Chapel Receives Opinion on Law Proposals for Narcotic Peddlers

By CHARLES E. CHAPEL
Assemblyman, 46th District

If more stringent anti-narcotic laws are not enacted during the current 1960 Session of the Legislature, depending entirely upon whether or not the Governor places narcotics on the agenda for a special session to run at the same time as the Budget Session, we must be prepared for anti-narcotic legislation in the long general Session of 1961.

Unfortunately, most of those caught and convicted as violators of narcotic laws are addicts themselves and they are not the big leaders in the traffic. In preparation for the introduction of bills during the 1961 General Session to meet tehis situation, I obtained a legal opinion from the Legislative Counsel, dated March 10 1960, his file No. 2318, as follows:

"Dear Mr. Chapel:

"You have asked that we discuss the matter of the ways in which the narcotics laws might better distinguish between th addict and the large-scale non-addict dealer in narcotics, and we will discuss the proposals that have come to our attention, without, of course, advocating adoption or rejection of any of them.

"We note, at the outset that it has been claimed that very rarely does the Department of Corrections receive a non-addict wholesaler under commitment by the courts. It has been stated (Board or Corrections, "Narcotics," February 19, 1959, distributed by the Senate Interim Committee on Narcotics):

'Of the 598 consecutive new adult male prisoners received in 1957 (i.e., for narcotics-involved offenses') there were no non-addict wholesalers revealed by official records or interviews. Only three offenders were apprehended in posession of at least three ounces of heroin and by definition operating at the 'management level.' All of these offenders were themselves opiate addicts or 'pushers.'

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IF THIS means that the non-addict wholesalers are simply not being apprehended, changing the penalties would not seem to be helpful, and the means of improving the rate of apprehension is beyond the scope of this discussion.

"However, proposals have been made for varying the prescribed penalties for narcotics offenses according to the status of the offender. It should be noted that the present law allows for this to some extent because the basic penalties for posession and sale are alternatively imprisonment in the county jail and imprisonment in the state prison, where a prior narcotics conviction is not pleaded and proved (Secs. 11500, 11501, 11530, 11531, H. & S. C.), and thus a court can choose between the two penalties. Also, there is leeway in the exaction of either of these penalties, because the maxium, but not the minimum, county jail sentence is prescribed by law, and the sentence of imprisonment in the state prison is an indeterminate sentence, so that the Adult Authority in fixing the term of imprisonment can, if it thinks it relevant, take into account the factor of the quantity of narcotics involved, and the factor of the offender being an addict or a non-adict.

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ONE PROPOSAL that has been made is that the permissible penalties for unlawful posession of narcotics vary according to the amount posessed, so that if more than a certain amount is posessed, a heavier penalty is permissible. Of interest in this regard is Section 1751 of the New York Penal Law, which makes it an offense to possess a narcotic with intent to sell it unlawfully and provides that unlawful possession of two or more ounces gives rise to a rebuttable presumption of intent to sell. The theory of this type of law aparently is that if more than a certain amount is possessed, it can be inferred that the possessor is actively engaged in the business of selling narcotics and is not merely providing for his own needs, and perhaps occasionally making a sale. Perhaps further gradations could be incorporated in a law punishing possession or sale to distinguish between sellers at various levels of the business.

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"Another proposal that has been made is that the statutes be written so as to provide that if it is proved that the defendant is an addict the persmissible penalties will be the lesser of those prescribed for the offense, and if it is proved that he is not, the greater of the permissible penalties will apply. A proposal of this general nature can be found in Assembly Bill No. 28 of the 1959 Regular Session, as amended in Assembly April 30, 1959, allowing suspension of sentence, provided that there is a long period of probation, including a relatively short term of imprisonment in the county jail, if the defendant is an adict, but not otherwise.

"Very truly yours,
"Ralph N. Kleps
Legislative Counsel

AT PENSACOLA . . . Undergoing training at the Naval School of Pre-Flight at the Naval Air Station, Pensacola, Fla., is Naval Aviation Cadet John W. Blodgett, son of Mrs. Naomi Atchison of 5306 Carson St. Blodgett attended El Camino College before entering the service.

Marine Pvt. Leon W. Thorn, son of Mr. and Mrs. Charles W. Thorn of 25030 Cypress St., Lomita, completed four weeks of individual combat training March 8 at the Marine Corps Base, Camp Pendleton.

The course included the latest infantry tactics, first aid, demolitions, field fortifications and advanced schooling on weapons.