the incarceration of accused misdemeanants, we will work for the increasing use of the citation procedures, the OR project, and to develop new methods to the end that needless and extended incarceration of such persons depends upon circumstances other than the availability of trial courts;

2) an accusatory and adjudicatory process that indiscriminately labels the accused as a felon and subjects him to an input system that results in long periods of pre-sentence incarceration should be eliminated;

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3) state subvention programs which substantially reduce the number of accused that ultimately go to the State Department of Corrections need to be strengthened and augmented;

4) OR programs that will at an early stage of legal proceedings release substantial numbers of accused felons under more precise and discrete criteria will substantially reduce needless pre and post trial incarceration.

We recognize that the adversary system of American criminal justice, relying as it does upon public prosecutors and defense attorneys, both private and public, has served us well. Within this evolving system, the American Bar Association and other groups have recognized that plea-bargaining between adversaries exists. To improve this plea-bargaining process, a number of standards have been proposed and are undergoing public discussion and examination.

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We believe and propose that the proper role of the adversary system should be restricted, however, to two enquiries. The first is whether the accused committed the physical acts included within the charge or charges; secondly, did and does the accused have the state of mind that the criminal law labels as responsible, thus subjecting him to criminal sanctions.

We further believe and propose that plea-bargaining should be conducted openly among all participants, including the prosecutor, the defense counsel, the defendant, the investigating probation officers, and including such other persons as may have special knowledge, training, or interest in the proper disposition of the case.

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Implicit in this proposal are methods which should be delineated. Reference has been made previously to pre-sentence plea-bargaining. The system herein proposed will necessarily look to the police or other law enforcement agencies for a complete factual investigation of the alleged offense. An investigating probation officer would be charged with the responsibility of assembling, collating, and evaluating background information relative to the offender and the victim at an early stage of the proceeding, which data should be available to court and counsel. In such a system, the judge is the final arbitrator and his role is not to be disturbed.

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We further propose that serious consideration be given to the elimination of the role of the magistrate; for example, the arraignment and the preliminary hearing in felony cases. The magistrate court lacks jurisdiction to dispose of the case. A proper input system should direct new cases to the court that will ultimately dispose of the offender. The practical effect of such proposals will be to free magistrate and inferior courts of unnecessary and time-consuming functions that must again be reported in superior court. Efficiency will necessarily be improved if such a system is adopted.

We recognize that for such a system to be adopted, substantial constitutional and statutory changes will have to be undertaken. The enormity of such a task ought not to prevent its commencement.

At the present time, in accordance with the constitution, general state laws, and provisions of the charter of San Francisco, the judges of the superior and municipal courts are elected for a term of four years, as are the district attorney and the public defender.

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We propose that these officials be appointed rather than elected, so as to eliminate political considerations from the administration of criminal justice.

As for judges, whether they be appointed under a format comparable to the Missouri or the California plan, or some other less controversial modality than these, are matters for further consideration.

The district attorney and the public defender should be appointed by the mayor and confirmed by the board of supervisors, from among those attorneys whose experience and professional competency measure up to precise descriptive criteria.

The district attorney and public defender staffs similarly should be appointed under appropriate criteria so as to make merit rather than political status the basis of staff appointments.

Perpetuation of the adversary system of criminal justice in the fact-finding area requires that there be a balance between these adversaries, the district attorney, and public defender expressed in equal opportunity for factual development. Implicit in this proposition is an adequate investigational staff, equal access to crime laboratories, etc. These are merely palliatives and involve costly and needless duplication of investigative staffs and other possible facilities.

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A more far-reaching and time-tested method is to charge local police departments with reponsibilities for the management of traffic, public safety, and more generally for the "on-the-street" enforcement of the criminal laws. A new and separately administered investigatory agency should be created under the overall supervision of the courts, accessible to procecutor and defender alike, impartial and professional, which will provide background information regarding the victim, the potential witnesses, and the alleged offender. Such an agency also should be responsible for all followup investigations of a factual nature.

These goals can be achieved only after there has been much public discussion. Only then and thereafter can appropriate changes in existing legislation be affected.

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Cognizant of the report on adult probation in San Francisco published by the San Francisco Committee on Crime and its criticisms and recommendations, we view this report as palliative in its dimensions and lacking philosophy.

As long as private conferences between the judge of the court, the probation officer, the deputy district attorney, and the deputy public defender or private defense counsel go on each morning in chambers regarding the disposition of the offender, the adversary system of criminal justice is jeopardized.

WHY IS IT?

To give philosophical content to the probation officer requires examination of the appointing power. The Omnibus Crime Control and Safe Streets Act of 1968 contemplate the creation of local citizens planning councils to evaluate needs, plan solutions, and to implement relevant programs in the area of crime.

WHAT DOES THIS SENTENCE MEAN?

Assuming implementation of these acts, some local board or group will be constituted. This body should be charged with the responsibility of recommending the best qualified person as the adult probation officer from the nation, on the basis of appropriate criteria. The appointing power should remain with the judges of the superior and municipal courts. Legislative changes to implement these recommendations are necessary. The Civil Service Commission should select staff on the basis of criteria recommended by the local council or board described above.

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Some suggest the creation of a County Department of Corrections. A more humane and sound approach is to eliminate the currently fashionable method of placing criminal offenders at one end of the spectrum and persons on relief, the mentally ill, and others at the other end. The process of criminal justice serves merely as one means of identifying persons who are in need of support from all relevant community agencies. The development of a methodology separate from the mainstream of social services is wasteful, duplicative, destructive, and criminogenic.

Work furlough programs, county jail commitments, supervised probation release, parole, or detoxification are special words to describe but a phase of how the community deals with the offender and should be eliminated from the lexicon.

Recognizing realities, the council or board to be created under the previously described federal statutes should be given responsibility as an interim department of city government for the daily implementation of all programs dealing with the offender under appropriate state and local laws. Ultimately the work of this department should be assumed by other city departments and its operation gradually phased out of existence.

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