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Sumner Canary

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*Two Views on the Federal Narcotics Law Problem**

I—Suggestion to Facilitate Apprehension and Conviction of Narcotic Law Violators

by Sumner Canary

*United States District Attorney for the Northern
District of Ohio*

THERE ARE THREE PRINCIPAL ASPECTS to the enforcement of narcotic laws. They are:

- (1) The apprehension of the criminal;
- (2) The prosecution of the offender; and
- (3) The sentencing of a convicted offender.

The United States Attorney is concerned primarily with the prosecution of cases which are prepared by other agencies and presented to him. For the most part, the prosecution of narcotic cases is relatively simple because there is little sympathy on the part of any juror for criminals of this type.

I should like to compliment the Bureau of Narcotics and the Narcotic Squad of the Cleveland Police Department. A high degree of cooperation exists between them. Having in mind the handicaps imposed by lack of adequate funds and sufficient personnel and by the requirements of law, I think they have performed an excellent service for the public.

Most narcotics come from foreign countries and come into the United States at seaports. Today most narcotics come into Cleveland from New York and some from Chicago and Detroit. However, with the opening of the St. Lawrence seaway I anticipate the possibility of some drug importation into Cleveland which will seriously increase the local enforcement problem.

Federal agencies do and should concentrate their efforts in apprehending major dealers in narcotics and those who engage in interstate trafficking. The major dealers are generally rack-

* **EDITOR'S NOTE:** The United States Senate is now working on a revision of its narcotics criminal code. In this connection, a Senate subcommittee headed by Sen. Price Daniel visited Cleveland in search of information recently. Two reports they received from top law enforcement executives in the Northern Ohio area are presented here as a composite picture of the problem and its many ramifications that have national as well as local significance.

eteers engaged in all forms of illegal enterprises. They have and of necessity must have national and international connections. They are of the same general group of persons who engaged in the violation of the prohibition laws, who engaged in large scale black market operations and who engage in any form of activity so long as it is illegal.

The apprehension of these criminals in the narcotic traffic is difficult because they rarely have narcotics in their possession. In the transportation and distribution of narcotics they deal almost exclusively through others whom they have encouraged to enter the illegal enterprise. Thus, most cases against major dealers can be made only by way of a conspiracy charge. I am convinced that the only thing these men fear is a long prison term. I therefore recommend that the maximum penalty for conspiracy to violate the narcotic laws should be increased to twenty years.

In view of the difficulty of obtaining evidence against the major dealers, I think the most effective way to deal with the narcotic traffic is to strike hard against those who do the actual distribution. If the smaller dealers are eliminated the bigger dealer will tend to disappear because there will be no one to work for him. Large sums of money are involved. One kilo of heroin in pure form is a small package easily transported. It generally sells for about \$15,000. It can be adulterated to make as much as 700 ounces or 300,000 capsules which sell in the retail trade for \$1.00 or \$1.50 apiece. Because of the enormous sums involved the distributors will remain in the business so long as prison terms are short, but I believe that the certain prospect of a long sentence will drive some from the business and will prevent others from entering it.

Under the present federal law, penalties are the same for the sale, possession or unlawful importation of narcotics. The penalty for a first conviction is from two to five years and this is applicable to addict, minor dealer and major supplier alike. In order to give our judges wider latitude in determining the penalties for offenders of different types, and in view of what I have just said about the preventive effect of the prospect of long prison terms, I think that the maximum penalty should be increased to twenty years.

I should like to say that I do not believe that there is such a person as a so-called "first offender" in this business. These people are not like the unfortunate person who commits his first

crime. The people engaged in the narcotic racket are in it day in and day out and commit a violation of law each time a sale is made. It may be that they are convicted for the first time but that does not mean that they are true first offenders. I think that except in rare instances severe sentences should be imposed upon the first conviction. The table which follows shows few convictions of second and subsequent offenders. I think this adds weight to my belief that severe penalties can be a deterrent to those who engage in the narcotic traffic.

The Boggs Act is an Act which prescribes mandatory minimum penalties for second and subsequent offenders. There are occasional instances in which mandatory minimum sentences result in undue hardship. I believe that the enforcement of the laws against the narcotic traffic can be more effective by the substantial increase of the permissible maximum sentences for all convictions.

I recommend that federal agents be permitted to tap telephone wires when reasonable grounds for obtaining evidence exist. This right should be controlled, perhaps by a requirement that a court order first be obtained, but the right should exist. Much of the dealing in narcotics is done by telephone or personal contact. Payment is usually in cash. Thus, apprehension of major dealers is difficult. It is now necessary to make many arrests of many small dealers in the chain of distribution in order to obtain evidence against the major dealers, and frequently such arrests are not productive of sufficient evidence—primarily because of the refusal of those arrested to give evidence because of fear of personal harm.

Within the past year the Sixth Circuit Court of Appeals has twice ruled that evidence is admissible which was obtained by agents who have listened to an interstate telephone conversation with the permission of one of the parties to the conversation. These holdings have been of considerable assistance in the prosecution of several cases in this district which could not have been successfully prosecuted without evidence obtained in that manner.

In this district persons arrested for narcotic violations are usually released on bail in amounts varying from \$1,000 to \$20,000 depending upon the seriousness of the offense and the character and background of the offender. Bonds in this district have been adequate to insure the presence of the offenders at the time of

trial but in many instances those persons released on bail used their liberty to engage in further traffic in narcotics in order to raise money to finance their trial and perhaps their appeal.

The following table shows the number of narcotic convictions in this District Court each year from 1952 to date, the sentences imposed (total and average), and the number of subsequent offenders. Seven of these cases involved marijuana, a few of them cocaine, and all of the rest heroin. During this period there were no cases involving persons under 21 years of age.

<u>Year</u>	<u>Narcotic Convictions</u>	<u>Total Number of Years Sentenced for Narcotics</u>	<u>Average Sentence for Narcotics</u>	<u>Subsequent Offenders</u>
1952	42	132 yrs., 9 mos. plus (3 yrs. probation)	3 yrs., 3 mos.	4
1953	30	96 yrs., 6 mos.	3 yrs., 2 mos.	2
1954	48	172 yrs.	3 yrs., 6 mos.	4
1955	17	72 yrs., plus (5 yrs. probation)	4 yrs., 3 mos.	3

Relatively few addicts are tried in Federal Court in this district and those that are usually are sent to the Federal Hospital at Lexington, Kentucky. The Probation Department, however, has no way of knowing what per cent of these addicts return to addiction upon their release. Even in those cases where addicts are paroled to them they have no means of knowing whether the parolee has resumed his addiction other than his word. However, the belief is widespread that a large percentage of addicts resume their habit upon release and there is no rehabilitation program to prevent this.

The proposal for the distribution of free drugs is not, in my opinion, advisable. I do not believe that such a distribution would eliminate the illegal traffic in narcotic drugs.

The suggestions which I have made do not provide a complete solution for this problem but I do believe that some of those suggestions would greatly facilitate the apprehension and conviction of narcotic law violators and would thus reduce the traffic in narcotics.