

# Freed Man May Not Go Back to 'Q' After All

By Stephen Cook

Frank Nubin may not have to go back to prison after all.

The encouraging word for the now steadily employed ex-convict came today as the State Adult Authority and a Marin judge wrangled over who was responsible for the order to return Nubin to San Quentin this Friday.

"It is entirely likely that Mr. Nubin will be released," Joseph Spangler, secretary of the California Adult Authority, said today. He denied the Adult Authority was responsible for ordering Nubin back behind bars, saying:

"I would like to stress that the Adult Authority has not taken any position in this matter and is merely reacting to the attitude of the court."

## Judge Disagrees

Marin Superior Judge E. Warren McGuire, who ordered Nubin's incarceration, sharply disagreed with Spangler on the blame for the bureaucratic and legal muddle over Nubin.

"If I were the Adult Authority and had the decision on whether or not Mr. Nubin should be returned to prison, I couldn't do it in good con-

science," he said. "I can't see any reason to return him."

McGuire added, however, that on the basis of information presented him on behalf of the Adult Authority, he had no choice under the law except to order Nubin's reimprisonment.

The case is complicated.

Nubin, 46, served a four year and 10 month sentence ending 24 years ago for a

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robbery he committed at age 18. In January 1961, he was sent to prison again for assaulting his former wife with a deadly weapon.

He was paroled in May, 1965, and the Adult Authority fixed his term at 7½ years. Fifteen months later, his parole was revoked and his term reset at 10 years when his parole officer accused him of excessive drinking.

After another year behind bars, Nubin was paroled again. This time, the Authority told him his term would end after eight years — on Jan. 4, 1969 — if he stayed out of trouble.

## Narrow Miss

He almost made it. But in a Christmas Eve quarrel with his former wife, she stabbed him with a pair of scissors and he assaulted her with a baseball bat, so that

she was hospitalized.

He was accused of assault with a deadly weapon, but the charges were dropped because the wife refused to testify.

Even though the charges were dropped, the Adult Authority said he had violated his parole and on Jan. 3, 1969, one day before his sentence was to expire, it sent Nubin back to San Quentin and refixed his term at 10 years.

## Typist's Error

A bureaucratic error — blamed on a junior typist — further complicated the case at that point. In the parole revocation, the date was put at Jan. 31, 1969, instead of Jan. 3.

Prison reform lawyer Salle Soladay asked for and got from McGuire a writ of habeas corpus in September 1969 on the grounds that Nubin technically was a free man — because of the wrong date — when he was sent back to prison.

The Attorney General appealed but McGuire ordered Nubin released on Jan. 26, 1970. Since then, Nubin has worked steadily and has remarried.

He was arrested once for being drunk in public but since he joined Alcoholics Anonymous. (He also was picked up by Berkeley police once after his ex-wife said he had beaten her but, as she had the previous time, she refused to testify. Nubin called her story a "fabrication").

## Appeal Reversed

Meanwhile, the Adult Authority proved the typing error and the District Court of Appeal reversed McGuire. McGuire, saying he had no

choice, then ordered Nubin's return.

The judge feels the Adult Authority acted in the first place to punish Nubin for a crime he was not convicted of — the assault on his wife.

"To return him to prison for further confinement or rehabilitation is obviously not necessary," McGuire told

The Examiner, "but the facts presented were such that I had to find that the Adult Authority technically acted within the legal period. I had to return him to their jurisdiction for further proceedings."

#### Court Order

Spangler, however, insisted the Adult Authority was only following the court order: "In spite of the stories carried in the Bay Area newspapers, the California Adult Authority has not taken any action whatsoever in the matter of Mr. Nubin."

He added, "We are making every effort to give this parolee the advantage of every consideration and it is possible, in the board's discretion, that he will be released (on Friday) either on reinstatement to parole or termination of his fixed sentence. This would give him release without further supervision by the parole authority."

Spangler added this caveat, however: "Of course, it is also possible that he will be asked to return briefly until his case can be routinely considered or, of course, he may be asked to serve the remainder of his sentence."

Mrs. Soladay said today she intended to file suit in Federal Court to block Nubin's return to SKAN Quentin to serve the final 10 months of his sentence.