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Trade Secrets

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TRADE SECRETS

On May 17, 1965, New Jersey enacted a statute[1] which restates the common law that trade secrets are property, and provides that stealing articles representing trade secrets, including the trade secrets represented, constitutes a crime. New Jersey has thereby taken another step forward in the law protecting trade secrets. Trade secrets have been protected in this country ever since the case of *Vickery v. Welch*,[2] and the concept of the trade secret as property was developed in *Peabody v. Norfolk*[3] as early as 1868. There, the plaintiff alleged that the defendant left his employ and made arrangements with a competitor, who knew of the relationship between Peabody and Norfolk, to build a factory for manufacturing gunny cloth with machines modeled after plaintiff's and with the latter's secret process.[4] In overruling defendant's demurrer, the Supreme Judicial Court of Massachusetts stated that one who develops

> . . . a process of manufacture, whether a proper subject for a patent or not, . . . has a property in it, which a court of chancery will protect against one who in violation of contract and breach of confidence undertakes to apply it to his own use, or to disclose it to third persons.[5]

While this case dealt with a process of manufacture, a trade secret may encompass many different items, including blueprints,[6] tables of dimensions,[7] machinery,[8] raw material sources,[9] secret pricing codes[10] and ingredients.[11]

> A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers . . . .[12]

A trade secret, therefore, can be almost anything useful or advantageous in business activity that is not generally known or easily or immediately ascertainable to members of the trade.

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1 N.J. Stat. Ann. §§ 2A:119-5.1 to .5 (1965).

2 36 Mass. (19 Pick.) 523 (1837).

3 98 Mass. 452 (1868).

4 Id. at 454-55.

5 Id. at 458.

6 E.g., Pressed Steel Car Co. v. Standard Steel Car Co., 210 Pa. 464, 60 Atl. 4 (1904).

7 E.g., Merryweather v. Moore, [1892] 2 Ch. 518.

8 E.g., A.O. Smith Corp. v. Petroleum Iron Works, 73 F.2d 531 (1934), modified, 74 F.2d 934 (6th Cir. 1935).

9 E.g., Vulcan Detinning Co. v. Assmann, 185 App. Div. 399, 173 N.Y. Supp. 334 (1918).

10 E.g., Simmons Hardware Co. v. Waibel, 1 S.D. 488, 47 N.W. 814 (1891).

11 E.g., Belmont Labs., Inc. v. Heist, 300 Pa. 542, 151 Atl. 15 (1930).

12 Restatement, Torts § 757, comment b (1939).

Protection of trade secrets is desirable from several viewpoints. The development of new ideas and the collection and organization of useful information and data is advantageous to society. The protection of trade secrets provides an incentive to engage in activities that produce immediate advantages to the inventor and long-range benefits to the community.[13] If trade secrets were not protected, corporations would have to spend money, which could be used for research, on increased security measures.[14] The means by which trade secrets have been protected in the past have included civil remedies and criminal sanctions.

I. Civil Remedies

The civil remedies available to an owner who has been illegally deprived of his trade secret include an injunction against wrongful use or disclosure,[15] an accounting for profits,[16] an order for the return of plans or copies of the secret,[17] destruction of the infringing instruments[18] or, where such remedy is adequate, damages.[19] For several reasons, however, these remedies may be inadequate to fully protect the owner of a trade secret.

In many cases, there may be substantial doubt regarding which process the potential defendant uses and whether he obtained it from the plaintiff. In such cases, the plaintiff will have to disclose his trade secret in order to prove that defendant is using it. Plaintiff may thereby frustrate his very goal of secrecy by bringing suit.[20]

In other cases, the plaintiff may find that he is unable to carry his burden of proof. The most difficult questions in modern trade secret litigation are the questions of fact. The relatively simple facts which the courts had to deal with in the days of *Peabody v. Norfolk* are not the facts which the courts face today. The plaintiff today must prove that the subject matter of the claimed trade secret (a) is not a matter of common knowledge or of general knowledge in a trade, for if it is such, it is not a secret; and (b) that it is not a part of the personal skills, knowledge and experience of another, typically his employee, for in such event the secret belongs to a third person. The line between the employer's proprietary information and the techniques personal to the skilled employee has become increasingly more difficult to draw.[21]

Even if the plaintiff does sue and prevail, his civil remedies may still prove inadequate. The resulting injunction and possible accounting for profits seldom leave the taker worse off than before he obtained the secret.[22] Damages

13 Stedman, Trade Secrets, 23 Ohio St. L.J. 4, 31 (1962).

14 Bartenstein, Research Espionage, 17 Food Drug Cosm. L.J. 813, 820 (1962).

15 E.g., Irving Iron Works v. Kerlow Steel Flooring Co., 96 N.J. Eq. 702, 126 Atl. 291 (Ct. Err. & App. 1924).

16 Vulcan Detinning Co. v. Assmann, supra note 9.

17 Pressed Steel Car Co. v. Standard Steel Car Co., supra note 6.

18 See American Bell Tel. Co. v. Kitsell, 35 Fed. 521, 523-24 (C.C.S.D.N.Y. 1888).

19 Spiselman v. Rabinowitz, 270 App. Div. 548, 61 N.Y.S.2d 138 (1946).

20 Doyle & Joslyn, The Role of Counsel in Litigation Involving Technologically Complex Trade Secrets, 6 B.C. Ind. & Com. L. Rev. 743-44 (1965).

21 Note, Industrial Secrets and the Skilled Employee, 38 N.Y.U.L. Rev. 324, 326 (1963).

22 Developments in the Law, 77 Harv. L. Rev. 888, 954 (1964).

are hardly ever allowed, probably because they are a very difficult item to prove,[23] and it does not seem likely that most employees would have sufficient assets to satisfy a judgment against them. It might be otherwise, perhaps, as to the competitor who hires away key employees, unless the reason for the hiring away is that the competitor cannot afford any research of his own.

II. Criminal Sanctions

Criminal sanctions for the disclosure of a trade secret have previously been possible in New York and New Jersey. The New Jersey statute[24] provides:

> Any person who gives, offers or promises any gift or gratuity to any employee without the knowledge and consent of his employer, and with intent to influence his action with relation to his employer's business, and any employee who, without the knowledge and consent of his employer, requests or accepts any gift or gratuity, or any promise to make a gift or to do any act beneficial to himself, under an agreement or understanding that he shall act in any particular manner to his employer's business, is a disorderly person.[25]

New York[26] and New Jersey[27] each report only a single case in which their statutes were applied to the theft of a trade secret and in which an actual gift changed hands. In the New York case, it was found that one who pays another for the purpose of securing secret machines used by the other's employer comes within the purview of the statute. The New Jersey case held that one who offers and pays a sum of money to the employee of a competitor, with intent to procure from him secret formulae used by his employer in the manufacture of a preparation, violates the statute.

It has been suggested that the New York and New Jersey statutes may be applicable to the employee who leaves his employment to go to a competitor at a higher salary and who takes documents or other materials of his employer relating to trade secrets.[28] This view regards the salary increase as the reward element of the statute, and the taking of documents as the requisite action in relation to the employer's business. By the same reasoning, a competitor who bribes an employee to disclose a trade secret would be a disorderly person under this statute.

The fact that both New York and New Jersey each report only one case suggests that the statutes were not adopted with the purpose of pro-

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[23] Barton, A Study in the Law of Trade Secrets, 13 U. Cinc. L. Rev. 507, 554 n.184 (1939).

[24] N.J. Stat. Ann. § 2A:170-88 (1953). The New York statute covers the same area, N.Y. Pen. Law § 439(1) (1930).

[25] N.J. Stat. Ann. § 2A:169-4 (1953):

> Except as otherwise expressly provided, a person adjudged a disorderly person, shall be punished by imprisonment in the county workhouse, penitentiary or jail for not more than one year, or by a fine of not more than $1,000, or both.

[26] Applebee v. Skiwanek, 27 N.Y. Crim. 78, 140 N.Y. Supp. 450 (Magis. Ct. 1912).

[27] State v. Landecker, 100 N.J.L. 195, 126 Atl. 408 (Sup. Ct. 1924), aff'd, 103 N.J.L. 716, 137 Atl. 919 (Ct. Err. & App. 1927).

[28] Klein, The Technical Trade Secret Quadrangle: A Survey, 55 Nw. U.L. Rev. 437, 464 (1960).

tecting trade secrets. The wording of the statutes seems to indicate that they were primarily designed to prevent influence being brought to bear on an employee's performance of the positive duties of his job rather than to guard against breach of his negative duty not to betray his employer's secrets. A typical situation contemplated by these statutes, for example, might be an attempt by a contractor to secure an employee's acceptance of his bid where it is the employee's job to award the contracts.[29]

Furthermore, these statutes are not designed to cope with the growing problem of industrial espionage. Articles in popular magazines and professional journals show the remarkable growth of business espionage.[30] In the drug industry, for instance, there exist international "spy rings," with centers here and abroad, and with markets in which spies can easily unload their "hot" secrets.[31] Because of the high marketability of drug formulas, process information and engineering data, it is quite possible that secrets may be sold to innocent third parties who may proceed in good faith to use the formulas for manufacture, or to use the data for further engineering and development of their own.[32] Although this industrial espionage sometimes involves methods which are criminal in themselves, it may also be accomplished by means which up to now were not unlawful.

III. The Newly Enacted New Jersey Statute

The statute recently adopted by New Jersey proposes to deal with this problem of industrial espionage by providing criminal penalties for the unlawful taking of trade secrets. Its purpose is

> . . . to make clear that articles representing trade secrets, including the trade secrets represented thereby, . . . can be the subject of criminal acts.[33]

This purpose is accomplished by declaring that trade secrets constitute goods, chattels and property,[34] and that any person

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29 See Note, supra note 21, at 331.

30 See, e.g., Bartenstein, supra note 14; Furash, Industrial Espionage, Harv. Bus. Rev., Nov.-Dec. 1959, p. 6; Smith, Business Espionage, Fortune, May 1956, p. 118.

31 Bartenstein, supra note 14, at 818.

32 Id. at 820.

33 N.J. Stat. Ann. § 2A:119-5.1 (1965).

34 A similar approach has been taken in Illinois, which recently amended its Criminal Code to include trade secrets under property that is subject to theft. The Criminal Code of 1961 now reads:

> As used in this Part C [of the Criminal Code dealing with "Offenses Directed Against Property"], property . . . includes . . . samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof, or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect or record a secret scientific, technical, merchandising, production or management information, design, formula, invention, or improvement.

Ill. Rev. Stat. ch. 15, § 1 (1965).

Similarly, a bill introduced in the House of Representatives on March 11, 1965, and referred to the Judiciary Committee for further action proposes to make the stealing

> . . . who with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his own use or to the use of another,
> (a) steals or embezzles an *article* representing a trade secret, or,
> (b) without authority makes or causes to be made a copy of an *article* representing a trade secret, . . . (Emphasis added.)[35]

is guilty of a misdemeanor if the value of the article is less than $200 and of a high misdemeanor if such value is $200 or more. An "article" in turn is defined as

> any object, material, device or substance or copy thereof, including any writing, record, recording, drawing, sample, specimen, prototype, model, photograph, micro-organism, blueprint or map.[36]

This approach to the protection of trade secrets via the concept of the trade secret as property is not new. As indicated above, *Peabody v. Norfolk*[37] had already established the trade secret as a property right, and several years later the court in *Tabor v. Hoffman* confirmed the property concept in the following language:

> It is conceded by the appellant that, independent of copyright or letters patent, an inventor or author, has, by the common law, an exclusive property in his invention or composition, until by publication, it becomes the property of the general public. This concession seems to be well founded and to be sustained by authority.[38]

It is to be noted that trade secrets have been treated as property rights in a great variety of situations, including such cases where they have been found to be taxable,[39] transferrable,[40] and to pass under statutes of descent and distribution;[41] they have been dealt with as property of the firm upon dissolution of a partnership[42] and under statutes requiring stock of a cor-

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of a trade secret transmitted in interstate commerce or used in connection with a product in interstate commerce a federal crime. It defines trade secret as

> any confidential technical or other confidential business information, regardless of whether it is in written or other tangible form, which is not generally available to the public and which gives one who uses it an advantage over competitors who do not know or use it. [It includes but is not limited to] secret formulas, processes, patterns, drawings, specifications, memoranda, maps, lists, statistics, and any copies thereof regardless of by whom made.

H.R. 5578, 89th Cong., 1st Sess. (1965).

[35] N.J. Stat. Ann. § 2A:119-5.3 (1965).

[36] N.J. Stat. Ann. § 2A:119-5.2(a) (1965).

[37] Supra note 3.

[38] 118 N.Y. 30, 23 N.E. 12 (1889).

[39] In re Brandreth's Estate, 28 Misc. 468, 59 N.Y. Supp. 1092 (Surr. Ct. 1899).

[40] See, e.g., Grand Rapids Wood Finishing Co. v. Hatt, 152 Mich. 132, 115 N.W. 714 (1908); Pomeroy Ink Co. v. Pomeroy, 77 N.J. Eq. 293, 78 Atl. 698 (Ch. 1910); Lamont Corliss & Co. v. Bonnie Blend Chocolate Corp., 135 Misc. 537, 238 N.Y. Supp. 78 (Sup. Ct. 1929).

[41] Peabody v. Norfolk, supra note 3; Glass v. Kottwitz, 297 S.W. 573 (Tex. Civ. App. 1927).

[42] Baldwin v. Von Micheroux, 5 Misc. 386, 25 N.Y. Supp. 852 (Sup. Ct. 1893).

poration to be paid for in property.[43] It should also be noted, however, that even though a trade secret has been and may be deemed a property right, it should be regarded so in only a limited sense. The property right disappears when the information embraced by the trade secret becomes public or the secret is discovered independently by others.[44] Furthermore, the protectability of the property depends upon the circumstances under which the trade secret is disclosed: an innocent person, *e.g.*, a bona fide purchaser, is permitted to use it without consent, while a person who violated a confidence may not use it.[45]

Labelling trade secrets as property, therefore, does not lead to a clear concept. The conceptual difficulties may well lead to problems in the protectability of trade secrets under the newly enacted New Jersey statute. Any statute that proposes to deal effectively with the theft of trade secrets, particularly with regard to organized crime,[46] cannot stop short by dealing only with the more mundane types of theft such as the removal of plans, maps and generally tangible objects, but must also cover the more ingenious types of espionage, such as the planting of microphones in executives' desks[47] and other sophisticated schemes.[48] But the instant statute does not seem to cover the appropriation of *intangible* information. Such appropriation could, if at all, possibly be subsumed under section 5.3(b), which makes it a misdemeanor for any person to make or cause to be made a copy of an article that represents a trade secret. This requires, however, that the appropriated information relate to some tangible property, because only the making of a copy of an *article* that represents a trade secret is a misdemeanor under section 5.3(b). But a trade secret may properly include such intangible information as negotiations for a contract, a chemical formula that has not been reduced to writing or the intention to produce a new consumer good. Since there is no article involved in these secrets, their appropriation cannot fall within the protection of section 5.3(b).[49]

IV. Protection of Intangible Trade Secrets

The difficulty of protecting intangible information, such as ideas and plans that have not been reduced to writing but must nevertheless be communicated between the originator and the persons executing them, has led to the suggestion that trade secret protection be placed within the law of unfair

[43] Durand v. Brown, 236 Fed. 609 (6th Cir. 1916).

[44] Stedman, supra note 13, at 21.

[45] Ibid.

[46] The "Introductory Statement" of the New Jersey statute states:

> In recent years, trade secrets have increasingly become the subject of theft, both by individuals and groups working inside industry and by conspiracies involving outsiders. Recently the participation of organized crime in these thefts has become alarmingly evident.

N.J. Stat. Ann. §§ 2A:119-5.1 to .5 (1965).

[47] Smith, supra note 30, at 121.

[48] See, e.g., Letter From Louis E. Garner, Jr. to Editors of Fortune, in Fortune, June 1956, pp. 18, 20.

[49] The Illinois amendment to the Criminal Code and the bill introduced in the House of Representatives suffer from the same defect since they limit the concept of the trade secret to tangible property. See note 34 supra.

competition.[50] This would be appropriate because the great majority of trade secret invasions accompany efforts to obtain competitive advantages over, or to overcome a competitive advantage possessed by, the victim.[51] The necessary deterrent can be provided by criminal sanctions. This approach has been taken in Germany[52] and other European countries.[53]

The German Law Against Unfair Competition provides:

> (1) Any employee, laborer or apprentice of a business who during the term of his employment, for purposes of competition, personal gain, or with the intent to harm the owner of the business, without authorization communicates a trade or business secret entrusted or accessible to him by virtue of his employment, shall be punished by imprisonment up to three years and fine or by one of these.
> (2) Any person who, for purposes of competition or personal gain, without authorization communicates or uses a trade or business secret acquired as a result of a communication described in subsection (1) above or by an act contrary to law[54] or public policy[55] shall be subject to the same penalty as in subsection (1) above.[56]

These sections are broad enough to include anything that is not generally known and that may aid the victim to carry on his business.[57] In particular, the statute avoids defining trade or business secrets, so that the courts are not limited in their interpretation of what constitutes a trade secret. Thus, a case decided by the German Supreme Court in 1913 held that the plan

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[50] Klein, supra note 28, at 461; Barton, supra note 23, at 537-38.

[51] See, e.g., Eastern Extracting Co. v. Greater New York Extracting Co., 126 App. Div. 928, 110 N.Y. Supp. 738 (1908) (spy placed in competitor's plant).

[52] Gesetz gegen den unlauteren Wettbewerb, [hereinafter cited as UWG], Law of June 7, 1909, [1909] Reichsgesetzblatt 499 (Ger.); Schönfelder 73 (35th ed. 1963).

[53] See, e.g., Code Pénal art. 418 (Fr. 60th ed. Dalloz 1963); Bundesgesetz über den unlauteren Wettbewerb (Federal Law Regarding Unfair Competition), Law of Sept. 30, 1943 (Swit.), art. 13, §§ f, g; Code Pénal Suisse art. 162 (2d ed. Panchaud 1962).

[54] An act is contrary to law if it violates any German criminal or civil statute, e.g., if the secret material is obtained by theft, trespass or embezzlement or if a person is forced to disclose a trade secret by fraud or blackmail, the act is contrary to law. See Reimer, Wettbewerbs- und Warenzeichenrecht 764 (3d ed. 1954).

[55] The concept of public policy in the area of unfair competition is not clearly defined. A formula that has been developed by the courts must be interpreted and applied in each individual case: The standard for public policy is to be taken from the morally and legally refined opinion of the business community; if such opinion, however, should adversely affect the interests of the general community, the opinion of the business community is no longer solely relevant. See Baumbach-Hefermehl, Wettbewerbs- und Warenzeichenrecht 88-89 (8th ed. 1960).

[56] UWG §§ 17(1), (2). Translation by the writer.

[57] The circle of protection is drawn very wide and includes attempts and offers to commit the offense of unlawful appropriation of a trade secret:

> (1) Any person who, for purposes of competition or personal gain, attempts to induce another to commit an offense under §§ 17 or 18, or accepts the offer of another to commit such an offense, shall be punished with imprisonment up to two years or fine.
> (2) Any person, who for purposes of competition or personal gain offers on his own or on the initiative of another to commit an offense against §§ 17 or 18, shall be subject to the same penalty as in § 20(1) above.

UWG §§ 20(1), (2).

of a manufacturer to bring on the market brooches and cups inlaid with a new enamel pattern on the occasion of the 1911 Leipzig Fair constituted a trade secret. The court did not limit the holding to the new enamel design but expressly included the "idea" to be the only exhibitor and seller of these new goods at the fair.[58] Other cases have held that the conclusion of contracts or the intent to conclude a contract is a trade secret.[59] More recently, conditions of payment that were not written down but in the course of business experience had developed in addition to the printed forms[60] and preferential rates granted to a purchasing cooperative[61] have been held to be trade secrets. The concept of the trade secret, as interpreted by the German courts, does, therefore include intangible information so that the Law Against Unfair Competition can be an effective tool in the protection of these trade secrets that have not been reduced to a material form.

Two other solutions have been proposed for the protection of trade secrets. The first approach is patterned on the patent and copyright laws and suggests a limited statutory protection after the secret has been disclosed.[62] Such an approach is comparable to the German "Gebrauchsmuster"[63] and would protect trade secrets for a limited time—perhaps for five years with the possibility of renewal—as a reward for the disclosure and the registration of the secret.[64] Although the adoption of this plan looks attractive on its face, it might create more problems than it solves. Apart from the fact that a new body would have to be set up to administer the act, it could turn out to be extremely difficult to formulate a meaningful standard for this "little patent." If the standard of invention required of a patent is itself uncertain,[65] a trade secrets standard that is patterned on the patent standard but which is less demanding is likely to be more uncertain.[66]

The other approach is also modeled on the patent law and would adopt a statute allowing the trial judge to award treble damages[67] in trade secret cases.[68] But a treble damage provision would most likely not be very effective against a defecting employee,[69] and is also open to the same objections that were raised against the civil remedies as protection for the owners of trade secrets.[70]

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[58] Judgment of 1913, 48 Entscheidungen des Reichsgerichts in Strafsachen [hereinafter cited as RGSt] 14 (Ger.).

[59] Judgment of 1906, RGSt, [1906] Juristische Wochenschrift 497.

[60] Judgment of Aug. 21, 1936, RGSt, [1936] Juristische Wochenschrift 3471.

[61] Judgment of Feb. 20, 1959, Oberlandesgericht Düsseldorf, [1959] Der Wettbewerb in Recht und Praxis 182.

[62] Stedman, supra note 13, at 32-34.

[63] Gebrauchsmustergesetz, Law of May 5, 1936, [1936] Reichsgesetzblatt II 130 (Ger.); Schönfelder 71 (35th ed. 1963).

[64] Stedman, supra note 13, at 33.

[65] See Note, The Statutory Standard of Invention: Section 103 of the 1952 Patent Act, 3 PTC J. Res. & Ed. 317 (1959).

[66] Note, supra note 21, at 348.

[67] 66 Stat. 813 (1952), 35 U.S.C. § 284 (1964).

[68] Developments in the Law, supra note 22, at 955.

[69] Ibid.

[70] See pp. 325-26 supra.

V. Conclusion

Civil remedies are inadequate for the protection of trade secrets because trade secret litigation involves many risks and a prospective plaintiff probably will not be able to collect any damages. In addition, the defendant will usually be in no worse position than before he unlawfully appropriated the trade secret. By imposing fairly stiff penalties,[71] the New Jersey statute should produce a deterrent effect so that industry will be saved a sizable expenditure of money and trouble in the defense and protection of its trade secrets. The statute also serves to eliminate some defenses to larceny prosecutions which were formerly available. Under the regular larceny statute, a criminal might have asserted that he only photographed or copied the article and consequently did not "take" any property, or he might have asserted that he intended to return the article, after copying the secret, and consequently did not intend to deprive the owner "permanently" of his property. These defenses are eliminated under the new statute.[72]

The New Jersey statute, therefore, takes a step in the right direction, even though it limits the concept of trade secrets to tangible information. The ultimate success of the new sanction, however, will depend upon how effectively it is enforced. Prosecutors exercise an almost unlimited discretion in the choice of offenders and offenses to prosecute,[73] and judicial controls, where they exist, are rarely exercised and difficult to obtain.[74]

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[71] If the value of the article stolen, embezzled or copied, including the value of the trade secret represented thereby, is less than $200, the offense is a misdemeanor which is punishable by a fine of $1,000, or by imprisonment for not more than three years, or both, and if such value is $200 or more, the offense is a high misdemeanor which is punishable by a fine of not more than $2,000, or by imprisonment for not more than seven years, or both. N.J. Stat. Ann. §§ 2A:85-6, -7 (1953).

[72] N.J. Stat. Ann. § 2A:119-5.3 (1965).

[73] The relevant statute provides:

> Each prosecutor . . . shall use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws.

N.J. Stat. Ann. § 2A:158-5 (1953).

[74] Goldstein, Police Discretion Not to Invoke the Criminal Process: Low Visibility Decisions in the Administration of Criminal Justice, 69 Yale L.J. 543, 560-61 (1960); Snyder, The District Attorney's Hardest Task, 30 J. Crim. L., C. & P.S. 167 (1939).