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Introductory Note

The editor is pleased to present No. 36 in the Resource Material Series including materials from the 81st International Seminar and the 82nd International Training Course.

Part I contains materials produced during the 81st International Seminar on "Advancement of the Integration of the Criminal Justice Administration" which began on 6 February and ended on 11 March 1989.

Section 1 of Part I consists of papers contributed by six visiting experts.

Mr. Hetti Gamage Dharmadasa, Commissioner of Prisons in Sri Lanka, in his paper entitled "Overcrowding in Prisons and Countermeasures," examines the causes of overcrowding in prisons and proposes practical countermeasures to the overcrowding problem.

Dr. Peter Johan Paul Tak, Professor in the Faculty of Law at the Catholic University of Nijmegen in the Netherlands, in his paper entitled "The Advancement of the Fourth Generation of Sanctions in Western Europe," reviews historical development of sanction systems and discusses the newly developed alternative measures to imprisonment in Western Europe.

Dr. Cicero C. Campos, Chairman of the National Police Commission in the Philippines, in his paper entitled "Fair Administration of Police Responsibility and Provision of Services to the Public: The Basis for Public Cooperation," analyzes the problems with respect to the administration of police responsibility, and seeks possible ways to solve them.

Dr. Heinrich Kirschner, Director in the Federal Ministry of Justice with responsibility first for administration and subsequently for Criminal Law, Federal Republic of Germany, in his paper entitled "Integration, Diversion and Resocialization in German Criminal Procedure," introduces and examines German criminal justice system and its practice from the viewpoint of integration, diversion and resocialization of offenders.

Mr. Yu Shutong, Advisor to the Commission on Internal and Judicial Affairs, the National People's Congress of the People's Republic of China, in his paper entitled "Chinese Criminal Law and Its Recent Development," introduces the current situation of and recent developments in the criminal justice system of the People's Republic of China.

Mr. John Wood, Head of the Serious Fraud Office, Great Britain, in his paper entitled "Investigation and Prosecution of Offences in England and Wales," introduces recent developments in criminal justice system with respect to investigation and prosecution of offences in England and Wales.

Section 2 contains papers submitted by five participants of the 81st International Seminar, and Section 3 contains the Report of the Seminar.

Part II presents materials produced during the 82nd International Training Course on Innovative Measures for Effective and Efficient Administration of Institutional Correctional Treatment of Offenders. The Course commenced on 17 April and ended on 6 July 1990. Section 1 of Part II consists of papers presented by five visiting experts.

Mr. Clair A. Cripe, General Counsel of Federal Bureau of Prisons, U.S. Department of Justice, in his paper entitled "Inmate Grievance Systems in the United States," introduces and examines the development of administrative grievance mechanisms in the United States Prison System.

Mr. Gordon H. Lakes, Former Deputy Director General of the Prison Service, England and Wales, the United Kingdom, in his paper entitled "Recent Managerial and Organizational Innovations," describes recent important changes and innovations in the prison service of England and Wales.

Mr. Chan Wa-shek, Commissioner of Correctional Services, Hong Kong, in his paper entitled "Some Thoughts on Correction within Penal Institutions," examines recent trends in the basic philosophy of correctional treatment, and analyzes various conditions affecting the rehabilitation of offenders.

Dr. Theodore N. Ferdinand, Professor, Center for the Study of Crime, Delinquency and Corrections, Southern Illinois University at Carbondale, the United States of America, in his paper entitled "The Promise and Pitfalls of Classification for Correctional Systems," describes the recent development of classification in correctional systems, and explores various methodologies being advanced in the field.

Dr. Hassan El-Sa'aty, Professor, Arab Security Studies and Training Center, in his paper entitled "Islamic Criminal Justice System—Legislation and Application," explains characteristics of Islamic legislation and its application in criminal justice.

Section 2 contains papers submitted by three participants of the 82nd International Training Course, and section 3 contains the Report of the Course.

Part III presents material produced during other UNAFEI activities which contain the Report of the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region. The Meeting was jointly organized by the Economic and Social Commission for Asia and Pacific (ESCAP) and UNAFEI in co-operation with the Government of Japan, and was held at UNAFEI headquarters from 3 to 10 August 1989. The objective of the Meeting was to provide a forum for social development and criminal justice experts to discuss contemporary issues surrounding youth and crime prevention in the ESCAP region. Twenty-one experts attended the Meeting and discussed the above-mentioned issues and formulated recommendations on the prevention of juvenile offences and the treatment of juvenile offenders.

The editor deeply regrets that the lack of sufficient space precluded the publishing of all the papers submitted by the participants in the Course. The editor would like to add that, due to lack of time, necessary editorial changes had to be made without referring the manuscripts back to their authors. The editor requests their indulgence and understanding of this necessity which was required to meet editorial deadlines.

In concluding the Introductory Note, the editor would like to pay tribute to the contribution of the Japan International Cooperation Agency (JICA) for providing indispensable and unwavering support for the UNAFEI Courses and Seminars from which these materials were produced. The editor also would like to express his gratitude and appreciation to all who so willingly assisted in the publication of this volume by attending to typing, printing, proofreading and in various other ways.

The editor would also take this opportunity to express his deepest appreciation to the continued financial and other support rendered by the Asia Crime Prevention Foundation (ACPF) for various UNAFEI projects including the publication of Resource Material Series.

December 1989

H. Sugihara

Hiroyasu Sugihara

The Editor
Director of UNAFEI

PART I

Material Produced during the 81st International Seminar on Advancement of the Integration of the Criminal Justice Administration

SECTION 1: EXPERTS' PAPERS

Overcrowding in Prisons and Countermeasures

*by Hetti G. Dharmadasa**

Prison overcrowding is a grave and pressing problem facing the Criminal Justice Administration in many countries both in the developed and the developing world. In many countries in the Asia Pacific Region, it has reached critical levels. In this regard, it would be of interest to know how countries measure prison overcrowding. Is there a common criteria as to what is the required accommodation or floor area or other conditions per prisoner? The United Nations Standard Minimum Rules for the Treatment of Prisoners stipulate certain standards in this regard. For example, Rule 10 stipulates that "All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard be paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation." In keeping with these rules many countries have included in their Prison Legislation, rules regarding accommodation for prisoners. For example, the Prison Law in Sri Lanka stipulates that "no cell shall be certified which contains less than 54 superficial feet of floor space and 540 cubic feet of space and is not properly ventilated."

The above specifications are for a cell meant for a single occupant. However, there is no such specification laid down for dormitory type or barrack type acommodation in the Sri Lankan Prison Law. Overcrowding in prisons could have different meanings to developed countries and developing countries. The developed countries use such criteria as minimum floor space, cubic content of air ventilation and other basic amenities to measure overcrowding. In the developing countries single cell accommodation with such specifications would be a luxury in many instances. To them prison overcrowding means gross overcrowding—overcrowding that is very glaring and sometimes shameful. Overcrowding of prisoners in some of these states is not merely a numerical or spatial problem. It is a problem of gross inadequacy of essential facilities such as sanitary and bathing installations, medical and recreational facilities. In these countries prison overcrowding is more a crisis than a problem.

The problem of prison overcrowding could be examined from two angles; overcrowding of convicted prisoners and overcrowding of remand or under trial prisoners. Some countries in the region are faced with the problem of overcrowding of convicted prisoners while some other countries are burdened with the problem of overcrowding of remand prisoners. Some countries in the region are faced with the problem of overcrowding of both categories. The major problem of the Sri Lankan Prison System is it's heavily overcrowded under-trial or remand population. The average rate of overcrowding has been over 500 percent.

In order to examine the reasons for overcrowding of prison population and to find possible solutions one has to study the problem by different categories of prisoners such as convicted, remand young offenders, etc.

The problem of prison overcrowding was a subject taken up for discussion at the Eighth Asia and Pacific Conference of Cor-

* Commissioner of Prisons, Sri Lanka

rectional Administrators held in Kuala Lumpur in 1987. One fact that all delegates agreed was that crime was apparently increasing, with the consequence of increasing contacts between the Criminal Justice System and offenders finally resulting in pushing the prison population up.

Causes for Overcrowding in Prisons: Remand or Under-Trial Population

The reasons for overcrowding of remand prisoners are common in many countries. One such common cause is the delays in bringing the offenders to trial or, more commonly known as "laws delays': Laws delays result in many prisoners under trial having to wait in remand custody for long periods. Excessive bail or inadequate use of bail provisions have also contributed to the increase in the remand population. In the Sri Lankan Prisons, it is very common to see large number of persons lingering in jail for their inability to furnish the bail ordered on them. There are also many instances where those on remand are either too ignorant or too poor to retain counsel to make applications for bail. In many developing countries remanding of suspects is used as a punitive measure by the police. There is also unnecessary and excessive remanding of persons in these countries often abusing the power to remand. In Sri Lanka, we have experienced remanding of ticketless travellers, petty thieves, vagrants, drunkards, persons of unsound mind, prostitutes and drug addicts, etc. keeping such offenders in remand custody for long periods is a total waste of human life and a crime in itself.

Causes for Overcrowding of Convicted Prisoners

Many countries still carry prison sentences for far too many offences. The legal system of these countries overemphasises imprisonment as the most powerful weapon against crime. Courts resort to imprisonment of offenders far too often even in cases which deserve lesser punishment. Far too many offenders are sent to prison for short terms. For example, in Sri Lanka, out of a total of 13,355 persons convicted to prisons in 1987, 61.16 percent or 8,169 were sentenced to less than 6 months. These persons easily could have been given some other form of punishment. This is the case with many other countries in the region.

In some of these countries alternatives to imprisonment have not yet been introduced or adequately developed. In other countries where alternatives to imprisonment existed sentencers do not adequately utilise them. Sri Lanka has introduced many alternatives to imprisonment such as probation, suspended sentences, community service, etc. However, these alternatives have been sparingly used by the courts, for example, in the last decade Sri Lanka has experienced a downward trend in the numbers placed on probation orders.

Another reason for the increase in the prison population is the large numbers admitted to Prison on nonpayment of fines. In Sri Lanka, the number of persons sentenced to imprisonment for default payment of fines have increased during the last several years.

Year	No. of Prisoners	Percentage
1984	4,280	32.97
1985	8,316	62.67
1986	10,977	75.10
1987	10,470	78.3

You would, therefore, see that 78.39 percent of persons convicted and admitted to prison in 1987 were not serving sentences for the offences they have committed but for their inability to pay the fines imposed on them.

Admission of convicted drug offenders to prison also contributes towards increasing prison population. Many countries in the

region have not developed proper rehabilitation centres for drug offenders. The Courts, due to lack of other alternatives, sentence them to prisons, such is the case in Sri Lanka. In the last few years, there has been a considerable increase in the admission of drug offenders to prisons as shown by the following figures.

Year	Number Admitted to Prisons	Percentage
1984	1,777	13.7
1985	3,207	24.2
1986	3,722	25.5
1987	3,642	27.3

Unrealistically long prison sentences also contribute towards overcrowding in prisons. Although research studies conducted in various countries have indicated that increase in the length of prison sentences do not have a significant effect as a deterrent to crime, sentencers in many countries continue to pass very long sentences on offenders.

Many countries in the region have not constructed any new prison facilities for several years. In Sri Lanka almost all the closed prisons are over hundred years old. Built in the latter part of the 19th century when the population of the country was less than 3 million, the prison system cannot meet the demands of the present day. Construction of modern prisons is an expensive proposition to most Third World countries. Emphasis in these countries is on economic and social development and construction of prison would be a very low priority item. In most of Third World countries politicians decide on the priorities. They would go for the construction of school buildings, hospitals, factories which are "vote catching" but not prisons. Therefore, in most of these countries the prison administrators have to manage with archaic prisons.

With the rapidly changing economic and social conditions and the ever increasing population, crime has increased in most developing countries. Better and widespread policing facilities have increased the rates of detection of crime resulting in more numbers sentenced to prison. However, the number of correctional institutions and the accommodations has not kept pace. So when most of these countries speak of overcrowding in prisons they speak of overcrowding of a prison system which is 75 or 100 years old.

Effects of Overcrowding

Increasing prison population and prison overcrowding are factors that create difficulties in the observance of the Standard Minimum Rules for the Treatment of Prisoners in many countries. Overcrowding causes severe strain on the already meagre essential services resulting in the deprivation of basic necessities for human living. It also disrupts the rehabilitation and other programmes creating problems for the Prison Administration in providing a well planned treatment package. Overcrowded prisons provide explosive settings where minor issues could escalate into major problems.

Apart from the difficulties and problems created for the Penal Administrator prison overcrowding severely affects the lives of those inmates kept in overcrowded conditions. Classification and segregation become impossible in such situations. Very often young and old, hardened criminals and mild offenders, convicted and unconvicted, long and short-termers are housed in the same institution. In Sri Lanka, the overcrowding of remand jails became so grave that sections of prisons meant only for convicted offenders had to be set apart to house remand prisoners. Such conditions not only create adverse conditions for the inmates but also for the officers. maintenance of discipline becomes difficult with a low inmate-officer ratio, bringing down the morale of the prison officer. In some instances, it could result in the officer's position being insecure. Therefore,

one of the worst effects of overcrowding is the deterioration of staff-inmate relationship.

The damage done to a person when imprisoned is unmeasurable. Prisons must be judged by what they are and not what they ought to be. Prisons cannot prepare men for social life. Repressive regimentation cannot teach the prisoners how to exercise their activities in constructive ways; outward conformity to rules repress all efforts at constructive expression. Work without the operation of economic motives, motivation by fear of punishment rather than by hope of reward, cringing rather than growth in manliness kill the spirit in man. The difficulties in classification and segregations caused by overcrowding make matters worse.

The celebrated Oscar Wilde has said.

"The vilest
deeds like prison weeds
bloom well in Prison Air,
it is what is good in man
that waste and withers there."

Countermeasures to Overcrowding of Remand Prisoners

The solutions to the problem of overcrowding of prisons could not be found within the penal administration alone. It is a problem that has its roots in government policy, courts, police, prosecutors and prisons. Therefore, solutions to the problem have to be sought through an integrated approach involving all parts of the criminal justice administration.

Policy decisions have to be made by governments regarding legal and administrative changes relating to remand and bail. It is obvious in many countries far too many persons are remanded. For example, in Sri Lanka for every single person convicted there are more than five remanded. In the year 1987, there were 13,355 persons admitted to prison as convicted offenders whilst there were 59,452 persons admitted as remand prisoners. Our studies also have shown that only 20 percent of those remanded are finally convicted to prison. This would mean that a great number of these remand orders could have been avoided. Certain measures could be taken in this regard. One of these would be a proper training for judges and magistrates. They must be made to visit the prisons regularly and made aware of the problem of overcrowding in prisons. By these means it should be possible to make them realise the importance of closely examining a case before ordering remand, and also granting bail on a larger scale. In Sri Lanka, the Prisons Law has made provision for magistrates and judges to visit and examine prisons. In practice, however, such visits are very rare.

Many of the crimes with which people are charged are minor. The potential exists to have many of these people remain in their communities awaiting trial rather than imprisoned. It can be done through the efforts of either the police or judges or both.

State Criminal Jurisdictions should develop a policy and seek enabling legislation where necessary, to encourage the use of summons instead of arrest and detention. This policy should make provisions for the enumeration of minor offences for which a police officer should be required to issue summons in lieu of making an arrest or detaining the accused, unless,

(a) The accused fails to identify himself or supply required information;
(b) It is a risk to the society to allow the accused to be in the community;
(c) Arrest and detention is necessary for further investigation:
(d) That he has no fixed abode or has previously failed to respons to summons, etc.

The policy also must give the discretionary authority for police officers to issue summons in lieu of arrest in all cases where the officer has reasons to believe that the accused will respond to the summons and does not represent a threat to himself or others.

When an arrest is made by a police officer, there must be provisions made authorising supervising officers to re-evaluate the decision to arrest and to issue summons at the police station in lieu of detention where desirable.

The state policy must also take similar steps encouraging the magistrates and judges to issue summons in lieu of arrest warrants in all cases where the magistrate or the judge has reasons to believe that the accused will respond to summons. A requirement must be made that a judicial officer issuing a warrant of detention and state his reasons for doing so in writing. Implementation of such procedure will require that the judicial officer has a certain amount of basic information so that he can make an intelligent choice between the alternatives. The prosecutor or police official who applies for such warrant of detention should be required to accompany the request with a brief report on accused person's personal background and his stability in the community.

Limiting the use of pre-trial detention would certainly result in a considerable reduction in prison overcrowding. However, the success of such policy can only be accomplished through the full commitment and cooperation of appropriate law enforcement agencies.

Measures also must be taken to speed up the police prosecution procedure. As mentioned earlier, a major cause for the overcrowding of remand prisoners is the inordinate delays in the prosecution procedure. Delays in obtaining medical reports, analysts reports and experts reports essential for evidence, absence of key witnesses and at times officers assisting the prosecutors, lawyers requesting for dates on flimsy grounds, heavy case loads in courts are very often the causes for delays in disposing of cases, especially in the lower courts. Many experts who have examined this problem have suggested setting up mandatory time limits for the completion of investigations and prosecution. In fact, some countries already have set mandatory time limits in their statutes. Time limits also could be set regarding the period that a person could be kept on remand.

The increased use of release on personal bond by the magistrates and liberalising the bail facilities are also suggested as solutions in reducing remand population. In Sri Lanka, it is common to see large numbers of remand prisoners languishing in jails even after they have been ordered bail, by the courts because of their inability to furnish the bail. When ordering bail, judges and magistrates should consider not only the gravity of the offence but also the offenders ability to furnish the bail. Sri Lanka, in the recent past, introduced certain bail regulations under the Emergency Regulations. Under these regulations, remand prisoners who have been in prison for over three months for their inability to furnish the bail ordered by the courts and remand prisoners who have been in prison over one year (other than those coming under certain scheduled offences) were released from prisons upon their signing a bond. On a study made it was found that 97 percent of those released in such manner have appeared in courts on due dates.

Another method that could be adopted to reduce the remand population is to feed regular information to magistrate and other courts and the public prosecutor regarding the numbers on remand. By this means the courts and the prosecutors not only are reminded of the number kept on remand by them but they are also made to check on the cases of those held for long periods.

In most Third World countries many remand prisoners spend time in jail due to utter ignorance and their inability to retain counsel. In such instances, arrangement must be made to educate the remand prisoner of his right to bail, etc. Facilities for legal aid must be made available to these categories of prisoners. A proper and well conducted Legal Aid System can help in a big way to reduce the remand population in prisons. Very unfortunately, only a few of the

Third World countries have properly organised legal aid systems. In Sri Lanka, though there is a Legal Aid Commission, its functions are very limited due to lack of funds and committed lawyers.

The problem of overcrowding of remand prisoners can, therefore, be effectively reduced if the different branches of the Criminal Justice System work in co-operation with each other. It is very essential that police, prosecutors, judiciary and prisons understand the gravity of the problem. The senior officers at the policy-making level in the different branches of the Criminal Justice Administration should meet regularly to sort out the problems that arise at various stages of the systems.

Countermeasures to Overcrowding of Convicted Prisoners: Modification of Penal Sanctions

As mentioned earlier in this paper many countries carry prison sentences for far too many offences. It is time that legislators rethought about their Penal Codes. In fact, some countries have already modified their penal codes. For example, Cuba has modified its penal Code in last April. In the process of modification several offences have been depenalised and in many other instances fines have replaced the prison sentence. Speaking on the changes introduced to the Penal Code, Cuba's Interior Minister, Jose Abrantes, has said;

> "I think we have to make our people reflect on all these questions and persuade and convince them that this rectification implies a change of attitude, a consistant and profound political and ideological work, a change in the repressive notion and the tendency to look for solutions to all the problems, mistakes, violations and law breaking through police intervention and courts."

Removal of prison sentences for certain offences in the Penal Codes and other laws and replacing them with fines or other suitable alternative punishments will definitely contribute in a big way towards reducing overcrowding of convicted prisoners. In this regard, it is necessary to create a climate of political and public opinion that will not perceive the use of imprisonment as the primary corrective sanction appropriate for less serious offenders.

At present, those in remand receive no credit on their actual sentence for the time spent in remand. Some prisoners spend more time in remand than the length of the sentence for the offence. If the laws are changed to give credit for the period spent in remand and set off against the sentence, it would reduce the period people have to serve in prisons. It would also mean that some prisoners receiving short sentences of a few weeks or few months would have served sufficient time in remand that they could be released after conviction. Those persons sentenced to short terms would not benefit by any further imprisonment. They have already been sufficiently punished by having been imprisoned on remand. In any event, there is little or no possibility for the prisons to develop any constructive rehbilitation programme for such short term offenders. Economically too, it would be an advantage to the government to give credit on the sentence for the time spent on remand.

Alternative Sentences

Overcrowding of convicted prisoners could be reduced to a great extent by the creation of a wider range of alternatives to imprisonment and the greater utilisation of existing alternative sentences. Resolution 16 of the 7th United Nations Congress on the Prevention of Crime and Treatment of Offenders advocates the use of noncustodial sanctions to achieve a reduction in the prison population. The resolution emphasises that imprisonment should be imposed only as a sanction of last resort, taking into account

the nature and gravity of the offences and the legally relevant social conditions and other personal circumstances of the offender.

Many nations in the Asia Pacific region have introduced several traditional alternatives to imprisonment such as suspended sentences, community service and probation. However, studies in several countries have revealed that these alternatives to imprisonment have rarely had an effective impact on the imprisonment rates. The reasons for this are the reluctance of the sentencers to utilise these measures adequately and the practice of utilising the alternatives in addition to imprisonment and not in lieu of imprisonment.

There is always a public outcry about the increasing crime rates. The police, politician and the public will criticise lenient sanctions as a major cause for the increase in crime. sentencers respond quickly to such criticism and prison sentences are passed on offenders even in instances where an alternative could have been utilised. To avoid such situations not only the judges and magistrates but also the general public should be better informed of the importance and advantages of non-custodial sentences, compared with imprisonment. The criminal Justice Administrators must use the mass media and other means to educate the public and develop their faith in the non-custodial sentences. Governments must, in their criminal justice policy, emphasise the importance of alternative sentences and discourage the imprisonment of minor offenders. Not only the existing alternative sentences must be utilised to the maximum, the authorities concerned must direct their ingenuity in finding more and better alternative ways of punishing offenders.

Several states in the region still have the legal sanction for the imprisonment of fine defaulters. In countries such as Sri Lanka, this has become a major cause for the increase in the prison population. Therefore, it is necessary to make every effort to avoid the use of imprisonment on offenders who are unable to pay the fines imposed on them. Judges, before imposing fines on offenders, must ensure that fines are proportionate to the offender's ability to pay. If necessary, laws must be amended to enable non-custodial sanctions instead of imprisonment for fine defaulters.

Early Release Mechanism

Expansion of early release mechanisms such as work release and parole (release on licence) is an important countermeasure to reduce the overcrowding in prisons. These release mechanisms could be used on short term prisoners as well as on long term prisoners. In Sri Lanka, selected long term prisoners are released on licence, a system very much similar to parole. Work release introduced several years back for medium term offenders also work satisfactorily in Sri Lanka. However, the difficulty in expanding this scheme is the scarcity of employment opportunities in the community.

Special Amnesties

Several countries in the region use the mechanism of granting special amnesties or remissions to reduce prison population. This practice is commonplace in countries such as Thailand and Sri Lanka. The special amnesties in Sri Lanka are granted under the prerogative power of the President, on special occasions of national importance such as Independence Day. In general, under these special amnesties, the sentences of fine defaulters are remitted and a two week or three week special remission for each year or part of the year served in prison is given to long term prisoners. However, certain exceptions are made in granting these amnesties.

Conclusion

The problem of prison overcrowding (in varying degrees) is common to many coun-

tries in the region. The problem has been discussed at various international fora such as the Asia and Pacific Correctional Administrators Conference and the United Nations Congress on the Prevention of Crime and Treatment of Offenders. Solutions to the problem are not easy or could not be found by the strategies adopted by the Correctional Administrators alone. It requires the attention of all parties involved. what is important and necessary is an integrated or a joint approach by all the agencies of the criminal justice system. The understanding and the involvement of the community and the politician is essential in developing a system with greater emphasis on non-custodial sanctions.

Notes

1. Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.
2. Report of the Eighth Asian and Pacific Conference of Correctional Aministration.
3. Cuba International Bulletin on the 30th Anniversary of the Cuban Revolution—1988.
4. National Advisory Commission on Criminal Justice Standards and Goals—Report on Corrections—U.S.A. 1973.
5. Principals of Sentencing—D.A. Thomas. (Cambridge Studies in Criminology) 1982.
6. Administration Report of the Commissioner of Prisons for the Year 1986—Sri Lanka.
7. Standard Minimum Rules for the Treatment of Offenders—United Nations.
8. Controlling the Offender in the Community. Todd R. Clear, Vincent O'Leary. Lexington Books—1984.

The Advancement of the Fourth Generation of Sanctions in Western Europe

*by Peter Johan Paul Tak**

Brief Sketch of the Development of Sanctions Generations

The First Generation

Influenced by the ideas of the Enlightenment as expressed by Beccaria, Voltaire and Bentham, the deprivation of liberty had been taken up into the penal codes of the Western European countries as the main principal sanction.[1] It was then regarded as a promising alternative to the penalties in use at that time: the death penalty, corporal punishment, forced labour and being sentenced to the galleys. Imprisonment was considered not only to be a humane and rational alternative, but also a sanction that could make a real contribution to the rehabilitation and improvement of the offender. All that remains of this first generation of sanctions is the death penalty, and then only in a few countries (Belgium, Ireland, Greece and Turkey). The other countries either abolished the death penalty as a sanction under ordinary penal law long ago[2] (e.g. Portugal 1867, The Netherlands 1870, Norway 1902, Sweden 1921), or have done so relatively recently, whether or not prompted by resolution 727 (1980) of the Council of Europe[3] (Federal Republic of Germany 1949, United Kingdom 1965, Spain 1978, France 1981)[4]. In the West European countries where the death penalty can still be imposed it is no longer enforced but converted into life imprisonment by means of a pardon.[5] Against this background it is safe to conclude that the first generation of sanctions has died out in Western Europe.

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The Second Generation

The deprivation of liberty was the most important sanction in the second generation of sanctions. It is inconceivable that this penalty could be removed from the sanctions systems of West European countries but it occupies a much less prominent position than it used to.

Most countries used to recognise different kinds of custodial sentences of varying degrees of severity. Since World War II there has been a strong trend toward developing one uniform prison sentence. The uniform prison sentence has existed in Sweden since 1962, in the FRG since 1969, in Austria since 1974 and in Portugal since 1983.

Although most countries[6] still continue to recognise different kinds of custodial sentences—usually penal servitude, imprisonment and detention—when the sentence is being implemented no differentiation is made based on the type of sentence but upon other criteria such as the length of the sentence, age and sex of the offender and his rehabilitation prospects.

Until a hundred years ago the prison sentence was the main sanction for all except the most trivial offences. By fixing a level for general and special minimum sentences and for maximum sentences according to each offence type, a classification of the abstract seriousness of criminal offences was created. This gave judges boundaries which they could use when passing sentence. In principle the imposition of a fine was possible for some offences but this kind of penalty was regarded as being in an entirely different class and was only considered appropriate for very minor offences. In practice therefore, there was no alternative or substitute for imprisonment.

Around the middle of the last century European criminologists, alarmed by the increase in crime and above all in recidivism, began to question the usefulness of deprivation of liberty. The short term prison sentence came in for particular criticism. The essence of the criticism was that short sentences do not allow enough time for the offenders to be given any instruction or for any moral improvement to be effected, but that they are long enough for moral corruption and criminal contamination through the association with other criminals. Also from the viewpoint of special deterrence short term imprisonment is deemed to be counterproductive, because prison damages a person's self-respect, and self-respect is an important factor in avoiding recidivism. A third objection was the financial and social costs that imprisonment entails, and another was the discriminatory way the short term prison sentence works.

The majority of offenders who serve a short term prison sentence are people who, because they lacked financial resources, were not considered for a fine or were unable to pay it.

The most important changes to the European sanctions systems which came about as a result of this international activity were the introduction of the suspended sentence and probation and the widening of the circumstances under which a fine could be imposed. A third generation of sanctions was born out of the need to find alternatives to the short term prison sentence.

The Third Generation

Around the turn of the century the suspended sentence was introduced into almost all West European countries,[7] following either the Anglo-Saxon model or the Franco-Belgian model. Under the first model, after the judge has declared a finding of guilt the imposition of a sentence is suspended. Provided that the offender keeps the conditions imposed by the judge and does not commit another offence during the probationary period no sanction will be imposed (Probation). Under the Franco-Belgian model, after the finding of guilt the judge does impose a penalty but simultaneously suspends the implementation of the sentence (sursis simple). Hybrid forms also occur.[8] Initially only first offenders could be given a suspended sentence and only for offences which would have been punished with a short prison sentence, but as the years have gone by the suspended sentence has been applied more and more widely in Europe.[9] Also the conditions which may be attached to a suspended sentence have become more and more far-reaching so as to adequately express the punitive element of the suspended sentence.[10] Where the treatment of the offender was considered unnecessary probation need not be used and a fine could be imposed instead.

Two forms of fine are found in Western European sanctions systems: the fixed-sum fine and the day-fine.

In the systems which operate a fixed-sum fine (e.g. The Netherlands and Belgium) minimum and maximum levels of fine are laid down in the Penal Code. The maximum fines are generally too low for the fine to be accepted as a universal alternative to imprisonment. This is why some countries introduced the day-fine system (Finland, Sweden, Germany, France, Austria and Portugal). The amount of a day-fine depends upon the convicted person's financial circumstances, though the minimum and maximum levels of a day-fine are usually given in the Penal Code. In Sweden, for example, one day-fine varies between a minimum of 10 and a maximum of 1,000 Swedish crowns.

The calculation of the level of the day-fine is based on the gross income for the year prior to the conviction less income tax, living costs and the costs involved in earning the income. The amount which is left over is used to calculate a day-fine which is fixed at one thousandth part of it. The seriousness of the offence is expressed through the number of day-fines the convicted person has to pay, which in Sweden varies between a min-

imum of one and a maximum of 180.[11]

Notwithstanding the aim behind the introduction of the day-fine, there are indications that the fine is not yet fully accepted as an alternative to the short prison sentence of six months or less. In the federal Republic of Germany a prison sentence of less than six months may only be imposed if special circumstances to do with the offender or the offence dictate the necessity of a custodial sentence either to make an impression upon the offender or to uphold the system of law. Despite this the number of short prison sentences remains quite high.[12] It is probably true to say that in the Federal Republic of Germany only prison sentences of three months or less are substituted by fines.[13] In France too the Act of 10th June 1983, introduced the day-fine as an alternative to short term imprisonment, but in practice it is only used in a very small number of cases as an alternative sentence.

There are countries, however, where the fine does seem to have taken the place of the short prison sentence. Greece is one such country. In Greece, under section 82 of the Penal Code, the general rule is that all custodial penalties not exceeding six months are converted into fines. The court may do the same with penalties up to 18 months if it is of the opinion that a fine will suffice to deter the offender from committing new offences. The courts make use of these opportunities in most cases so that, of all custodial sentences imposed, only about 4% are executed in prisons.[14]

The Fourth Generation

When the possibility of extending the application of fines and suspended or conditional sentences had been exhausted, because a more extensive application would have endangered their credibility, new ways of avoiding the implementation of deprivation of liberty were invented, the so-called alternative sanctions. This is the fourth generation of sanctions. Very new elements of these sanctions are the involvement of the public in the enforcement of the sanction which is a particular feature of the community service order, and the rapidly developing emphasis upon the position of victims which requires offenders to make some recompense for the injury, loss or damage they have caused to individuals or the community. Such reparation is already a feature of compensation orders in the U.K. which are also currently under discussion in The Netherlands.

The introduction of the alternative sanctions has not completed the development of new sanctions and new modes of implementing sanctions. New ways of implementing sanctions are being developed such as tracking[15], curfew and the monitoring of persons sentenced to non-institutional deprivation or restriction of liberty by electronic tagging[16]. All the available literature on electronic monitoring suggests that so far it has only been used in the United States on a rather restricted scale.[17] There are no indications that experiments with electronic monitoring will be started in Europe in the short term.

The fourth generation of sanctions is in fact the second generation of sanctions which has aimed to provide non-institutional substitutes for short prison sentences.

Their development was born out of dissatisfaction with the first group of substitutes which were characterised by the treatment ideology which, in turn, has been severely criticised since the middle of the 1960's.

Evaluatory studies have shown that little was achieved in terms of rehabilitation[18] and that the treatment ideology carried with it numerous pitfalls[19].

Which Penalties Belong to the Fourth Generation?

There are two well-known European inventories which list all the sanctions which aim to reduce the use of imprisonment. The first dates from 1975[20] and lists twenty-three sanctions, the second is from 1985[21] and con-

tains twenty-two.

Some, such as fines and suspended sentences, had long formed a part of the penal legislation common to Western European countries. Others dated from more recently and had only been applied on a restricted scale e.g. intensive supervision and compulsory attendance.

Still less was said about other alternatives such as compulsory confrontation with the offender or compulsory vocational training, except to note that they had been proposed.

Quite a number of the listed alternatives are not replacements for the prison sentence but alternative modes of implementing a prison sentence.

Semi-detention, weekend-detention, work release and permission to reside away from the prison in a therapeutic community, for example, have as their object the alleviation of the negative effects of imprisonment and the provision of the means whereby the prisoner can improve his personal situation.

They are in fact not alternatives to imprisonment but alternatives to institutionalisation.

Of all the alternatives listed, only three appear to meet resolution 16 on the "Reduction of the prison population, alternatives to imprisonment and social integration of offenders" passed at the seventh U.N. Congress on the Prevention of Crime and Treatment of Offenders.[22] Only these three can really be called alternatives to imprisonment. They are:

—contract treatment,
—deprivations and interdicts concerning rights or licences, and
—community service.

Contract Treatment

Contract treatment is the most recent alternative sanction provided for in new Swedish legislation which came into force on 1st January 1988, after being preceded by experiments since 1979[23]. Contract treatment has been introduced as a form of non-institutional treatment for persons misusing alcohol or drugs and for persons where any other circumstances which have been directly instrumental in criminal activity demand care or treatment. If the offender agrees to undergo suitable treatment in accordance with an individual treatment plan, and treatment is possible to arrange, this form of sanction shall be used. The court shall pronounce contract treatment as a form of regulation included in a probation sentence.

The period of treatment and subsequent supervision is limited to two years. Any serious breach of the conditions can lead to imprisonment. Somewhat similar possibilities, but in a different legal framework such as a conditional waiver of prosecution or a suspended sentence with conditions[24], are provided for in the legislation of other European countries such as Austria, France, Portugal, Luxembourg, The Netherlands and the Federal Republic of Germany.

Since this sanction is so recent, very little information is available about its application in practice.

Deprivations and Interdicts Concerning Rights or Licences

All European criminal legislation makes provision to punish offenders with a deprivation of rights or interdict. The most frequently applied sanction of this kind is the suspension of the driving licence. In a large number of countries, however, this sanction is supplementary to the principal penalties of imprisonment or a fine.

In some countries it is possible to use a deprivation or interdict of a right as a principal penalty in place of imprisonment.

In France, for example, the Act of 11th July 1975 extended the range of alternative sanctions by allowing the judge to impose one or more of the following sanctions as a principal sentence:

—a complete or partial withdrawal of the

driving licence for up to five years;
—a prohibition from driving certain specified vehicles for up to five years;
—a confiscation of one or more vehicles owned by the accused;
—a prohibition from being in possession of weapons for up to five years;
—a withdrawal of a hunting permit and a prohibition from applying for a new permit for up to five years; and finally
—a confiscation of one or more weapons owned by or at the disposal of the accused (section 43.3 PC).

The Explanatory Memorandum states that these sanctions are alternatives to short term imprisonment.[25] It is explicitly laid down (in section 43.5 PC) that the judge may not impose a prison sentence or a fine alongside one of these sanctions.

However, he may impose certain alternative sanctions cumulatively (sect. 43.3 PC).

Apart from this the regulations leave the judge entirely free in his choice of sanctions. It is not necessary for there to be a connection between the nature of the criminal offence and the type of sanction. So, for example, a simple theft could be punished with a withdrawal of the driving licence.[26] If the convicted person does not comply with a prohibition or duty which has been imposed upon him, he may be punished with a prison sentence of between two months and two years, or if this is not his first offence with a prison sentence of between one and five years.

The legislator had high expectations in the effects of this new arrangement. It should have made a real contribution toward reducing short term imprisonment.

In practice, however, these new regulations have had very little effect. Shortly after this act came into force studies were carried out on the application of these alternative sanctions in the jurisdiction of the Court of Appeal of Aix en Provence[27] and the Paris Tribunal[28]. They showed that, in 1976, in only 1.5% of sentences was one of the penalties from sections 43.1-43.4 of the Penal Code imposed. Withdrawal of the driving licence as a principal penalty (sect. 43.3 PC) was given most often, and then almost exclusively for traffic offences.

Measured over the whole of France the results were even more disappointing. In 1976, 5,353 alternative sanctions were imposed which represented 1.04% of all sentences from tribunals and courts of appeal. In 1977, there were 5,365 alternative sentences out of a total of 543,697 sentences, which is 0.98%.[29] The years since then have also witnessed a very limited use of this regulation, and until 1984 the percentage of alternative sanctions had never risen above 3.1.[30]

It appears from these investigations that trial judges are not prepared to impose these sentences except in a very few cases. Likewise defence lawyers rarely ask the judiciary to impose an alternative sentence. There are many reasons for the judiciary's poor response[31] and some of them are very plausible, but the fact remains that this group of alternative sanctions have not really been a success.

Out of the fourth generation of sanctions, those sanctions that have been invented and developed recently solely to serve as non-custodial alternatives or substitutes for short term imprisonment, only community service is being used on a greater scale in an increasing number of countries in Western Europe. This justifies our looking at this sanction in more detail.

Community Service

Looking at the current state of affairs regarding community service it is possible to make a broad distinction between three groups of countries.

The first group includes the countries which have definitely decided not to introduce the penalty of community service or whose enquiries into the desirability of doing so are still in the embryonic stages.

The second group of countries have decid-

ed in principle to incorporate community service into their legal systems, but have not yet done so, because it was felt desirable to go through an experimental phase first to see whether the penalty would prove acceptable to the authorities who would have to impose and enforce it.

Finally the third group of countries are those which have already implemented community service in their statutory sanctions-systems.

I. The Considering Countries

There are a large number of countries in the first group but in none of these countries is the situation the same. In some of them, such as Greece and Turkey, the possibility of introducing community service has not been discussed at all as far as we know. In other countries the debate is fully in progress.

In Spain, for example, during the preparation of a bill for a new Penal Code which dates from 1980 community service was discussed at great length but it did not result in any legislative proposals.

The most important reason why countries have not moved on to proposals to introduce this alternative penalty is that they did not have the necessary infrastructure, that is a well organised probation service. It was also argued that considerable practical problems could be expected, such as existing unemployment and where to draw the line between community service and forced labour. This in turn led to the assumption that community service cannot develop into a worthwhile alternative to the short prison sentence.[32]

In Switzerland, on the other hand, the discussion has produced results. The godfather of Swiss penal law, Hans Schultz, professor at Bern, included community service in his draft bill published in 1985, as a substitute for prison sentences not exceeding one year or for fines.[33]

In Finland and Belgium too, draft legislation is being prepared which includes the penalty of community service.

There is only one country which has definitely rejected community service as an alternative to the short prison sentence, and that is Sweden. The decision to reject community service did not come about without a struggle though. Several committees examined in detail the question of whether such an alternative sanction was desirable and attainable.[34]

The discussions went on from 1977 to 1984 and produced a wealth of theoretical and practical considerations on the subject. Community service was eventually rejected as an alternative sanction for the following reasons:

- —there are scarcely any figures available on the effects of the sanction, and such figures as do exist suggest that community service is given as an alternative to imprisonment in, at most, 50% of cases;
- —community service orders assume that the person performing the work is in possession of certain social skills. The majority of the current Swedish prison population—often drug addicts and/or alcoholics—do not have these skills;
- —Swedish society is highly professionalised, so that the greater part of the available work is carried out by professional staff trained for the job. Because community service tasks may not compete with paid work, it can be expected that it would be difficult to find suitable community service projects;
- —finally, it was felt to be questionable whether work could be used as a sanction, now that work is generally seen as a privilege and forms an important part of social life.

Does this mean then that Sweden has done nothing to reduce the number of prisoners?

On the contrary, Sweden has just been through a very radical reform of sanctions law in which the reduction of imprisonment was central.

For example in, 1981, the statutory minimum prison sentence was reduced from one month to one week so that, in cases where a prison sentence is unavoidable, judges are able to impose a very short sentence.

Also the conditional release rules in Sweden underwent a major change in 1983.

Before the change a prisoner could only be released on parole after serving two-thirds of his sentence with a minimum of four months.

Under the new rules parole may be granted after half of the sentence, with a minimum of two months, has been served.

Every year thousands of convicted offenders benefit from this very lenient regulation, and an annual saving of 450 prison places is made out of a total capacity of 5,500 cells.

In addition, the sentence of probation supervision has been improved to such an extent that judges now accept it as an alternative to a short term prison sentence.

Finally, and this is remarkable in Western Europe, since 1983 Sweden ceased to implement fine default detention for unpaid fines.

Other countries which have not yet introduced community service as a substitute penalty have also taken statutory measures to reduce the use of short prison sentences.

For example, the Penal Codes of Germany (sect. 47 PC) and Austria (sect. 37 PC) lay down that prison sentences of six months or less should not be implemented in principle, unless there are special circumstances to do with the offence or the offender which compel the judge to impose a prison sentence for reasons of general or special deterrence.

In Belgium, to give another example, it has been the practice since 1939 that prison sentences of four months or less are not implemented.

II. The Experimenting Countries

We now turn to the second group of countries: those currently experimenting with community service in preparation for future legislation.

There are three countries in this group: Norway, Denmark and The Netherlands.

In these countries the community service experiments are being conducted within the juridical framework of the suspended sentence.

In Denmark experiments with community service were begun on 1st September 1982 in Copenhagen and 1st November in North Jutland. This followed several years of preparatory work by various committees which devised the rules for the experiments.

Community service can be imposed as a condition of a conditional non-imposition of a penalty. In principle, any offence can be considered for community service no matter how serious, and no matter how long a prison sentence might have been imposed. The preparatory committee specifically recommended that community service be used in place of prison sentences up to 6-8 months long. Only one offence is excluded from consideration for community service, and that is drunken driving.

The judge can only impose community service after the "kriminal-forsorgen"—the probation department of the Ministry of Justice—has produced a social enquiry report on the accused.

The court cannot impose community service without the accused's consent.

The court decides upon the number of hours community service to be worked, within the statutory minimum and maximum levels of 40 hours and 200 hours. The court also lays down the period within which the community service has to be completed. The maximum period is twelve months. The detailed content of the community service and the supervision is the responsibility of a special section within the "kriminal-forsorgen."

Non-fulfillment of the community service does not automatically lead to revocation of the suspended sentence and the fixing of a penalty. The court also has the option of giving a warning or altering the conditions of the sentence.

The community service experiment had a

slow start; in its first year only 43 community service conditions were imposed. This increased to over a hundred in the second year. The number of failed community service orders was around 10%.

In June 1984, the Minister of Justice decided to extend the community service experiments over the whole of Denmark.

Since then 1,000 community service orders have been imposed and the experience looked promising. Parliament was to have taken a decision early in 1988 on the introduction of community service as a principal sentence[35], but this decision has not yet materialised.

In Norway experiments with community service were started in Stavanger and Rogaland in 1984, and extended to the whole country in 1987. The maximum number of hours of community service is 240, and the maximum prison sentence that it can replace is twelve months. The penalty of community service is primarily intended for property offences.

The first years of the experiment have been evaluated by a committee and the results are so promising that a bill is currently being prepared in Norway to incorporate community service into the Penal Code. The bill is expected to appear at some time during 1989.

The Norwegian Justice Ministry is working on the assumption that about 700 people will be sentenced to do community service every year and that this will bring about a saving of 200 prison places per year[36].

In The Netherlands, after a six year experimental period and over 10,000 community service orders, a bill was presented to parliament in September 1987 which would provide community service with an explicit statutory foundation. The main points of the statutory regulations are as follows. The maximum number of hours of work that can be imposed as a penalty is 240, and the work must be completed within six months. A judge may only impose a community service penalty if the sentence he would otherwise impose is an unconditional prison sentence of six months or less, or, a part suspended part unconditional prison sentence of which the unconditional part is not more than six months. Furthermore, a judge can only impose this penalty in response to an offer from the accused who must also consent to the proposed sentence. The offer must state the nature of the work. The "compulsory consent" was taken up in the bill to avoid contravening four international conventions forbidding forced labour which The Netherlands has signed. To ensure that the penalty of unpaid work is only used as an alternative to an unconditional prison sentence the judge has to state in his sentence the prison sentence he considered imposing for which community service is a substitute. The sentence also specifies the number of hours of work to be carried out, the period within which it has to be completed and the type of work.

The prosecution service is responsible for supervising the manner in which the work is carried out. Information can be requested from individuals and organisations involved in probation work for this purpose. If the prosecution service considers that the convicted person is not or has not been able to complete the work entirely in accordance with the agreement then it can make changes to the agreement without going back to the court.

Changes may be made to the completion period, the person or institution for whom the work is being done and the type of work being done.

The convicted person will be informed of these changes and may make his objections to the judge who imposed the sentence if he wishes.

If the judge feels that the convicted person has not carried out the imposed work properly, and if the prosecution service demands this, he can actually impose the prison term mentioned in the sentence and order that all or part of it be enforced. He does take into account that part of the work that

has been properly carried out. The prosecution service has to make its demand within three months of the end of the completion period for the community service.

When the prosecution service is satisfied that the work imposed has been carried out properly it must inform the convicted person as soon as possible.

It may be expected that the act will come into force in 1989.

Experience in Norway, Denmark and The Netherlands has shown that the many practical and legal problems which existed at the beginning of the experiments resulted in a limited application of the alternative sanction. In Denmark, for example, it is known that the trade union movement initially had fundamental objections to the CSO fearing unfair competition. A problem that arose in The Netherlands was the uncertainty surrounding whether an unemployed person engaged in community service would be entitled to unemployment benefits when he would not be available for work during the hours that he was working on his community service. Considering that 62% of those convicted to a CSO in The Netherlands were unemployed the solution to this problem had to be given high priority. As soon as these practical and legal problems had been resolved many judges in these three countries were prepared to apply the alternative sanction on a greater scale.

III. The Applying Countries

The third group of countries, those which have implemented community service in their statutory sanctions systems, includes the United Kingdom, France, Portugal, Italy, the Federal Republic of Germany, Luxembourg, Norway and Switzerland.

That Norway and Switzerland are mentioned again here points to the fact that the community service penalty does not only occur as a substitute for judicially imposed prison sentences, it is also used as a substitute for other sanctions and consequences of sanctions.

For this reason we have found it necessary to subdivide this third group.

There are countries which have had a form of community service penalty in their penal legislation for almost a century. This was used as an alternative to a judicially imposed fine, or the default detention which can be imposed when a convicted person fails to pay his fine.

The oldest regulation is found in section 19 of the Italian Penal Code of 1889. Community service could substitute for a fine default detention only at the request of the convicted person and two days' community service replaced one day's detention. The public prosecutor was responsible for implementing this alternative sanction.[37]

Section 28 of the Norwegian Penal Code of 1902 provided that the King might issue regulations to allow fines to be substituted by work to be carried out for the benefit of the state or municipality. The King acted upon this and issued the Royal Decree of 3rd December 1904.[38]

There has been a similar provision in the German Penal Code since 1924.

Finally, the Swiss Penal Code has, since 1942, provided that fine defaulters might avoid detention by carrying out work for the general good (sect. 49).

There is nothing new in the idea that a fine imposed by a judge can be paid off by doing work for the general good; it is centuries old.

In his study of the history of this penalty the German criminal law scholar, Hans von Hentig[39], points to a number of German towns whose municipal by-laws have, since the middle ages, enabled people to avoid serving a default detention by doing work for the community such as helping construct the city wall or cleaning the canal.

The penal legislation of Bern (Switzerland) contained a similar provision in 1614 but also required the consent of the person concerned.[40]

We do not intend to go any further into the historical background of this variant. This is because we are far more interested in the

practical significance, if any, of this form of community service, the alternative to fine default detention.

This has been disappointing in a number of countries. In Norway and Switzerland this statutory provision has virtually remained a dead letter.

There are two well-known studies of the application of this provision in Switzerland.

They show that between 1942 and 1947, out of 388 people in the canton of Zurich who could not pay their fine, only 5 took up the opportunity to pay through work.[41] A similar study was undertaken in the period 1976-1980. Fourteen people who had not paid their fines were asked whether they would like to pay it off by doing community service. Thirteen did not reply at all and one came to pay his fine immediately.[42]

In Germany the opportunity to avoid default detention was hardly ever used up until 1981. This was mainly because there were no personnel to approach the non-payers personally, and because community service could only take place with government organisations and within normal office hours.[43]

However, since 1981 the German federal states have decided to put the departments attached to the Justice Ministry in charge of preparing and coordinating the necessary work projects to allow community service to be put into operation. This had become necessary because the worsening economic situation had led to an increase in default detentions at a rate of several thousand per year. This in turn had resulted in serious overcrowding in the prisons. The German policy was very successful. By 1985 over 7,000 persons convicted to fines were able to avoid a default detention by doing community service.[44]

The situation in Italy is also worth mentioning. On 21st November 1979 the constitutional court decided that the conversion of an unpaid fine into a subsidiary detention conflicts with the principle of equality before the law and thus with the Constitution.[45] In 1981, in response to this decision, convicted persons were given the opportunity to ask for their fine to be converted into a "lavoro sostitutivo" in sections 102 and 105 of the Penal Code. For each 8 hour day worked the imposed fine is reduced by 50,000 lire. The maximum number of hours community service that can be worked is 60 if one fine is involved and 480 if there are several fines. No more than 8 hours community service can be worked per week.

Between 1982 and 1985 only about thirty fines were converted into community service. The most important reason for this is that a convicted person can also request conversion of his fines into a "liberta controllata" (supervised liberty) which is seen as a much lighter sentence than "lavoro sostitutivo."

Given the choice, most convicted persons prefer the "liberta controllata."[46]

Community service does not only have a role as an alternative to default detention, but also as a substitute for a principal fine. At least that is the case in Portugal.[47]

Under section 43 of the Portuguese Penal Code of 1982, prison sentences not exceeding six months (180 days) are substituted by an equivalent number of day-fines unless there is a very clear indication that a custodial sentence is necessary to prevent the offender from committing further crimes. Section 60 further provides that day-fines up to an equivalent of three months imprisonment can be substituted by a community service penalty. With the consent of the accused a judge may convert up to 90 day-fines into a community service order, at a maximum rate of two hours community service per day-fine. The maximum number of hours of community service therefore works out at 180.

Portugal is the only country in Europe with a legal system which explicitly provides for the conversion of principal fines into community service.[48] If section 41 of the Swiss draft bill is adopted unchanged, then Swiss law will also allow a fine to be converted into a community service order of between 10 and

240 hours.

Finally we come to those legal systems which make provision for community service as a substitute for the short term prison sentence. In the past fifteen years five countries have adopted community service as a substitute for imprisonment in their legal systems, but the way it operates in practice varies very much from country to country.

First there was England and Wales which, in the Criminal Justice Act of 1972, provided that offenders over the age of 16, convicted for an offence punishable with imprisonment, can be given a community service order if they consent (sects. 14-17 Powers of Criminal Courts Act 1973 and Schedules 12 and 13 Criminal Justice Act of 1982). The minimum number of hours of community service is 40 and the maximum 240. It is clear from the parliamentary debate of the Criminal Justice Act that community service was only intended to be used in place of a prison sentence, or as the Green Paper put it again recently: "The community service was designed for offenders who would otherwise be at risk of custody."[49] In practice, however, it has become clear that the community service order is also imposed in cases where previously a fine would have been used.[50] About 35,000 community service orders are now imposed annually.

In the Federal Republic of Germany, since 1975, it has been possible for an offender to be given a suspended prison sentence up to two years in duration, to which a condition is attached that he carry out work for the general good (sect. 56 PC). Unlike England and Wales, therefore, community service cannot substitute for a principal fine.

The Portuguese Penal Code of 1982 also includes community service as a substitute for a prison sentence up to three months maximum. Under Portuguese penal law community service cannot be imposed as a condition of a suspended sentence but only as a principal sentence (sect. 105 PC).

Under French law community service can be imposed as a principal sentence (sect. 43.3.1 PC) or as a condition of a suspended sentence with probation supervision (sect. 747.1 CCP). As a principal sentence it can only be imposed upon offenders who, in the five years preceding the offence now being tried, have not been convicted for other offences to an unconditional prison sentence exceeding four months. The principal sentence of community service can only be given for offences carrying a maximum statutory sentence of five years. When it is imposed as a condition of a suspended sentence community service can be used for any offence. Although there are no further statutory restrictions on the imposition of community service, it is clear from the parliamentary debate that it is only intended for non-grave offences.

Community service entails an obligation to carry out unpaid work in the service of the community, a public institution or a private society or foundation. The court fixes the number of hours between a minimum of 40 and a maximum of 240 and the completion period (maximum 18 months). Community service can also be imposed upon juveniles. They have to do between 20 and 120 hours unpaid work within a twelve month period. Before imposing this alternative sanction the judge informs the accused that he has the right to refuse this type of penalty.

The sentencing judge ("judge de l'application des peines") works out the concrete content of the community service and is reponsible for its supervision. Non-fulfilment of the principal sentence is a separate criminal offence punishable with between two months and two years of imprisonment, or, in the case of recidivists, between one and five years. Non-fulfilment of community service imposed within the framework of a suspended sentence can lead to its revocation. In the first three years (1984-1986) ±15,000 convicted persons started a community service penalty. The failure rate is around 4%.

The most recent statutory regulation of community service is in Luxembourg, where, since 1986, it has been a possible con-

dition of a suspended sentence or probation (sect. 633.7 CCP).

There are also a number of European countries where a prison sentence imposed by a judge but not yet enforced can be replaced by a community service order via a pardon. This is the case in The Netherlands, Luxembourg, Norway and the Federal Republic of Germany among others.[51]

We can well imagine that your mind boggles at the quantity of different sentence modalities within which community service can play a role, but there are still more.

In Norway community service can theoretically be imposed as a condition of a waiver of prosecution (sect. 69 CCP) and a conditional release. In the Federal Republic of Germany it is possible as a condition attached to parole (sect. 57 PC), a waiver of prosecution (sect. 153a CCP) and an admonition with a deferred sentence (sect. 59 PC)... but there is no need for us to go on with this list.

It is sufficiently clear by now that community service regulations in Europe are by no means uniform and that it can be applied under a great variety of different sentence modalities. This has important consequences affecting the nature of community service as a penalty.

We would like to comment on this aspect now whilst making a comparison of the different systems.

Discrepancies in the Various Sanctions-Systems

We have seen that in both Germany and Portugal community service can function as an alternative to a day-fine. In Portugal it replaces the day-fine as a principal sentence, in Germany it is an alternative to fine default detention.

In Portugal a maximum of 180 hours community service can be imposed instead of 90 day-fines. In Germany 90 unpaid day-fines can be converted into 720 hours community service.

Such a discrepancy between two systems, both of which operate the day-fine and recognise community service as a substitute for it, cannot be explained either theoretically or for practical reasons.

We will give another example of such a discrepancy. In Denmark and Norway the maximum number of hours of community service is 200. In Denmark 200 hours community service substitutes for an 8 month prison sentence whereas in Norway it substitutes for a 12 month prison sentence, while in The Netherlands 240 hours community service is an alternative to a 6 month prison sentence.

The real reasons for these very considerable discrepancies can only be guessed at. Nowhere have we been able to find an explanation for the relationships which have been fixed between the duration of a prison sentence and a community service order. Nowhere have criteria been developed for judges to use when converting a prison sentence into community service. The absence of these criteria hampers the desired uniformity of sentencing practice.

Finally, on the subject of discrepancies, we would like to give one more example which occurs within one legal system, the French. Non-fulfilment of community service imposed as a condition of a suspended sentence results in the convicted person having to serve the prison term which has already been fixed by the judge.

Non-fulfilment of community service imposed as a principal penalty is a separate criminal offence punishable with between two months and two years imprisonment. This sentence may possibly be suspended.

The consequences of failing to carry out a community service order imposed as a principal sentence can be very different from those which result from not carrying out a community service condition. In the latter case the convicted person knows exactly what term of imprisonment lies in store if he does not meet his obligation: the judge has already fixed this in the sentence. With the

principal sentence on the other hand, he only knows that he can be punished with a prison sentence of anywhere between two months and two years in duration. Because the punishment is for a new offence (namely non-compliance), and because the original offence for which the community service was imposed has no bearing upon this sentence, the offender stands a theoretical chance of getting a much heavier prison sentence than that which would have been imposed for the original offence.[52]

It is unclear why the French legislator chose to make non-fulfilment of a principal sentence of community service into a separate criminal offence. There are indications that he was following the English system where non-fulfilment of a community service order is a contempt of court which is also a punishable offence. However, there are important differences. A contempt of court can only be punished with a fine up to a maximum of £400 and the community service order remains in force giving the convicted person another chance to fulfil his community service.

If he still fails to do this the community service order is revoked and the offender is reconvicted for the original offence.[53]

Factors Negatively Affecting the Court's Use of the CSO

As a relatively new sanction the community service order has already made its mark in the sanctions-systems of a number of countries, as a separate penalty alongside the prison sentence and the fine or as a substitute penalty for short term imprisonment.

Nevertheless, there are sufficient grounds to fear that, in the long term, this new substitute penalty will pass into oblivion if nothing is done to avert the dangers which threaten it.[54] We shall now look at a few of these threats.

Firstly there is the incomplete ideological base of this alternative penalty.

Many judges who could impose this penalty have serious reservations about its punitive character. If the characteristic feature of a penalty is that it inflicts punishment, this aspect has been given very little exposure in legal and political discussions. This is all the more strange in view of the fact that the CSO is a substitute for quite long prison terms in many countries. Looked at in terms of the severity of the punishment, is 240 hours community service equivalent to six or eight months in prison?

The answer to this question must be no if we only take the punitive aspect of the sentence into account.

If, however, we also look at the other purposes of a penal sanction, for example, the element of redress to society for wrongdoing, the rehabilitation aspect and recidivism rates, then the CSO compares very well with the prison sentence. It would therefore be a good idea to investigate from time to time how far judges, public prosecutors, councillors and convicted persons perceive community service as a punishment.

This should in turn reveal whether this penalty's level of acceptance among professionals is increasing, and if not, why not.

This kind of research has been conducted in The Netherlands throughout the experimental phase and the findings have contributed to the formulation of statutory regulations for community service.

The most recent study showed that the rates of reoffending were significantly lower for persons convicted to community service than those who served short term prison sentences.[55] Studies like this stimulate the use of the alternative sanctions.

The second risk is that the supervision of the execution of the community service work is too lax so that judges lose their confidence in the sanction. In England, in particular, probation officers have felt that the supervision of a penal sanction is incompatible with their professional principles. This has resulted in a situation developing whereby the CSO no longer functions as a substitute for imprisonment in many cases, but as a sub-

stitute for a fine.

The third threat to the success of this sanction occurs where the necessary infrastructure is lacking.

The preparatory work and supervision demand quite a major investment in manpower and money. The community service order, though much cheaper than prison sentence, does not come free.

For this alternative penalty to succeed, there have to be enough judges and probation officers as well as adequate financing. The fiasco in Portugal where the CSO was introduced in 1983, but where since then it has been imposed in only thirty cases, can be attributed directly to the lack of supportive structures: a chronic shortage of probation officers and a shortage of money.

Another factor which threatens the new sanction is its rather shaky statutory foundation. The regulations governing the new sanction need to be as clear as glass. The regulations must be formulated in such a way as to preclude any disputes about the respective responsibilities of the judge who imposes the sanction and the agency which has to implement it. Statutory guarantees need to be built in to ensure that the work will be suitable for the individual offender.

The act must also state clearly what the consequences of failing to carry out the community service will be.

Finally there is the danger posed by the absence of Standard Minimum Rules for the implementation of non-custodial alternatives. Rules relating to privacy, rules guaranteeing the professional qualities of supervisors and the quality of work tasks, etc. will become more and more important as the alternative sanctions are used on a greater scale. The offender sentenced to a community service order also has the right to be protected against possible abuse of power exercised under this sanction.

It is a good thing therefore that work is being done to draw up these rules at both international and supranational levels. A great amount of work has been undertaken by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) in initiating the formulation of Standard Minimum Rules for non-custodial measures. These rules, the Tokyo Rules, will be presented for adoption to the 8th U.N. Congress on the Prevention of Crime and the Treatment of Offenders to be held in 1990.

Notes

1. For the history of the prison sentence, see: H.H. Jescheck, Die Freiheitsstrafe und ihre Surrogate im deutschen und auslandischen Recht, Nomos Verlagsgesellschaft, Baden-Baden 1984, pp. 1949-1974.
2. Some countries still have provisions allowing the death penalty for grave war time offences.
3. Resolution 727 appeals to the parliaments of those member states of the Council of Europe which have retained capital punishment for crimes committed in times of peace to abolish it from their penal systems.
4. Nine member states of the Council of Europe are parties to the Sixth Protocol to the European Convention on Human Rights and have therefore abolished the death penalty for all offences (including crimes under military law or committed during wartime) (1. 1. 1989).
5. The death penalty, Travaux de la Conference Internationale tenue a l'Institut Superieur International de Science Criminelle, Syracuse Italy 17 au 22 Mai 1987, Revue Internationale de droit penal 1987, pp. 285-821.
6. For example, the Spanish Penal Code recognises at least six types of custodial sentence (see sects. 30, 45, 46, 47, 84 and 85 PC), the Swiss three (see sects. 35-41 PC) and the Dutch two (sects. 10 and 18 PC).
7. Luxemburg 1892, Portugal 1893, Norway 1894, Italy 1904, Denmark 1905, Sweden 1906, Spain 1908, Greece 1911, The Netherlands 1915, Finland 1918. For more detailed information, see: M. Ancel, Suspended Sentence, Heinemann London 1971, pp. 38-41.
8. For example, in Denmark, Norway and The

Netherlands.

9. In The Netherlands, since 1st January 1987, up to one year of a prison sentence not exceeding three years in total may be suspended. In Germany sentences between one and two years can only be suspended if special circumstances relating to the offence or the personality of the offender would justify this. Under French law since the legislative changes of 1970 and 1975 sentences up to five years may be suspended.
10. See: Peter J.P. Tak, Standard Minimum Rules for non-institutional treatment: an attempt to respond to some basic questions, Sixth International Colloquium of the International Penal and Penitentiary Foundation, 3-7 October 1987, Poitiers, France.
11. The regulation of day-fines is far from uniform in Western Europe, as the following examples illustrate. In the Federal Republic of Germany the minimum level of the day-fine is two marks and the maximum 10,000 marks. The number of day-fines that can be imposed varies between a minimum of five and a maximum of 720. In France the maximum amount per day-fine is 2,000 French francs and the maximum number of day-fines is 360. In Portugal a fine may comprise 10 to 300 day-fines and each day-fine amounts to between 200 and 10,000 escudos. There are thus considerable differences in the level of day-fines.
12. In 1982 46% of all prison sentences were less than six months.
13. See: J. Kurzinger in H.H. Jescheck op. cit., p. 1830 and p. 1996 ff.
14. See: Anton M. van Kalmthout/Peter J.P. Tak, Sanctions-systems in the Member-States of the Council of Europe, part 1, Kluwer/Gouda Quint Deventer 1988, p. 163.
15. Tracking is a term used broadly to cover various schemes which use ancillary probation staff to maintain regular and frequent contact with offenders under supervision in the community. The tracker discusses with the offender how he will spend his time and maintains contact with schools, clubs and other places where the offender intends to go. See: Punishment, Custody and the Community, Green Paper, July 1988, Dm 424 HMSO London, p. 11.
16. A tag which is attached to a person gives a unique signal in response to a telephone call. The person or computer making the telephone call then knows that the tagged person has responded. The tag cannot be removed or tampered with by the person. This is called the passive system. There is also an active system in which the tag transmits a continuous signal to the telephone terminal in the tagged person's home which can communicate with a computer. The signal stops when the tagged person moves further than a prescribed distance from the telephone.
17. See: Belinda R. MacCarthy, Intermediate Punishments: Intensive Supervision, Home Confinement and Electronic Surveillance, Monsey New York, Willow Tree Press 1987. The author estimates that by the target date of 1st August 1988 five to six thousand individuals would be subject to electronic monitoring over the whole of the United States.
18. See: D. Lipton, R. Martinson, J. Wilks, The effectiveness of correctional treatment. A survey of treatment evaluation studies, Praeger Publ. New York 1975.
19. See: I. Anttila, The Ideology of Crime Control in Scandinavian Current Trends, in: Selected Issues in Criminal justice, HEUNI Publication Series, no. 4, Helsinki 1985, pp. 66-67.
20. W. Rentzmann, Om alternativer til frihedsstraf, Nordisk Tidsskrift for Kriminalvidenskab, 1975, p. 163.
21. Alternative measures to imprisonment. Council of Europe, Strasbourg 1986.
22. A/Conf.121/22/Rev. 1 UN 1986, p. 84.
23. See: Anton M. van Kalmthout/Peter J.P. Tak, Sanctions-systems in the Member-States of the Council of Europe, Kluwer/Gouda Quint, Deventer 1988, pp. 298-299 and N. Bishop, Non-custodial Alternatives in Europe, HEUNI publication series, no. 14, Helsinki 1988, pp. 72-74.
24. See: Peter J.P. Tak, The legal scope of non-prosecution in Europe, HEUNI publication series, no. 8, Helsinki 1986, pp. 67-72.
25. Assemblee Nationale Doc. No. 1481 pp. 10-11.
26. Compare: H. Bestard, Les substituts aux courtes peines d'emprisonnement et l'application de la loi du 11 juillet 1975, Revue

penitentiaire et de droit penal, 1978, p. 305.
27. J.H. Syr, L'application de la loi du 11 juillet 1975 modifiant et completant certaines dispositions du droit penal dans le ressort de la Cour d'appel d'Aix en Provence, Revue de science criminelle et de droit penal compare, 1979, from p. 521.
28. J. Delmas-Goyon, Application au Tribunal de Paris pour l'annee 1976, des dispositions de la loi du 11 juillet 1975 concernant les substituts aux courtes peines d'emprisonnement, Revue de science criminelle et de droit penal compare, 1979, from p. 525.
29. H. Bestard, op.cit., p. 308.
30. Compare J. Larguier, Chronique de jurisprudence, Revue de science criminelle et de droit penal compare, 1981, p. 601, the circular of 21st October 1981, Recueil Dalloz, 1981, p. 374, and the figures issued during the parliamentary discussion of the proposals in the Bill on comunity service, Journal Officiel, 1982, no. 84 AN, p. 4681, and the Annuaire statistique de La Justice 1985, Paris 1987 p. 109 and subsequent pages.
31. See: Anton M. van Kalmthout/Peter J.P. Tak, Sanctions-systems, op.cit., pp. 86-87.
32. See: Sanctions-systems, op. cit., pp. 258-263.
33. See: Sanctions-systems, op. cit., pp. 341-361.
34. See: Sanctions-systems, op. cit., pp. 279-287.
35. Anton M. van Kalmthout/Peter J.P. Tak, Sanctions-systems, op. cit., p. 67.
36. Justisdept's pressemelding no. 40/87 Nordisk kriminologi Nyhetsbrev no. 44, November 1987, p. 29.
37. See: Carlo E. Paliero, Community Service in Italy—legislation and practice, in: H.J. Albrecht/W. Schadler, Community Service, Freiburg 1986, p. 151.
38. H. Rostad, Samfunnstjeneste Som Alternativ til ubetinget fengelsstraff, Lov og Rett 1984, p. 3.
39. Die Strafe, Teil II, Die moderne Erscheiningsformen, Heidelberg 1955, p. 408.
40. C. Stooss, Das sogenannte Abverdienen von Geldstrafen, Revue Penale Suisse, 1891, p. 347 and C. Stooss, Geldstrafe und Bussenabdiener, Schweizerische Zeitschrift fur Strafrecht, 1916, pp. 1 & 3.
41. H.F. Penninger, Das Problem der kurzzeitige Freiheitsstrafe, Schweizerische Zeitschrift fur Strafrecht, 1949, p. 1875.
42. R. Bernhard, Die Bussenvollzug gemass Art. 49 StGB unter besonderer Berucksichtigung der Praxis des Kt. Zurich, Diessenhofen 1982, p. 59.
43. D. Zimmerman, Tilgung uneinbringlicher Geldstrafen durch freie Arbiet, Bewahrungshilfe, 1982, pp. 113-126.
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45. Corte Constituzionale, sentenz no. 131, Guistizia penale 1980 I, p. 129.
46. C.E. Paliero, Community Service in Italy, op. cit.,.from p. 158.
47. Compare: E. Correira, Community Service and the New Portuguese Penal Code, IPPF proceedings Bonn 1987, p. 81 and L. Oliveira de Miranda Pereira, Community Service in Portugal, in: H.J. Albrecht/W. Schadler (eds.), Community Service, Freiburg 1986, p. 139.
48. See: Sanctions-systems, op. cit., p. 181.
49. Punishment, Custody and the Community, op. cit, p. 3.
50. W.J. Bohan, Community Service as an alternative to the Prison Sentence, Experience in England and Wales, IPPF proceedings, Bonn 1987, p. 47 and G.C. Cartledge, Community Service in England and Wales, in: H.J. Albrecht/W. Schadler, op. cit., from p. 15.
51. See: Tak/Van Kalmthout, op. cit., p. 113 & p. 196 and P.J.P. Tak, Community Service as an alternative to the prison sentence in The Netherlands, IPPF proceedings, Bonn 1987, p. 122.
52. P.J.P. Tak, A comparative survey on the use of alternatives to imprisonment in the Member States of the Council of Europe, IPPF proceedings, Bonn 1987, p. 110.
53. N. Walker, Sentencing, theory, law and practice, London 1985, p. 281.
54. For more details on this, see: N. Bishop, Non-custodial alternatives in Europe, or. cit., pp. 97-140.
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Fair Administration of Police Responsibility and Provision of Services to the Public: The Basis for Public Cooperation

by Cicero C. Campos *

I. Introduction

A. The Ideal Police

Awed by the multi-faceted role of the police, Paul Riege, in his history of the police, reiterated an expression oft quoted: *"Nach Gott kommt gleich die Polizei"* ("After God, comes the Police.")[1]

Riege made this exaggeration evidently after he became aware of the extent of police work as it was originally conceived. This ideal was embodied by Charles Rowan and Richard Mayne in the Ninth Principle, which they framed in 1829, based on the philosophy of Sir Robert Peel of England who is considered a leading pioneer of the modern police system. The essence of police professionalism was distilled into the Ninth Principle, which reads:

> To maintain at all times such a relationship with the public that gives reality to the historic truth that the police are the public and the public are the police—the police being only members of the public who are paid to give full-time attention to those duties which are incumbent on every citizen in the interests of the welfare and existence of the community.[2]

This police ideal can be traced to the birth of Greek democracy. The term police is etymologically derived from the Greek word *polis,* which refers to an assembly of armed citizens that took on the responsibility of *governing the city*—which in effect constitutes the origin of democracy.[3] This evidently is the basis for the statement that "the police are the public and the public are the police."

This comprehensive nature of the police ideal covers such extensive responsibilities as emergency medical care, assisting the helpless, relief and mercy operations, disaster control, etc., all these in addition to what is usually associated with police work, namely, the maintenance of law and order. The ideal police, in a way, is the dividing line between civilization and chaos. It is therefore no wonder that Paul Riege was moved to exclaim with that classic exaggeration "After God, comes the Police."

B. Ideal and Reality

Through the years, many police systems have deviated from the ideal. This is a basic reason why police authorities have been frustrated with regard to police work. There is a dearth of police effectiveness and public acceptability. There is a perceived need for innovation, to couch modern techniques and technology within the context of the original police ideal, to pursue a "changing, changeless system," that is, to ensure that changes in approaches are fixed to a changeless ideal.

II. Statement of the Problem

As industrialized societies develop into more complex urban areas, modes of conduct, in the very nature of things, may be subjected to stricter sanctions. Grassroots enforcement of these sanctions renders imperative the ubiquitous presence of the police. The range of this presence, and the very purpose thereof, may spawn hostility and outright conflict.[4] The "arm's length" at-

* Chairman, National Police Commission, the Philippines

mosphere could lead to a gap in communication which, in turn, could create mutual social isolation between the protector and those to be protected, that is, between the law enforcers and the community. The isolation further aggravates the hostility, carrying along with it brutality and corruption.[5] The vicious cycle is obvious. Attention should therefore be focused on this mutual social isolation which is a root cause of communal apathy vis-a-vis overtures for public cooperation. For without public involvement, police work becomes an exercise in futility.

III. Analysis of the Problem

A. Systems Analysis: The Diagnostic Approach

For maximum results, approaches to the problem would have to be couched within the context of a behavioral and systems framework. Police-community issues would have to be addressed within an overall setting that encompasses other social systems. This methodology would of necessity revolve around the concept of the *roles of the police.*[6]

It cannot be gainsaid that a social symbiotic relationship is a *conditio sine qua non* if law enforcement were to measure up to the challenge of crime. The concept of symbiosis is inherent in a behavioral and systems approach wherein the individual or collective conduct of the police, whether by commission or omission, creates a ripple effect on the larger social setting. Conversely, the latter impacts on the former, distinctly illustrating the interdependence of one on the other.

Drawing from the universalities of operating systems, we can project a basic system design, which could be used as a frame of reference in the quest for a deeper insight into police-public interaction. This basic system could be dissected into five elements, to wit: (1) the input, (2) the central processor, (3) the output, (4) the controls, and (5) the feedback loop.[7] This basic system would have to be viewed and implemented *in toto,* because premature concentration on a single element, to the detriment of another important element, would negate efforts to comprehend and implement the system as a whole.

If a system designer were to retrieve output data from the system, it is axiomatic that the pertinent data had been programmed into the system in the first place. Applying this to police operations terms, items that can be drawn from the police system are those which previously had been fed into the system as *inputs,* in the form of logistics, management, etc.

The quality of police operations is largely determined by the social and political traditions in a given area, that is, whether pressure is made to bear on the police to ensure integrity and efficiency, or corruption is condoned within a "tolerable level." As to which emphasis predominates can usually be sensed from the overall state and condition of law and order in the locality. As the saying goes, "The proof of the pudding is in the eating." However, the influence of social and political traditions on the *output* is not absolute, because the police organization, as the *central processor,* can *dilute,* as well as *dilate,* the influence of said traditions.

Another determinant is organizational *controls,* both internal and external. Internal controls include the policies and regulations of the department, internal allocations of the budget, the administrative attitudes and styles of the command personnel, internal inspection and supervision policies and standards, etc. On the other hand, external controls cover statutory laws governing the behavior of the organization, appellate court decisions on search and seizure, etc.

Still another determinant is the *feedback loop,* which, technically, "consists of any portion of a system's output which is utilized as an input for the purposes of monitoring or controlling the system's performance." The degree of organizational success is often premised on the adequacy of the feedback loop. Failure or subpar performance is often due to the fact that the feedback loop had not been "deliberately designed into the op-

eration, is too long and circuitous, or is rampant with blockages."

Needless to say, ineffective police performance due to the inadequacies alluded above contributes heavily to the disinterest and skepticism of citizens towards involvement in the work of the police.

Ignoring a systems orientation vis-a-vis police-community relations would mean an inadequate comprehension of the nature of the interaction between the police and the public.[8] The police system does not operate in a void, or within a passive context.[9]. On the contrary, the police system could be likened to a satellite that orbits around a macrosystem—the community, about which orbit other satellites, namely, other governmental systems and social systems (e.g., the social welfare system, health care system, traffic safety system, etc.). The influence of one on the other should be just sufficient to maintain a delicate balance of orbital cycles, thereby precluding collisions or conflicts. This, in essence, is the ideal symbiotic relationship that should prevail in police-public interaction.

B. Elements of the Problem

Police-public "social isolation" constitutes an issue in both developed and developing countries to such a degree that, for many, the police remain "faceless and nameless creatures"[10]—indeed an acute malady of a social dimension that could spell the difference between success and failure in law enforcement.

Police-public isolation evidently is premised on several factors, to wit: (1) socio-political history, (2) perceptions, real or imagined, of unjust police practices, (3) inward orientation of the police[11] and (4) organization. The existence of these elements is aggravated by the public's simplistic notion of the role of the police, thus perpetuating the myth of outdated police stereotypes.

1. Socio-political History

Case histories subscribe to the thesis that police-public isolation can be traced to "policing practices and organizational structure."[12] A flashback over space and time projects the conclusion that the negative image of the police, especially in some Third World countries, is closely associated with the "initial purposes for which the police were formed and the social character of its recruits."[13] The police recruits were perceived to have been taken from the destitute, from those who belonged to the lower socio-economic level. This was aggravated by their being used as instruments of oppression.[14] And because they represented the "repressive hand of government, the police developed a stigma around themselves."[15]

To adequately comprehend the police system of many Third World countries, it would have to be construed within the context of colonial history and geopolitical realities. Throughout colonial history, the Third World has had, to a large extent, a consistently military-type police force, established to ensure political control over the colony. Law and order were equated with defense of the colony against insurgents and rival colonizing powers, and the strategy for this was the creation of militarized police forces.[16] These were direct adjuncts to the colonial military establishment. In the very nature of things, these bodies were perceived by the citizenry as instruments of oppression over the subjects of the colony. Hence, the alienation of the public and the concomitant mutual isolation.

This phenomenon of police isolation is not confined to Third World countries. It has been a concern in other jurisdictions where the police has been an instrument of the elite, at the expense of the masses.

2. Mutual Perception

The quest for a profound insight into police-public isolation necessitates an adequate grasp and comprehension of"...the perspectives, attitudes, experiences, responsibilities and emotions that participants on both sides bring to encounters."[17] Often, the

prejudice is mutual. The police may consider the public "symbolic assailants," entities to be wary of.[18] The public, for its part, often has a superficial impression of the police, aptly summarized as follows:

> ...policemen are uneducated and of low mentality; ...they are selected for physical strength and courage alone; ...they are of doubtful honesty and integrity; ...they are often rude and domineering; ...they get angry easily; ...they resort to illegal third degree; and...the only way safe from this tyranny is wealth or pull.[19]

Although these subjective notions may not reflect accurately objective reality, they nevertheless lend a certain degree of complexion to the relationship between the police and the public.[20] Because of these unfortunate stereotypes, the policeman may feel himself a pariah,[21] isolated socially from the very public he has pledged to protect, a public which paradoxically takes on the form of an enemy.

Other perceptions were added to the concept of "colonial police." Worth quoting at length is the following:

> Besides introducing colonial police, new ideas were introduced, one of which was a notion that an offender was reckless, dangerous and possibly sick, a person to be civilized, and a second notion that the rest of the public must be treated with suspicion arose. In summary then the colonial background of the police imparted an image that alienated the force from non-police citizen and created an unpopular institution. *This sense of alienation has survived into post-colonial police organizations.*[22]

a. Impartiality in law enforcement

Racial and socioeconomic biases are elements of universal experience. In certain countries, the police may look at blacks and slum dwellers as potential criminals.[23] In countries where a caste system exists, a social gap often prevails between the police and the lower caste.[24] In developing countries where student activism is very pronounced, lack of dialogue and suspicions that go with it create a milieu of hostility.[25]

Overaction by going beyond the parameters of law and policy, often based on the socioeconomic status of the objects of abuse, militates against public expectation.[26] And where police performance does not dovetail into public expectation, it is natural for resentment and alienation to set in.[27]

b. Police methods

(1) Police brutality

The adversarial process, often inherent in conflict resolution by the police, militates against the conciliation methods preferred by village elders, especially in the Third World, in the straightening up of problems among family or community members in rural areas.[28] It has been aptly observed that the police" are quite unlike the village elders in communities where everything is asked in a friendly manner. There is no slapping or any form of rudeness."[29]

Police may not be aware of it, but the community often associates, rightly or wrongly, police brutality with "loud banging on the door" of a person to be arrested.[30] This may seem to be just a little matter, but big repercussions do come out of little things. We may call them *tremendous trifles.*

(2) An absence of discretion

Police overaction is often due to lack of adequate training in the judicious use of discretion. This inadequacy leads to non-use of said power of discretion which, in turn, would invite citizen indignation. For example,"...arrests for minor violations are more likely to provoke citizens to claim that authority is being exercised arbitrarily and unjustly."[31] In this condition where there is an absence of discernment as to when violations

could be permissible and where performance is measured by the number of persons the police arrests, isolation becomes a foregone conclusion.[32]

c. The phenomenon of corruption

Another isolating factor is corruption, which may be defined as "acts involving the misuse of authority by a police officer in a manner designed to produce personal gain for himself or for others."[33] Corruption leads to lack of impartiality and unprofessional methods. It is quite common, in both developed and developing countries, to see or hear of policemen accepting bribes "in exchange for non-enforcement of laws, particularly those relating to gambling, prostitution and liquor offenses, fixing of traffic tickets, minor thefts, and occasional burglaries."[34] Corruption begets isolation, and isolation breeds corruption.[35] And so the process goes *ad infinitum,* indeed, a vicious cycle.

3. Inward Orientation

Training inculcates in the mind of the police that although he must be *in* the community, he should not be *of* the community. He is taught to be reserved and not to be too familiar and intimate with the citizenry, one or the other of whom may eventually be the object of his responsibility as a law enforcer.[36] The police is also taught that being too friendly with a citizen could prove to be dangerous or fatal,[37] because many a policeman has been killed or wounded due to overconfidence in the apparent friendliness of the criminal offender.

In the mind of the police is often drilled the "self-image of belonging to a social control agency." This state of mind categorizes the public into "symbolic assailants, potential criminals," etc. As an offshoot of the need for mutual protection, policemen virtually constitute themselves into a fraternity, to the exclusion of the public.[38]

As a concrete example of this isolationist mentality, I could mention the Bramshill Police College in England—an institution physically and socially isolated in the countryside and where "formal and informal social interactions (swimming, games, dances, parties, etc.) take place among policemen and trainees themselves."[39] In many post-colonial countries, isolation is underscored by the fact that police stay in the barracks.[40]

The professional police ethic enjoins observance of general impersonal rules that ignore personality considerations,[41] a fact which, while essentially sound, may lead to carelessness in approach that could lead to unnecessary humiliation and hurt feelings. Furthermore, pride in the police profession at times makes the law enforcers frown on performance evaluation made on them by the public or by entities outside of the police. Hence, certain authorities state that there exists a correlation between professionalism and isolationism.[42] This statement is misleading. I would qualify the word *professionalism.* The correlation exists rather between isolation and *false professionalism.*

4. Police Organization

Centralization, a factor of organization, has also been linked to isolation. Authorities such as Michael Banton, Marshall Clinard and Daniel Abbott apparently have come to the conclusion that centralization of the police is a cause of isolation. Clinard and Abbott based their conclusion on a comparative study of the police systems in Britain and the United States as against the nationalized police forces of Malaysia, Uganda, and many other developing countries.[43] However, I would like to take issue with this conclusion. It would seem there are certain inaccuracies in the said finding. I will expound further on this under the subheading, "Centralization vs. Decentralization" and point out the inaccuracies in the said research.

IV. Solutions and Recommendations

A. A Square Peg in a Round Hole

There has been a trend in developing countries to make wholesale transfers of West-

ern solutions to police problems. Apparently this policy has not been adequately successful.[44] Perhaps one reason is the adversarial nature of certain Western police methods, which go against the grain of indigenous attitudes that are more oriented towards reconciliation.[45]

Another "importation" from Western practices has been the military nature of police forces, a situation that has spawned many abuses against basic civil rights. I will deal on this more extensively under the subheading, "Organizational Structure."

B. The Concept of Police Professionalism

The incontrovertible solution is to build up a knowledge of what works in policing and what does not, because "so much is taken on faith."[46]

Before, statistical evidence tended to project a close relationship between the development of police resources and the control of crime. In more recent years, however, relationships between police input and crime control does not have the same degree of validity.[47]

Greater law enforcement efficiency does not necessarily mean greater police effectiveness.

> . . . the main directions of their (police) drive for professionalism have been organizational and technical, through force amalgamations, regional crime squads, specialist squads, more vehicle patrolling, better information and communication systems, increased use of weapons, and so on.[48]

Collectively, these approaches may have made a substantial impact against organized or "professional" crime, such as terrorism, but unfortunately, these methods, *per se,* evidently do not adequately address "non-professional" mass crime, which for the public at large, is *the* crime problems.[49]

Authorities may fear terrorist crimes above all else, but the citizens fear more that which threatens them most directly, the largely opportunist mass crime: crime on their own streets, close to home, to families, to themselves—crimes such as theft, burglary, criminal damage, etc.[50]

For police professionalism to be genuine, organizational and technical sophistication would have to be couched within an equally sophisticated police-public interaction.

C. Preventive vis-a-vis Reactive Policing

Certain police authorities maintain that in an increasingly disordered society, police-public interaction would of necessity diminish, but this, according to them, can be compensated for by corresponding increase in police professional resources. This, of course, is a myth. As has been aptly stated:

> . . . Police resources alone can never be more than marginal to the control of mass crime, for the prime resources for its control are certainly to be found *outside* the police service, in particular, in tne nature and quality of society's structures, relationships and values.[51]

Placing the public in the backseat in favor of a warped concept of "professionalism" has resulted in a shift from preventive policing to reactive policing, which definitely is diametrically opposed to what the leading pioneers of the present democratic police system wrote:

> . . . the primary object of an efficient police (is the preventive function) . . . to this great end, every effort of the police is to be directed.[52]

I would even daresay that police professionalism, as it is often erroneously defined, is counterproductive vis-a-vis police effectiveness. The downgrading of generalist functions in favor of specialist functions has diminished the traditional value of the policemen "on the ground," so much so that often the police officers left to make crucial con-

tact decisions are those who do not have the aptitude to be judicious in discretion and judgment, a situation that often results in the extremes of the pendulum of police service: overreaction or underreaction. Many of those responsible for police organization and functions apparently have forgotten the time-proven traditional police ideology that "The most important man is the man on the beat."[53]

D. Role Perception

The confusion attendant upon the concept of professionalism is premised on what may perhaps be called a crisis in role perception. I would like to refer to the *Potholm Model,* a paradigm of police roles and functions formulated by Christian P. Potholm to categorize roles and functions that are associated with the work of the police,[54] to wit:

1. *Maintenance of law and order*—This refers to the traditional primary roles of the police by Western standards to include the protection of life and property, enforcement of laws and the maintenance of law and order, prevention and detection of crimes, apprehension and prosecution of criminal offenders.

2. *Paramilitary operations*—This role overlaps with functions that are typically military activities like riot control, the gathering of intelligence, conducting counterespionage, border patrol operations, and containment or suppression of local insurgency.

3. *Regulatory activities*—This role refers to a variety of activities not normally included in routine law enforcement or internal security operations. It includes the issuance of licenses and permits, currency protection, passport and immigration control, supervision of trade, management of prisons, making of ordinances, monitoring of elections and inspection of facilities. Generally, the police share this authority with other government agencies.

4. *Regime representation*—This role calls for the legitimization of the central government by the police through the relationship with the public they serve.

a. *Mass-elite integration*—In heterogeneous and geographically separated societies, the police may provide the linking of political authority with those who are governed, particularly in geographical areas where the central government is weak. If organized on a national basis and provided adequate training, the police would represent a potentially strong force for integration. The police are spread throughout the length and breadth of the country. They oftentimes serve to link the political elites located at the center to the masses at the periphery.

b. *Modernizing agent*—In transitional societies, the police may act as role models for the public to emulate. For instance, if neatly dressed, well-trained, punctual and efficient, the policeman may encourage by example the development of these qualities. They may likewise serve as the links between the old, traditional culture and the new modern central government.

c. *Channel of upward mobility*—Police work as an occupation may have far more appeal in many developing countries than in (developed ones). This is largely because it often shares an elevated social status or material rewards commensurate to those of some bureaucratic or white collar jobs. Police work may likewise provide a high paying and secure position.

d. *Rule adjudication*—By employing the traditional discretionary latitude in police work which is especially true in the developed world, the police in a sense act as quasi-adjudication agents since they make the decisions to act or not to act on a given case.

5. Social Services Activities

To Potholm's paradigm of roles and functions, I have added a fifth role, that of social services activities. This role would include emergency medical care, assisting the help-

less, eliminating physical hazards, giving directions, counselling of juveniles, providing legal aid, relief and mercy operations, disaster control, etc.

Of all these roles, the role which ensures success in police work is the very role often most neglected. I am referring to the fifth role which I have added to the paradigm, namely, social service activities, which, more than any other role, attract public participation. This is significant because success in police work is predicated on public involvement. This is due to the nature of police work. Police deal only with portions of total crime, those portions discovered by them or *reported by the citizens.*[55] Furthermore, it cannot be gainsaid that only a fraction of crime is solved by sophisticated criminalistics. The greater bulk in the science and art of crime solution depends on the *flow of information from the public to the police.*[56]

This neglect of the fifth role, common to both developed and developing countries, is due to the failure to draw a line of distinction between end and means. In the first place, the end for which the police in a democratic society was established is "to protect life and property, preserve public tranquility, and to prevent and detect crime." The roles in Potholm's paradigm are the various means to the attainment of this end; maintenance of law and order is only one of the means.[57]

Societal development intensifies the demands on the time of the police, and many police officers, in their hierarchy of values, perceive that they have to give priority to what they consider their "first duty," that is, their role in the maintenance of law and order, and in the process often set aside their other role, namely, rendering social service activities.

It follows therefore that by focusing only on the maintenance of law and order, thereby converting what is supposed to be only a means into the end itself, and neglecting social service activities, which is the main attraction to get public cooperation in crime control, the police often fail to achieve the original end, which is "to protect life and property, preserve public tranquility, and to prevent and detect crime." Without public cooperation, the police cannot succeed in overall crime control. The Japanese *koban* system has been successful due to the public support they get, largely because the beat officers perform social service activities, such as visiting the homes in their beat, giving advice to residents on crime prevention methods and counselling them on other daily problems, visiting the old and vulnerable residents, etc. It is therefore evident why the means should never be confused for the end.

E. Police Reorganization

There evidently is a need for an overhaul of police concept and practice. The organizational setup would perforce have to focus on certain aspects, such as "police roles and functions, police life-style and subculture, and police professional ethos."[58]

1. Police Roles and Functions

a. The nature of public involvement

Awareness, especially through experience, of how professional police work depends on the quality of community contact, develops a policeman's maturity in thought and action, and motivates him to seek and nurture a wholesome working relationship with the community.

Since crime should be construed more as a community problem rather than a police problem, it is important to have an accurate understanding of what is meant by community involvement in a democracy. At the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, a working paper was prepared in order to enable the body to have an overview of how "public participation" was understood in various countries. The subsequent findings were quite revealing:

> . . . in all countries where police or cor-

> rectional workers called for public participation, they really meant public support in implementing the policies which they, the official services, had already designed. Alongside this was a fear of too much public participation which might lead to laymen telling the professionals what to do.[59]

The police would have to disabuse their minds of whatever false conception of public participation they may have. They should learn to look at the public not so much just an agency for the implementation of predetermined policies, but also a component in a partnership for the formulation and implementation of policies. The public, in line with its being a pillar of the criminal justice system, or the base thereof, has to have its input at the policy level.[60] It would be easier for the public to accept and implement programs which they feel to be their own and adapted to their needs, and not just the product of the proverbial ivory-tower approach. Public participation should seep into all levels, local, provincial (state, prefectural, etc.) and national.

b. Operational contact

Police-public relations should include "operational contact," because the work of community relations departments in police forces may not include *community-based strategies through operational contact.* Community relations without successful operational contact means that police pronouncements are not matched with accomplishments.[61]

The success of a police officer as a reference point for community thinking and action depends on the range and quality of his personal contacts with community leaders and their organization. With adequate contacts, he can anticipate and thus defuse potential challenges to peace and order without overreaction, an act which often leads to charges of oppression and brutality. Through interaction, violence can be prevented, for example, in militant marches and rallies, which could be efficiently stewarded by community leaders, with a minimum of police presence.[62]

c. The ideal policeman

The police officer, around whom revolve community participation in peace and order functions, would have to have the public relations qualities of a counsellor, affable yet reserved, and therefore, not too familiar with the citizenry. Recruitment, appointment and promotion policies would have to be structured around the need to get the best men for this key job.

> . . .(Police authorities) must certainly seek ways to give greater priority, recognition, and *status* to contact functions. In particular, they must offer better incentives and *career prospects for good (policemen) to stay "on the ground"* as neighborhood or area officers to develop those sustained relationships which alone can generate effective interaction between police and community.[63]

The switch of patrol techniques from foot to mobile has isolated the policeman in the car from the public.[64] Mobiles have their place in the scheme of things, but they should be put in the proper perspective, as in the example I will give under the subheading "Structured Patrol and Patrol Support."

Compounding this problematical situation is the confining of policemen (who could act as foot patrolmen) to reactive roles. As has bean aptly pointed out:

> . . .This strikes at the heart of preventive policing, the concept of the man on his patch who through sustained personal contact makes himself a reference point for community thinking and action, a creative source for community self-regulation.[65]

d. Structured patrol and patrol support

In order to maximize existing resources, more police officers could be released for

purposes of community contact. Available manpower could be divided into two groups, namely, a Structured Patrol and Patrol Support. The former comprises Area Teams responsible for separate quarters of a town, working on foot on a flexible basis, according to local needs. The latter would provide vehicle backup or "response" services to the Area Teams on a normal shift system. It would be advisable that the scheme be supported with a management information service using a logging system, information from which is fed into a minicomputer so that data about local crime and local demands on police resources can be readily made available to police officers.[66]

The key factors in this scheme are the Area Teams. The grant of more responsibility and decision-making to these teams generate greater commitment, initiative, leadership qualities, job satisfaction and community reputation. The Area Teams do more than maintain law and order.

> ...(The Area Teams help) to create and strengthen informal social networks between parents, teachers and police for the care and control of the young, and in the sphere of detection, (they rely on) community contact and information to make some notable arrests of men responsible for local break-in offences.[67]

e. A new police image

Fear and suspicion of the police, especially in Third World countries, can be traced, to a certain extent, to the "oppressor image" it had inherited from colonial days.[68] There is a perceived need for the police to rid itself of this colonial cloak and project a new image, that of "a group of citizens performing on a regular basis the duty of every citizen to enforce criminal law," the image of "father figure and friend," similar to the "Bobby" of England.[69]

The police, in projecting themselves as "a group of citizens performing on a regular basis the duty of every citizen to enforce criminal law," should perforce learn to identify themselves with the rest of the citizens.

Mass media would be an invaluable asset in projecting this new image, because media shapes public opinion. One problem in maximizing positive propaganda for the police to induce public satisfaction is the fact that reporters have an eye more for sensational news rather than routine efficiency; newsmen have a preference for conflicts and issues. There is a need therefore for police propagandists or information officers to be more dramatic in their presentation of achievements.[70] And if this is not always possible, reporters will only be too glad to do a favor in publishing police news if there is rapport between the police and reporters. It all boils down to public relations.

f. Police-public relations

As long as the police learns to habitually look to the needs of the residents in his beat, there will hardly be any problem in police-public relations. Concern begets concern. And in this way, many citizens, on their own initiative, will support the police in crime control endeavors. With this kind of interaction, the community would be more enthusiastic in having certain routine functions offloaded unto the community, such as social services for drunks instead of police cells.[71]

It is evident, therefore, that the key word to success in police-public relations is *symbiosis.*

The image of the police as protector of the people can be vastly enhanced if social service activities were looked at by the police as a central function rather than a sideline. Contrary to certain views that coercive and helping roles are contradictory, authority and assistance are indeed complementary, as exemplified in the roles of responsible parents.

g. Certain desirable traits

(1) Impartiality

Police often have a bias in favor of the well-

to-do, officials, etc., and against the poor and underprivileged. Police would have to realize that professional success and acceptance by the community are based on credibility, and that credibility, in turn, is largely anchored on impartiality.[72]

Much of the public esteem of the police will depend on whether the former can depend on the latter for protection from abuse of power by even those in positions of authority in government.

(2) Discretion

Mental training of the police, especially in making decisions, would have to be vastly improved because a crisis situation often confronts him and he would have to resort to snap decisions in seconds, for which defense and prosecutions lawyers would need months, or even years, to argue on.[73]

If often would be counterproductive to apply the letter of the law against one who may have committeed a minor infraction, especially if it be a victimless offense. The judicious use of discretion in instances such as this would project the humane side of the police, a matter that cannot but induce appreciation on the part of society. Discretion should however be distinguished from discrimination. Discretion seeks to be just, discrimination to be unjust.

(3) Self-control

Police methods should be restructured to be more reconciliatory rather than adversarial, that is, the police should first get together the victim and the offender for a possible settlement outside the purview of the criminal justice process.

Furthermore, force should be availed of only as a last resort, such as when an offender opts for violence or attempts to flee.

"Democracy. . . depends on the quality of policing."[74] The nature and character of police work necessitates a delicate balance; overdoing it would lead to oppression of basic freedoms, underdoing it would lead to unbridled license.[75] Without this balancing act by the police, the public would have no other choice but "between the tyranny of the ruler, or the tyranny of the ruled."

(4) Addressing corruption

Social and political traditions have much to do with the problem of corruption, that is, whether pressure is made to bear on the police to ensure integrity and efficiency, or corruption is condoned within a "tolerable level." However, as I earlier pointed out, the influence of social and political traditions is not absolute, because the police organization, as the central processor, can neutralize or minimize the influence of said traditions. Corruption would therefore have to be addressed from the *outside,* through public pressure, and from the *inside,* through sound management.

2. Police Life-Style and Subculture

Central to the problem of police-public relations is isolation, both physical and mental, the former through such practices as living in police barracks[76] and confining social interaction only to members of the *police clan,* and the latter, through studied cynicism wherein the police are programmed to think of themselves as a subculture sufficient unto itself and to be suspicious of the very society in which they operate.[77]

Frequent interaction, especially through social service activities, will go a long way in neutralizing isolation. By peeling away physical isolation, mental isolation will gradually crumble. Stopping physical isolation is easier than stopping mental isolation. By starting with the easier act, namely physical association, the other act, that is, mental association, becomes all the more easy.

3. Police Professional Ethos

It is all right for professionalism to be based on standards independent of personalities.[78] But the police would have to guard against the danger of mixing efficiency with officiousness—this would be false professionalism. Genuine professionalism strikes a del-

icate balance between firmness and tact. Stated otherwise, the police can learn to disagree without being disagreeable. Police authorities often take things for granted: they tell their men to be tactful, but overlook telling them *how* to do it. It is tantamount to telling a person, in a fit of vomiting, to stop vomiting, without showing him the means to do it. One simple and proven way for the law enforcer to be firm but tactful would be to ask himself the question: "If I were the layman, how would I like the policeman to address me?" This, after all, is the essence of police-public relations.

4. Aspects of Organization

a. Militarization vs. civilianization

In confronting police problems, especially in Third World countries, there is a perceived need to address the issue at the very roots thereof, through a structural approach, because the problem is logically structural in nature and origin.[79] The military structure of the police force, which evolved the soldier-police concept, can be traced to colonial times. This militarized police phenomenon is strong in countries which underwent a colonization period. I would like to mention some of them, namely, Indonesia, Malaysia, India, Nigeria and the Francophone countries, such as Algeria and Senegal. These countries, like my country, share a common denominator: they bear colonial police traditions. In these countries, law and order were equated with defense of the colony and the militarized police constituted the means to this end.

With the advent of independence, through grant or force, this colonial system has outlived its relevance, and, as far as these countries are concerned, has become rather academic. Converting the police force into a civilian body dovetails into the classic concept of the police, promulgated by Sir Robert Peel of England in 1820, when he swayed the British Parliament from the proposal to call in the army for law enforcement assignments, and initiated instead the policy of drawing from the civilian populace men to enforce law and order.[80]

The philosophy behind the deference for a civilian police force is premised on the very nature of things: the police force is service-oriented, and therefore is structured to take care of all laws and rights; the military, on the other hand, is mission-oriented, and therefore is programmed to achieve the objective at all cost, and in the process, may run roughshod over basic human rights, often with the use of the instruments of power: force and firearms.[81] One need not wonder, therefore, why in jurisdictions where the militarized police is paramount, the law enforcers have been isolated from the populace. Because of the excesses of militarized police forces, there is a worldwide deference for a civilian police force, with but a few exceptions.

Historically and essentially, the police system has always been civilian in nature. In 1820, Sir Robert Peel, the Prime Minister of England, introduced into Parliament a bill which ruled out the use of military force in London in the preservation of peace. When England experienced a severe economic depression, there was an agitation to call in the army. This was voted down, because of the fear that the use of force would only further inflame mob passions. What was followed was the new idea of using uniformed and trained men to constitute a police force, recruited from people in the community. After thirty years in Great Britain, the practice spread across the capitals of Europe, and eventually in the United States.

V.A. Leonard, a noted police authority, wrote in his book, *The Police of the 20th Century*, that it is precisely the "stigma of force on the character of the army, that gave birth to the police as a body of civil officers charged with the maintenance of order and public safety in England." George Berkley, in his book, *The European Police: Challenge and Change,* said that "In Europe, one of the most striking features of the police services,

apart from being highly centralized, is that they are under civilian control."

Berkley further states that "Contemporary society has long ceased to equate insurrection and military problems with the maintenance of internal peace and order. It would be anachronistic to recede back to a military-directed police which. . . history has not vindicated. Modern legislations recognize the civilian nature of police functions." The near-universal insistence on a civilian administered police force is due evidently to the people's unpleasant experience with the military. As Berkley put it in his book, *The Democratic Policeman,* "History provides examples of the military's frequent disregard of the rules of the game."

He further writes:

> Military values, in many respects, conflict with democratic values. (Values) as equality, participation in power and individual self-determination are suppressed in a military setting.
>
> The more the police are brought under civilian control and suffused with civilian influences, the more these problems will diminish. Civilian administration (is) the warp and woof of the democratic police force.[82]

b. Centralization vs. decentralization

The advocates of localized law enforcement premise their argument on the assertion that local tyranny is better than national tyranny. In a series of public polls in the United States, where local law enforcement is practiced, the results indicate that civilians rate the federal law enforcement agencies above those of the state, and state systems above local units.[83] The common perception was that human rights are better observed where there is a nationalized organizational structure. Observance of human rights is an ingredient of public acceptance.

In developing nations, strong, central control over police functions is a necessity due to limited resources available for law enforcement and nation building, and the social and ethnic fragmentation.[84] And even in a developed nation, the abundance of resources can best be maximized through nationalized law enforcement, as what Japan has proven with its national police force.

A word of caution may be proper at this juncture. Top-heavy organizational structures, redundant bureaucracies and complex lines of communications have created a gulf between decision-makers and practitioners on the ground.[85]

It is therefore important to avoid extremes. Virtue stands in the middle. States otherwise, a delicate balance would have to be maintained between the good points of centralization and decentralization.

> . . . (the police) will have to review their own policies and organization, balancing the needs for far greater decentralization of decision-making and far greater devolution of resources to combat local "mass" crime against the needs for greater centralization to combat the crime and disorder which have national or international bases—terrorism, fraud, currency offences, drugs, art and antique theft, and other "professional" areas of crime.[86]

The city and municipal mayors may have a certain degree of authority and operational control over the police forces in their respective localities because the local chief executives are accountable for the peace and order of their individual communities. This would have to be balanced with the national character of the police. Japan has been quite successful in this balancing act. Centralization would have to remain so as to provide a buffer for the professional police force from local politics. Mayors often have a tendency to exploit the local police as a sort of "private army" to perpetuate their political ascendancy.

There has to be a body that is above local politics, in order to preclude mayors from abuses. A national police organization could effectively insulate the police force from lo-

cal politics. Furthermore, a national police organization could ensure a uniform and standardized system of administration, selection, promotion, compensation, benefit, training and equipage. A national police organization would not be hampered with political and territorial boundaries, and would be unimpeded by rivalries, conflicts and jealousies. This would mean enhanced mobility and striking capability. Poor rural police stations normally cannot afford sophisticated training in scientific crime detection and investigation and the acquisition of advanced equipment; a national police organization could provide these.[87]

Centralization has been linked to isolation. Authorities such as Michael Banton, Marshall Clinard and Daniel Abbott apparently have come to the conclusion that centralization of the police is a cause of isolation. Clinard and Abbott based their conclusion on a comparative study of the police systems in Britain and the United States as against the nationalized police forces of Malaysia, Uganda, and many other developing countries.[88] As I earlier stated, I would like to take issue with this conclusion.

I believe we should draw a line of distinction between "cause" and "predispositive factor." Empirical data, other than those from which Banton, Clinard, and Abbott drew their conclusion, make manifest that centralization *per se* is not a cause of isolation; it may be a predispositive factor, which however can be neutralized by structural innovations and social orientation. If we were to follow the line of reasoning in the conclusion which I am contesting, then we would arrive at another patently erroneous conclusion, that is, that the national police of Japan are more isolated than, for example, the local police of the United States. Only last year, a group of police experts from the United States visited Japan and in effect observed that there is better rapport between the police and the public in Japan than that in the United States.[89]

Isolationism, which has been associated with centralization, was neutralized with a *police structure* that revolves around the koban or police box, and with *orientation and training* in discharging the functions of a community *counsellor.* The salutary effect on the Japanese citizenry was evident in a public opinion poll conducted in Japan in 1981.

> To the question "What do you do if you have some information concerning crime?," 51 percent answered that they would co-operate with the police, and 31 percent answered that they would co-operate with the police on request from the police. As . . . shown by this poll, most of the Japanese people have confidence in the police, *which is the most valuable asset in police work . . . .*"[90]

The availability of the Japanese police to discharge their functions as community counsellors is based on their ubiquitous presence in the grassroots level. This ubiquitous presence is, in turn, due to the nationwide network of police boxes (many of the urban police boxes are within ten minutes, walking distance, from each other) and the high ratio of police to population, which is about 1:552.[91] Therefore, centralization, in a way, is a neutral quality: it may lead to *association* or to *isolation,* depending on how it is *used*—or *abused.*

To recapitulate, police-public interaction and police accountability can be intensified through organizational restructuring. A nationalized force has certain distinct advantages, among which are (a) better opportunities to get the best recruits nationwide, (b) uniformity in standards, (c) more efficient execution of discipline, and (d) the linking of citizen bodies, involved in police-public interaction, to the national police headquarters, a condition that will augment the former's effectiveness.[92]

5. Police Accountability and Quality Control

In any organization, quality control depends on a responsible entity to which an op-

erating arm should be accountable, especially if the latter's performance falls below standard. Often, the police acts as if his discretion is subject to no appeal, giving rise to the impression of police absolutism.[93]

> The nature of (police) authority is such that it must be accompanied by accountability that insures that its exercise is consistent with the limits defined in its original creation. . . the unique relationship between the people and the police require that the police be answerable to the public if their authority is to be respected and accepted by the people.[94]

Much of organized crime cannot exist without corruption at various levels of the police. Public confidence in the police, or the lack of it, could be taken as a gauge of the degree of such corruption. To preclude the danger of an internal cover-up which often happens when discipline is confined to an internal mechanism, there is a felt need for a separate and independent entity to "police the police."[95] This quality control could neutralize or minimize corruption and therefore be instrumental in maintaining or restoring faith in the police.

It would also be helpful to set up village or neighborhood boards which could act as monitoring bodies to ensure that police methods are consistent with legal and moral requirements. A board should consist of responsible senior and elderly people, of known probity, from the community and the government, whose main functions will be to harmonize relations between the police and the public and to help pertinent government bodies tasked with the control of police misconduct.[96]

Mass media, due to its unique position enabling it to expose anomalies, is a vital factor in compelling police accountability to the public,[97] which in the first place is what keeps the police force in operation—through the taxes it provides the government.

F. The Proper Place of Technology

In some developing countries, emphasis has been made on advanced police technology, through more sophisticated weapons and computerized communications. Technology, however, is a two-faced coin. In the hands of oppressive law enforcers, technology can be counterproductive and could create a backlash, such as when modern weaponry and devices are used to ruthlessly sow fear in the citizenry. On the other hand, technology is beneficial if placed in the hands of responsible police officials, sensitive to the public pulse, and who can truly act as counsellors of the community.

A concrete example would be the koban police. In order to preempt crime, police strategists have to plan ahead. And they can do this if they are regularly kept up-to-date on the crime situation in a given area. The police from the various kobans are able to integrate and dovetail the information they gather from different sources due to a sophisticated communication system. But the police are able to utilize their advanced communication facilities only because of the active involvement of the citizenry in feeding them information. Police without the community would be like fish outside of water. It cannot be gainsaid therefore that technology, without responsibility, would lead to frustration.

Since European society has become less communal in nature and family structures have to a certain extent been "loosened," police methods in certain areas tend to overrely on modern technology, ignoring the "historical truth" that *technology minus community equals futility.*

VI. A Philippine Situationer

Historically, the Philippines has had a colonial police tradition, thereby rendering the latter militarized, militarization of which carried with it centralization. Since the colonial police was designed to ensure the ascendancy of the colonizer, the people, in

the very nature of things, were subject to the perception that the police was an instrument of oppression, a condition that induced mutual isolation.

The Philippine government is addressing this issue as of this moment. As I speak here before this body, there is now pending in the halls of the Philippine Congress, a bill to create the new Philippine National Police (PNP), which seeks to free the policy system of its military structure, while at the same time retaining the aspect of centralization—without prejudice to a certain degree of authority that the city and municipal mayors may exercise over the police in their respective localities. The civilianization of the Philippine police is a giant step in the right direction.

Another problem related to isolationism of the police in the Philippines is a certain cultural trait of Filipino politicians. The latter have a propensity to hire thugs and bullies as bodyguards because they believe, rightly or wrongly, that this type of bodyguard would instill fear in said politicians' enemies. After such a politician wins in an election, the first thing the bodyguard will ask the politician is to make the former a policeman. This is the ambition of such types because, before they became bodyguards and were still plain neighborhood thugs and bullies, they had felt the power of the police who had often gone after them.

The government is addressing this issue by dismissing or suspending many of these police misfits. Under the PNP, many more may be removed through a retirement system with reasonable benefits.

To screen out the non-qualified applicants, the government enjoins that all applicants first pass qualifying exams, psychiatric checks and background investigation. The best are sent to the Philippine National Police Academy, the premier school in police science. To attract better people to the service, the PNP scheme seeks to institutionalize a career system that will ensure job satisfaction.

To ensure police accountability and quality control, the government has embodied in the Constitution a collegial body, namely, the National Police Commission (NAPOLCOM). The juxtaposition of the National Police Commission vis-a-vis the proposed Philippine National Police is similar to that of Japan's National Public Safety Commission in relation to the National Police Agency.

Public involvement in police matters has been institutionalized through the Peace and Order Council, which permeates the city/municipal, provincial, regional, and national levels. The Council, which is composed of the top government officials and community leaders, has the National Police Commission as its action arm. The National Police Commission discharges this function through the Technical Panel on Crime Prevention and Criminal Justice, a body composed of representatives from the five pillars of the criminal justice system, namely, law enforcement, prosecution, judiciary, corrections and the community, with the National Police Commission as the funding and lead agency. A concrete achievement of this interaction was the successful completion in the Philippines the other month, in December, of the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI) Joint Seminar on the topic, "Crime Prevention and Treatment of Offenders," organized by the Government of Japan (through the UNAFEI) and the Government of the Philippines (through the Technical Panel on Crime Prevention and Criminal Justice), with the vast support of the Japan International Cooperation Agency (JICA). This international undertaking of both governmental and community representatives initiated the further rationalization of the criminal justice system in the Philippines, in order to provide a context that would enhance nationwide socioeconomic development, which the government is confident could be implemented this year, largely through another international effort, the polysectoral Mini-Marshall Plan.

VII. Conclusion

The time may have come in some countries for a change in the concept of the role of the police, from an instrument of the power elite, otherwise referred to as the "establishment," to service for *all* citizens. This is due to the growing perception that police effectiveness, to a large extent, is determined by an entity outside the police, namely, the public.[98] This is in line with the fundamental truism that a police force which operates outside the context of community cooperation operates in a vacuum. And from a vacuum, nothing much can be expected, for as the philosophical maxim goes, "Nothing comes from nothing."

In the pursuit of this commitment, the police must strike a delicate balance between the rights of the citizenry to protection of "life, liberty and property," on the one hand, and, on the other, the rights of the accused to "due process and his proverbial day in court." The British Commission on Police described this in 1962 when it issued the statement:

> The Police should be powerful but not aggressive; they should be efficient but not officious.[99]

Success in policing is predicated on police effectiveness. Police effectiveness, in turn, is premised on public acceptance. Finally, public acceptance is founded on the ideal, as promulgated by the pioneers of the modern policy system, that is, a balance between maintenance of law and order, on the one hand, and, on the other, the conduct of social service activities. Indeed, the new, emerging policeman is, in a way, "All things to all men." T.G. Lamford put it this way:

> What is increasingly clear is that if we were to lose the battle for the hearts and minds of the people whom we serve, then policing would become a very different function indeed. Truly then "we labour not for ambition, or bread...but for the most sacred heart" of those whom we serve...[100]

Notes

1. Paul Riege, *Kleine Polizei-Geschichte* (Institut Hiltrup, 1959), p. 27.
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Integration, Diversion and Resocialisation in German Criminal Procedure

*by Heinrich Kirschner**

The various phases of criminal proceedings, from the commencement of investigations up to the completion of enforcement of sentence, are nowadays frequently not separate from one another, but interwoven in many respects. The constantly growing workload of the criminal justice system, resulting, for example, from the petty crime of shoplifters on the one hand, and terrorism and narcotics crimes on the other, has forced the legislator to rationalise criminal proceedings. This has now been joined by the modern notion of diversion—that is, the attempt to make, via informal disposal of criminal proceedings, a better contribution to the resocialisation of the offender than would be possible with the social stigma of a conviction.[1] This also relieves the pressure on the prison system. We shall see, taking examples from German criminal law and the German law of criminal procedure, how these trends are producing a particular development in the law—namely, new forms of the integration of criminal justice administration.

To make things clearer here, let me just give a brief outline of classical German criminal procedure by way of contrast to the new phenomena. The course it follows can be divided into four distinct stages. In the investigatory proceedings, the police and the public prosecution service establish the facts, both incriminating and exonerating circumstances. They are obliged to take action in response to all prosecutable offences, this legality principle being one of the bases of German criminal procedure law. When investigations are completed, the prosecution service brings the public charge, or alternatively discontinues proceedings because the suspicion of an offence has not hardened or there is some procedural impediment. If charges are preferred, then in the intermediate proceedings—the second stage—the court of jurisdiction decides whether the main proceedings should be opened. In these main proceedings—the third stage—judgment is passed at the trial on the guilt or innocence of the accused. If the latter is given a binding conviction, there follows the fourth and last stage, the formal procedure of enforcement.

Legal reality has moved a long way from this model. Numerous investigatory proceedings in which grounds for suspicion are found to exist against the accused, no longer result in charges. Rather, the department of public prosecution has been given extensive rights to diverge from the legality principle and desist from bringing the public charge. One result of this is that procedural problems which, in the classical system are reserved for the main proceedings, are brought forward to the investigatory proceedings, so that the latter often anticipate the main proceedings. In similar fashion, the court is empowered to refrain in the main proceedings from passing judgment on the guilt of the accused, and instead, to discontinue proceedings. The fourth procedural stage—enforcement of the sentence—today goes far beyond a mere enforcement of the sanction. As we shall see, after the main hearing (i.e. trial), "post-proceedings" begin in which decisions are taken on alternatives to enforcement of sentence.[2] Thus all the procedural

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segments are interwoven with the other. This integration of the administration of criminal justice, possibly going beyond the immediate area of the prosecuted offence, is something I would like to look at closely.

The oldest example is the well-known discontinuation on the ground of insignificance provided for in section 153 of the German Code of Criminal Procedure (Strafprozessordnung-StPO). It was introduced as long ago as 1924 by a statutory order issued by the Reich Minister of Justice, Emminger, and concerned what used to be called "infractions" (Übertretungen) and also "minor offences" (Vergehen). If in the case of a minor offence the guilt of the perpetrator was slight and the consequences of his deed insignificant, then the department of public prosecution could, with the consent of the local court judge, desist from bringing the public charge. If charges had already been brought, then—in the circumstances just described—the position was reversed and the court, with the consent of the prosecuting service, could discontinue proceedings.[3]

Today this provision makes rather finer distinctions. The prerequisite for non-prosecution is that the guilt of the offender "would be" viewable as slight. Couched in German in the subjunctive ("wäre"-"would be"), this provision permits the deduction that it is not necessary for there to have been a finding of a culpable commission of an offence—an initial suspicion suffices.[4] If, in addition, there is no public interest in prosecution, the prosecuting service may dispense with it. Public interest today is seen in relation to the punitive intent behind the substantive criminal law—in other words, considerations of both special and general deterrence can establish public interest in prosecution.[5] Also needed is, lastly, the consent of the court; thus both court and prosecuting service must make the same assessment of the facts.[6]

For simple minor offences against the property of others, however, an exception is laid down. In the case of such crimes, the court's consent is not required where the damage caused by the deed is slight. Here, then, we find the insignificant consequences of the offence mentioned in the original section 153 of the Criminal Procedure Code cropping up again. In practice, the dividing line today is round about DM 50.[7]

If the department of public prosecution has brought charges, the court, in the intermediate and in the main proceedings, may discontinue the hearing of the case if the prosecuting service and the accused give their consent. This possibility, too, is of great practical significance. What is interesting here—and this is different from the investigatory stage—is the fundamental requirement to obtain the consent of the accused. Under the law, he has a right—once charges have been brought—to insist that a main hearing be held, although of course, this also entails the risk of a conviction.

A court order for discontinuation can have a limited final and binding character. Should it later became clear, however, that for example the deed in question was not a minor offence, but really a major one, then new criminal proceedings can be opened.[8]

This discontinuation of proceedings contained right from 1924 onwards the subsequently developed notion of—simple—diversion.[9] In the investigatory proceedings, in the intermediate proceedings and in the main proceedings, the court and the prosecuting service work together to bring the case to an informal close. This also assumes, however, an integration of the different procedural phases.

Already at the investigatory stage, the question can be looked into of whether criteria of special or general prevention call for a penal sanction. In the main proceedings, on the other hand, the court can refrain from returning a finding of guilty and discontinue the proceedings.

The next amendment to the law which is of significance for our present study came in 1951. I am talking here about the substantive law possibility of discharge, i.e. decid-

ing against the imposition of punishment. German criminal law, for a number of offences, enables the court to pass a judgment ordering discharge. This is possible, for example, where persons inflict bodily injuries on one another.[10] Another example is where someone given the care of another person sexually abuses that person; here, too, the court can refrain from imposing a penalty if the person placed under care has behaved in such a way as to render the "wrongness" of the act slight: for example, he or she has made the sexual approach.[11] Additionally, the General Part of the German Criminal Code (Strafgesetzbuch-StGB) today contains a general rule: if the prison sentence incurred does not exceed one year, the court may order a discharge, provided that the consequences of the offence for the offender are so severe that the imposition of a penalty would obviously be wrong.[12]

In all these cases, it would not be in the interests of procedural economy to have a main hearing. In 1951, therefore, the legislator empowered the public prosecutor—subject to the consent of the court—to refrain from bringing the public charge.[13] Where charges have already been preferred, the court, up to the start of the main hearing, and with the consent of the public prosecutor and the accused, can discontinue the proceedings. This serves the purpose of diversion. The accused is spared the strain of a trial in public; the question of his guilt remains open. Thus the provision meets not only a procedural economy objective, but also a criminal policy one.[14] Once again, we find here that there has been a process of integration in the criminal justice system. Investigatory, intermediate and main proceedings are intertwined. Already at the stage of conducting investigations, the issue can be examined whether the imposition of a punishment is necessary. In the main proceedings, there is the possibility of refraining from a conviction.

We see something similar in the area of what is termed "active regret"; this possibility has existed since 1957.[15] In the case of certain offences, enumerated in law and concerning state security, such as high treason and treason, the Federal Prosecutor General can, with the consent of the Higher Regional Court, refrain from instituting prosecution. The prerequisite here is that the alleged offender has performed some sort of compensatory act, i.e. shown active regret. For as long as he is unaware that his offence has been discovered, it suffices for him to have made a contribution to averting a danger from the state. Following discovery, the accused must completely reveal everything he knows about the offence. Where these requirements are met, the Federal Prosecutor General and—after the preferring of charges—the Higher Regional Court with his consent, are permitted to discontinue proceedings. Here, too, we find an interweaving of investigatory and main proceedings in the interests of clearing up the case.

Following this look at the political criminal law, we can now go back to the beginning, to discontinuation on the ground of insignificance. The latter was considerably increased in scope by a new provision introduced in 1974. Up to now, we have only familiarised ourselves with regulations simply permitting the prosecuting service and the courts to refrain from criminal proceedings. The new sec. 153 a StPO gives them more extensive powers:

Where the degree of guilt is slight, the department of public prosecution can, in the case of minor offences, provisionally desist from preferring charges and require the alleged offender to carry out certain requirements (Auflagen) and directives (Weisungen). The latter are, under the law governing reparation for the damage caused by the offence, payment of a sum of money, community service and the meeting of maintenance obligations. If one of these measures, or several combined, are such as will extinguish public interest in prosecution, the public prosecutor can provisionally discontinue proceedings and lay down a date by which

the requirements and directives must be satisfied. The consent of the accused is required, as is also that of the court unless it is a matter of trivial property offences. This exception as regards the consent of the court is identical for both cases of discontinuance—under section 153 StPO and section 153 a StPO.

Specific requirements and directives can be altered at a later date, and the time-limit set for fulfilling them can be extended once. If the accused does what is required of him within the stipulated period, the proceedings must be finally discontinued.[16] The deed can no longer be prosecuted as a minor offence, and to this extent, the principle of "ne bis in idem" applies.[17]

This power held by the prosecuting service again has a mirror image. The court can proceed in corresponding fashion up to the end of the main hearing—with the consent of the public prosecutor and the accused.[18]

These new-style proceedings have given rise to much discussion in the legal policy field in the Federal Republic of Germany. Critics have come out in particular against the discontinuance possibilities available to the public prosecutor. They complain that the accused is put under pressure, and that offenders in a strong financial position are placed at an advantage. Most important of all, so they claim, there is a breach here of the Constitution, which entrusts the power of judicature to the judges, and not to the public prosecutors.[19] Although the time available makes it impossible for me to take a full look at this criticism, I would still like to consider the main points of contention briefly. As regards the allegedly unreasonable pressure brought to bear on the accused, it should be pointed out that the proceedings repose upon the accused's meeting the requirements of his own free will. The "pressure" is less than that felt by an accused who must decide whether to lodge an objection to a written penalty order, in other words, decide on whether he wishes to stand trial in public. The latter situation, however, is generally viewed as reasonable.[20]

It remains questionable whether public prosecutors are here exercising the power of judicature because the consent of the court is not required in all cases. Penal sanctions may only be imposed by a judge, and it was for this reason that the Federal Constitutional Court declared null and void the competence once enjoyed by German tax offices to fix penalties in tax offence proceedings.[21] From this it is inferred that section 153 a StPO is also unconstitutional.[22] Such a view, however, would only be correct if the requirements and directives are penalties within the meaning of the substantive criminal law. And here we are getting to the heart of the problem: are the requirements and directives criminal sanctions and as such the exclusive preserve of the judge? The payment of a sum of money—just to give an example—is felt by the accused to be disagreeable, and ought to be felt as such. Furthermore, it is intended to serve as satisfaction for the wrong perpetrated, and this is why requirements and directives are generally viewed as sanctions.[23] But are they sanctions of a penal or penal-like character?

Although discontinuance means that a set of proceedings cannot then pass to a superior instance, the Federal Court of Justice still had an opportunity to decide this issue. The case was as follows: a lawyer in divorce proceedings had behaved in prohibited fashion by negotiating directly with the opposing party without informing her lawyer. From this there followed the suspicion of a criminal offence—betrayal of a client.[24] The criminal proceedings on this charge, however, were discontinued by the Regional Court under section 153 a StPO following payment of DM 6,000. Subsequently, a professional court—that is, a disciplinary court—ordered the lawyer to pay an administrative fine of DM 2,500 for culpable violation of his professional duties. It was against this that the lawyer directed his appeal on a point of law, maintaining that there had been a breach of the general prohibition of double jeopardy.[25]

This course of proceedings then gave the Federal Court of Justice, as the supreme professional court for lawyers, an opportunity to interpret section 153 a StPO. The appeal on a point of law was unsuccessful. The Federal Court of Justice emphasised that where discontinuance was made under section 153 a StPO, there was no finding of guilt. In addition, any requirements and directives imposed were met voluntarily—or alternatively, were not met. For these reasons, so the Federal Court of Justice continued, it was not possible to find that the requirements and directives were of a penal-type character. These arguments of the Federal Court of Justice with regard to section 153 a of the Code of Criminal Procedure ought, I think, to remove the foundation from any allegation of unconstitutionality.[26]

In everyday practice, this new institute for bringing proceedings to a close has established itself to a surprising degree. According to the latest research findings of Professor Heinz of the University of Constance, one can assume a figure of 211,000 discontinuances under section 153 a StPO for the year 1986. To these can be added a further 211,000 discontinuances on the ground of only a slight degree of guilt under section 153 StPO, or because a discharge was granted pursuant to section 153 b StPO. Thus for the general criminal law, the ratio of informally sanctioned to formally sanctioned persons is 42 percent to 58 percent.[27]

It is worth giving some thought to the question of where this new legal institute is to be situated in the law of criminal procedure. The Federal Court of Justice, in another decision, was called upon to pass judgment on the alleged implications of section 153 a StPO on the summary written penalty order procedure also possible under the Code of Criminal Procedure. In this connection, the Court coined the term "termination procedure with self-submission." The intention, so the Court held, is that the petty offender who is aware of the wrong he has done, and who is prepared to accept a sanction, should be spared—through the new procedure—the risk of sinking further into crime. This criminal policy aim was of greater importance than the simplifying effect produced for the system of criminal justice, the Court also added.[28] So whereas the Federal Court of Justice emphasised the submission of the offender, Riess stresses the contract-like agreements in this type of procedure, which displays a "cooperative termination of proceedings." Quite rightly, he also points out the links with the plea-bargaining of Anglo-American procedural law.[29]

Section 153 a of the German Code of Criminal Procedure, in particular subsection 1 laying down the right of the public prosecutor to discontinue proceedings, is one particular manifestation of diversion—to be precise, of intervening diversion. Here, too, the intention is to avoid the stigma which attaches to a previous conviction, and to make the chances of social adjustment as favourable as possible.[30] To this end, elements of the investigatory and of the main proceedings are drawn together. Thus the examination of the need for a penal sanction is brought forward to the investigatory stage. Since additionally the fulfilment—albeit voluntary—of the requirements and directives prefigures the final discontinuance, we even find features of enforcement in the widest sense being included here. In short, then, we are looking at a new kind of integrated procedure, which over a broad area has taken the place of the classical criminal proceeding with its four stages.

Certainly, further developments here will need to be followed with a watchful eye, However much one may welcome the flexible treatment of petty crime made possible by this instrument, it would still be dangerous if it were to gain a foothold in fields of criminal activity better dealt with at a trial held in public. The important thing here is to remain alert, and to be particularly vigilant as regards any inappropriate attempts to apply this institute to accused persons enjoying some sort of prominence or financial

might.

Closely related to section 153 a StPO is a special provision of the Narcotics Act (Betäubungsmittelgesetz). If an accused is suspected of having committed a crime—and this includes major offences—as a result of addiction to narcotic drugs, and if a prison sentence of up to two years is the most that can be expected, then the public prosecutor—with the consent of the court—may provisionally refrain from bringing the public charge.[31] The requirement here is that the accused must already have been receiving treatment for his addiction for a period of at least three months, and that there is every expectation of successful resocialisation. Should therapy be abandoned or the favourable forecast proved wrong by a subsequent offence committed by the accused, proceedings must be continued. The same is true if new facts come to light, indicating the likelihood of a custodial sentence of more than two years. The possibility of continuing proceedings only remains available for four years, however. After that, the statutory basis for prosecution is completely extinguished.[32]

Where charges have already been preferred, the court—with the consent of the public prosecutor—can make provisional discontinuance.[33] You can see the parallel with section 153 a StPO: in the latter case, it is the voluntary fulfilment of requirements and directives which are intended to bring the criminal proceedings to an informal close. In the present case, the same end is to be achieved by the drug-addicted offender voluntarily undergoing therapy. In actual practice, this provision—regrettably—has not acquired any great significance.[34]

The German Code of Criminal Procedure contains still further possibilities of discontinuance. However, as the public prosecutor here is not first obliged to seek the consent of the court, they contain but few elements of integration. All the same, I would like to look at some of them briefly, particularly as they do in fact help to relieve the burden on the prison system.

In the case of offences committed abroad, the public prosecutor can refrain from initiating proceedings. Charges already brought can—exceptionally—be withdrawn, without the consent of the court.[35]

If the alleged offender has been extradited or expelled, the public prosecutor can desist from preferring charges.[36] If charges have already been brought, then the court, upon application by the public prosecutor, must discontinue the proceedings.[37]

Where certain political offences are concerned, the Federal Prosecutor General may decide that it is in the public interest not to prosecute. If charges have already been brought, he can—exceptionally—withdraw them and discontinue proceedings.[38]

Offences of less significance measured against the outcome of another set of criminal proceedings do not call for prosecution.[39]

To help the clearing up of offences of coercion and blackmail, it is not necessary to prosecute the deeds perpetrated by the victim.[40]

Where indictment for a minor offence is conditional upon a question which first needs to be decided in civil or administrative proceedings, the department of public prosecution can stipulate a date by which the question should have been settled in such proceedings. If the deadline passes without the issue having been resolved, then the department of prosecution "may" make "final" discontinuance of the criminal proceedings.[41]

It will almost certainly be the case in many legal systems that the juvenile criminal law is more modern and progressive than the law applying to adult offenders. Thus it is not surprising that we find some other noteworthy examples of integrated proceedings in the German Juvenile Courts Act (Jugendgerichtsgesetz-JGG). The position of the public prosecutor is stronger here than it is in the procedural code for adults. In criminal proceedings against young persons up to the age of eighteen,[42] the public prosecutor can refrain from prosecution without the con-

sent of the judge—that is, in two cases. The first is where the requirements of section 153 StPO are met: in other words, slight degree of guilt and lack of public interest in prosecution.[43]

More interesting is the second case: if an educative measure which makes it possible to forego the imposition of further punishment by the judge, has already been ordered, then it is no longer necessary to prosecute. Educative measures which may be considered here include all those taken by private bodies or public agencies. Talking to or cautioning the miscreant will suffice; where the damage caused is slight, even a simple written caution will be enough.[44] You can see, then, that full use has here been made of the diversion concept in order to avoid proceedings which can only be detrimental to the young persons in question.

If the public prosecutor feels that a formal imposition of punishment via a judgment can be dispensed with, but at the same time, that the judge must be involved, then he can—where the young person has admitted the offence—approach the juvenile court judge with proposals. He can suggest that the young person be ordered to meet specific requirements, perform community service or take part in a special course of instruction for road users. The specific requirements here are reparation of the damage, personally apologising and payment of a sum of money. The public prosecutor may suggest, however, that the young person be cautioned by the juvenile court judge.[45] If the latter goes along with this suggestion, the prosecutor must refrain from introducing proceedings. Should the young person not do what has been ordered, then the public prosecutor can re-open proceedings.

This possibility, too, has taken on considerable practical significance as a way of avoiding formal juvenile criminal proceedings. This is all the more true in that the provisions here—in contrast to those for adults—are not limited to minor crimes. In the case of major crimes committed by young persons, too, the preferring of charges can be dispensed with if the educative measures referred to suffice. It has been reported that this even happened in a Hamburg case of attempted manslaughter, The point here is that the legislative provision does not make the seriousness of the offence the governing factor.[46]

If the public prosecutor has already brought charges, the judge for his part can discontinue the proceedings under the conditions already discussed. The consent of the public prosecutor is here called for.[47]

So as with the possibilities of discontinuance in general criminal proceedings—and some of these may also be applied to young persons[48]—investigatory, intermediate and main proceedings are here interwoven. Where specific requirements are fulfilled, we again find elements of enforcement in a wide sense integrated into procedural segments of an earlier stage. The criminal policy aim here is diversion. Formal proceedings to the detriment of the young person are to be avoided.[49]

Up to now we have looked at the interrelationship between investigatory, intermediate and main proceedings. Now I would like to take you to the close of the main proceedings, since at this juncture, too, progress has been made in procedural integ ation. The main proceedings are today followed by annexed proceedings, where a decision is taken on alternatives to a prison sentence or to a continued prison sentence. In these proceedings subsequent supplementation of the judgment is made; they serve the resocialisation of the convicted person and the easing of the pressure on the prison service.

The year 1953 saw the insertion in the German Criminal Code of the possibility of suspending a sentence on probation. Here the German legislator did not follow the Belgian and French model of "sursis." In the case of the latter, the judgment and the fixing of a penalty are conditional.

If probation is successful, the sentence is deemed not to have been imposed.[50] Nor was

the model of "probation" adopted as this term is understood in Anglo-Saxon law countries because German criminal procedural law does not distinguish between conviction and sentence.[51] Under German law, it is rather the case that there is—unconditionally—a finding of guilt entailing a prison sentence ("Verurteilung zu einer Freiheitsstrafe"). At the same time, the court suspends enforcement of this penalty on probation if it can be expected that the convicted person will—even without the influence of imprisonment—refrain from committing further offences.[52] Originally, suspending the sentence on probation was only permissible for prison sentences of up to nine months.[53] In the meantime, this legal instrument has twice been the subject of cautious extension—in 1969 and 1986.

As the law stands today, we must distinguish between three different categories. If a prison sentence of less than six months is passed—which under section 47 StGB is permissible only in exceptional cases—then where the forecast is favourable, suspension on probation must take place. Where a sentence exceeds six months, it cannot be suspended—despite a favourable forecast—if enforcement is called for by "the defence of the legal order": that is, by considerations of general deterrence and the need to maintain public confidence in the integrity of the law. The significant issue here is the overall assessment of the offence and the offender.[54] In the case of sentences between one and two years, the court "may" suspend—in other words, the decision is at the discretion of the court.[55] This discretionary decision is subject to limiting factors. As the legislator made clear in 1986, suspension is only possible in this area if there are special circumstances attaching to the offence and in the personality of the offender. Thus it is insufficient for there to be only what are termed "offence-related" or "offender-related" circumstances speaking for suspension.[56]

An example which can be mentioned here is a case decided by the Federal Court of Justice, in which an accused with no previous convictions had aided and abetted fraud in several cases without, however, enriching himself at the expense of the person damaged. Seven years after the offence, he was sentenced to an aggregate prison sentence of two years without probation. The Federal Court of Justice, on the other hand, held that a suspended sentence was permissible, especially in view of the fact that the public need for a penalty decreased as the intervening period since the offence increased.[57]

Where a sentence is suspended on probation, the court lays down a period of probation. It can impose certain requirements on the convicted person, such as making good the damage caused. If he requires help, then he can also be given directives for the general conduct and organisation of his life. He can be put under the supervision of a probation officer.[58] These decisions can be subsequently amended, by an order and without a formal sitting of the court.[59]

If the convicted person, during the probationary period, commits a new offence, grossly or persistently ignores a directive or requirement, or persistently refuses to accept the guidance of the probation officer, the first instance court of trial revokes the suspension of the sentence on probation.[60] This, too, is done by means of an order without a formal sitting of the court.[61]

Suspension of the sentence on probation is reminiscent of the discontinuance of the proceedings pursuant to section 153 a StPO. Whereas in the latter case, however, the judge is already involved at the investigatory stage, what happens when there is a suspended sentence is that he is allocated new responsibilities for the procedural segment following the trial. He can amend or revoke his decision on the suspension of the sentence. Where suspension is revoked, he is even obliged to find that offences have been committed which were not part of the original indictment. Thus after judgment has been pronounced, new kinds of "annexed proceedings" develop.

The latter can even go beyond complete remission of the penalty upon expiry of the probation period, since the decision to remit can itself be revoked at any time within a period of one year following the end of probation.[62]

The prerequisite here is that the convicted person must have been sentenced to a term of imprisonment of at least six months for a willful offence committed in the domestic territory during the probation period. In such a case, the judge must—as part of his duty-bound discretion—decide whether the new offence calls for revocation of the remission of the penalty.[63] This, too, is done by means of a subsequent order without a formal sitting of the court.[64]

Classifying these annexed proceedings in procedural law terms initially caused some difficulties. Under the classical way of looking at things, adjudication took place in that part of the proceedings which produced a decision on the merits, and which lasted up to the judgment becoming final and binding. There then followed something quite different—the enforcement of the penalty. This distinction was no longer valid with the introduction of the possibility of suspending a sentence on probation and the subsequent decisions this entailed. Today we work on the basis that the later decisions represent a completion of the judgment, the content of which first remains in abeyance as a result of the sentence being suspended on probation. In a procedurally modified form, the decision-taking process is continued at the enforcement stage.[65] In short, then, we here find ourselves looking at a further example of integration of the administration of criminal justice, cutting across the bounds of the traditional procedural segments.

Things are in a state of flux, as is also discernible from the fact that in 1986, the convicted person was given an enhanced position under procedural law. If there has been a breach of requirements or directives, the new provision stipulates that the person in question should first be given the chance of being heard in the matter before the court decides on revocation of the suspension of the sentence.[66] The convicted persons should be given the opportunity of putting their position to the court orally.[67] The latter shows how, in substantive terms, the main hearing is re-opened at the enforcement stage—up to now only in one particular domain.

Special provisions for drug-addicted offenders are once again to be found in the Narcotics Act: if someone has committed an offence attributable to his drug addiction and been sentenced to a prison term not exceeding two years, the judge must first consider whether he is entitled to a suspended sentence on probation pursuant to the general provisions just discussed.[68] If this is not possible, enforcement of the prison sentence can still be deferred for up to two years. The prerequisite here is that the convicted person must already be receiving rehabilitative treatment for his addiction or intending to undergo such treatment. So that this therapy might continue undisturbed, the prosecuting service—as enforcement agency—is entitled to postpone enforcement.[69] The consent of the court of first instance is also required. Should therapy not be commenced or not continued, the enforcement agency revokes deferment of enforcement, a decision from which the convicted person may then seek relief by petitioning the court of first instance.[70]

In order to encourage the person in question in his readiness to submit to therapy, there are various statutory provisions for offsetting the period spent in therapy against the prison sentence imposed.[71] Such offsetting may even result in the remainder of the sentence being suspended on probation. You can see here, then, a further variant of annexed proceedings, the practical significance of which, however, has unfortunately not been very great up to now.[72]

Further examples are provided by what are termed "measures of prevention and correction" (Massregeln der Sicherung und Bes-

serung), enforcement of which can also be suspended on probation. Here we must distinguish according to whether the measure is ordered in isolation—that is, without an additional penalty—or whether a prison sentence is first served and then intended to be followed by enforcement of the measure. To take the first case: suspended enforcement can be considered in relation to placement in a psychiatric hospital, which may be ordered where the offender lacks, or has only diminished, criminal liability.[73] Another measure which should be mentioned here is placement in a unit for alcohol or drug dependency; this can be ordered for offenders suffering from some form of addiction.[74] For both measures suspension on probation is possible if special circumstances justify the expectation that the purpose of the measure can also be achieved by suspension.[75] The purpose in question is the prevention of further unlawful acts by the person concerned. If, for example, the prevention of such further acts would appear to be sufficiently ensured by arranging supervision by the family or a guardian, or by removal from a dangerous environment, then enforcement is to be suspended.[76] The judge here must look into the future and make a forecast as to whether there seem to be good grounds for "taking a chance and foregoing execution of the measure."[77]

If prior to the measure a prison sentence is served, then before completion of the latter, there must similarly be a review of whether the purpose sought with the measure still requires placement following the time spent in prison.[78] This applies not only to the two measures just named, but even to preventive detention, the most severe measure taken against dangerous habitual offenders. In this case, too, the difficult forecast must be made as to whether, following release from prison, the offences whose likelihood first provided the basis for the preventive detention order—e.g. property crimes—need no longer be feared.[79]

Where suspension takes place, the person concerned must by law be placed in the charge of a supervisory office, which is assisted by a probation officer.[80] The court can give him directives for the general conducting and organisation of his life.[81] Whereas directives generally appear largely unnecessary where supervision is carried out by private persons, they are appropriate in the case of addicts—for example, making an order for specific forms of medical treatment.[82]

Subsequent decisions on directives are possible, and are made by a court order without a formal sitting.[83] If the convicted person commits another unlawful act, grossly or persistently infringes directives or persistently evades the supervision of the probation officer, then the court revokes the deferment of placement. Here, too, an order is made without a formal sitting of the court.[84] Otherwise, the measure is deemed to be executed when supervision of conduct ceases.[85]

You can see the parallels with suspension of the sentence on probation. Here, too, we find "post-proceedings" developing in which additional final touches are put to the original judgment—yet another example of integration of procedural segments.

Where a fine is imposed, German law does not permit suspension of the sentence on probation. In 1969, however, the legislator did introduce in the area of fines the possibility of issuing a formal warning with punishment reserved. This approximates to probation as understood in Anglo-Saxon law, even though there is still an element of sentencing in the judgment pronounced.[86] Such a procedure is only possible where the fine does not exceed 180 day-fines. Since the lower and upper limits for fines are 5 and 360 day-fines, respectively, this means that it is the lowest category which is being covered here as regards the seriousness of the offences. If in this category a fine of up to 180 per diem units has been incurred, the court can convict the offender, give him a warning and stipulate the penalty in terms of the number and the value of the day-units. The court reserves, however, the possibility of actually

sentencing to payment of the penalty already laid down if three requirements are met:[87]

- the offender must have been given a favourable forecast as to his social adaptation;
- the overall assessment of the offence and the offender must reveal special circumstances indicating the desirability of sparing the offender the sentence;
- it must not be the case that the sentence is called for by the need to defend the legal order.

The further procedure is similar to that for suspension of the sentence on probation, to which the statutory provision makes three references.[88] It should be said, however, that up to 1986 only specific requirements were permissible, and not directives. The view held was that directives could only be contemplated for those prone to criminal behaviour, and for them, the provision in question had not been created. Then in 1986 the legislator made a helpful intervention, so that today, certain directives are also possible following a formal warning with sentence reserved. These are:

- meeting maintenance obligations; and
- undergoing out-patient medical treatment or non-institutional treatment for some form of addiction.[89]

If probation proves unsuccessful, then sentencing to the reserved penalty takes place via a subsequent court order. Otherwise, the court returns a finding—also in the form of an order—that the warning "suffices."[90] The entry of the formal warning in the Federal Central Register is then deleted, which means it can no longer be taken into account.[91]

In actual practice, use is made of this provision only exceptionally; more often than not, the offender does not have the necessary qualities of character.[92] The courts have not taken to this unwieldy procedure, preferring instead the discontinuance possibility under section 153 a StPO which we have already met.[93] Whether anything is likely to change here, now that there is also the possibility of issuing directives, is something I rather doubt.

All the same, the formal warning with sentence reserved should not go unmentioned here as a further form of integrated proceedings. It makes particularly clear just how decisions from the phase of main proceedings carry over into the post-proceedings. A judgment issuing a formal warning with sentence reserved is a torso. It takes on substance only through a subsequent decision, either sentencing to imposition of the reserved penalty or finding that no further action is called for over and above the warning.[94]

We have already seen that, as regards discontinuance of proceedings, the German juvenile criminal law is more progressive than the law for adults. This phenomenon is repeated in relation to deferment of the possible imposition of youth imprisonment pursuant to the Juvenile Courts Act, where we find something almost identical to the probation of Anglo-Saxon law.[95] The procedural situation is as follows: the juvenile court judge is unable to assess with certainty whether a sentence of youth imprisonment is required for educative reasons. In such a case, he can under his duty-bound discretion restrict himself to returning a finding that the young person is guilty, with the decision on the imposition of the youth imprisonment sentence being deferred for a specific period of probation.[96] Such deferment is intended to have a constructive effect in educative terms, as it leaves the young person without the stigma of a penal sanction. A probation officer is allocated, and requirements and directives can be issued.[97] If the probation period is successful, the conviction is extinguished;[98] if it is unsuccessful, then the judge sentences to the penalty which he would have imposed when returning a finding of guilty if he had been certain of his assessment of the young person.[99] This is reminis-

cent of suspension of the sentence on probation, but in procedural law terms, there is a fundamental difference. The subsequent decision to impose a sentence of youth imprisonment must be contained in a formal judgment passed following a new trial.[100]

As against this, the decision to extinguish the conviction after probation can be given in the form of a court order, made with the consent of the public prosecutor and without a main hearing.[101] What conclusions in doctrinal terms can be drawn from this statutory framing of proceedings—whether this amounts to an interlocutory conviction, for example—is a matter of some dispute.[102] For our purposes, it suffices to observe that the Juvenile Courts Act makes provision for a further integrated proceeding.

In addition to this deferment of the possible imposition of youth imprisonment, however, the Juvenile Courts Act also includes provision for a suspended sentence on probation, corresponding to what is to be found in adult law and, in practice, far more frequent than deferring possible sentencing.[103] where youth imprisonment is imposed for up to one year, the important factor is whether the forecast for the young person is a favourable one. If it is, then the judge must suspend enforcement of the sentence on probation.[104] Where the youth imprisonment sentence is for a term of between one and two years, the judge has—as under the Criminal Code—scope for discretion: if special circumstances exist, attaching to the offence and present in the personality of the offender, he may suspend enforcement.[105] In contrast to the position obtaining in adult law, the defence of the legal order is not a significant factor in either case here; rather, it is the educative aspect which enjoys pride of place in the juvenile criminal law.[106]

The further course taken here—and I do not really need to repeat this—is that annexed proceedings then develop as under adult law, and these may culminate in a finding of further offences in the event of revocation.[107] Once a sentence of youth imprisonment has been completely remitted, a young person is better off than an adult, as under the juvenile criminal law, there can be no revocation of remission.[108] Here, then, post-proceedings do not go as far as they do under the adult criminal law.

Related to suspension of the sentence on probation is one final area—namely, suspension of the remainder of the prison sentence after part of it has been served. This is possible in the case of a determinate prison sentence if two-thirds of it have been served and it may be deemed responsible to see how the person concerned behaves when at liberty. In the case of persons serving a first prison sentence, just completing half of it may be sufficient.[109]

Even in the case of a life-sentence, there has been since 1982 the possibility of suspending the rest of the sentence on probation after fifteen years, provided that the special degree of guilt attaching to the convicted person does not call for enforcement to continue.[110] This radical amendment to the Criminal Code is attributable to a decision of the Federal Constitutional Court in 1977, which held that a life-sentence for murder was only constitutional under certain conditions. Citing the dignity of man, the Federal Constitutional Court insisted that the person sentenced to a term of life-imprisonment must also be left a chance of regaining his freedom. In this respect, the Court found, the possibility of clemency was not enough; rather, in any State subscribing to the rule of law, the practical question of release from prison must be the subject of statutory regulation—it must be "legalised." The very essence of the person's human dignity, so the Court continued, would be affected if, regardless of the development of his personality, he had to abandon all hope of regaining his freedom.[111]

The legislator made the necessary response to this in 1981 by laying down the requirement that a term of fifteen years be spent in prison, the objective here being clear demarcation as against the possibilities of

suspending a determinate prison sentence, where the maximum permitted is fifteen years. Earlier suspension by the court is not permissible.[112] A further special obligation to be met here is a review of the degree of guilt, since this can vary quite considerably as in the case of life-sentences. If the degree of guilt rules out release after fifteen years, the court can stipulate a period of at most two years during which the person under sentence cannot apply for suspension. If he is released, then the period of probation is by law five years. In examining the question of revoking the suspension, it must be borne in mind that the convicted person will, following revocation, return to indeterminate confinement. This means, then, that crimes of negligence and less serious willful offences do not provide an adequate basis for revocation.[113]

As regards the course taken by proceedings, the following can be said about the suspension of residual sentences: as in the case of suspension of the sentence on probation—to which the statutory provision makes reference[114]—annexed proceedings have developed in which the judgment receives supplementation. The principle here, however, is that it is no longer the court of trial which is responsible for these proceedings, but instead the court division competent to deal with questions of sentence enforcement.[115] This type of division was specially set up to deal with subsequent decisions of the kind just referred to, and is to be found at the regional courts in whose jurisdictional districts an adult prison is situated.[116] In the case of young persons, these enforcement divisions are replaced by the juvenile court judge as the person responsible for supervising enforcement.[117]

The sentence enforcement divisions—and this is the last new point I wish to make—are also responsible for the subsequent suspension of enforcement of a measure of prevention and correction involving deprivation of liberty.[118]

We have seen how, in recent decades, new paths have been opened up in the German criminal law and the law of criminal procedure permitting the mutually agreed informal disposal of criminal proceedings and also the easing of the burden on the prison system. I am well aware, however, that seen as part of an international comparison, these have only been modest, hesitant steps. Whether in the case of the suspended sentence on probation, for example, the German legislator has already exhausted all the possibilities desirable in criminal policy terms, seems doubtful. Again as regards the voluntary "termination proceedings" under section 153 a StPO, these are almost certainly only the start of a trend.

In this connection, it will constantly be necessary to take a comparative law approach and focus our gaze beyond the boundaries of our own legal order, especially on a country which has particularly wide experience of the informal, mutually agreed termination of criminal proceedings. I mean our host country. It was therefore certainly appropriate that a Preparatory Colloquium of the Thirteenth International Criminal Law Congress in 1983 should deal with the topic "Diversion and Mediation" in Tokyo.[119] No modern legislator can simply ignore the Japanese successes with regard to diversion.[120] On this point we have a great deal to learn from our hosts.

Notes

1. Blau, in the journal "Goltdammer's Archiv," 1976, pp.45 ff. Hirano, Zeitschrift für die gesamte Strafrechtswissenschaft, Vol. 93, pp.1085 ff.
2. Cf. Wendisch in Löwe-Rosenberg, Die Strafprozessordnung und das Gerichtsverfassungsgesetz. Grosskommentar, 24th. edit. Berlin, 1984 onwards, 3 preceding section 449 StPO.
3. Sec. 153 subsecs. 2, 3 StPO old version, Reich Law Gazette (Reichsgesetzblatt) 1924, Part I, pp. 338.
4. Cf. Riess in Löwe-Rosenberg, ibid., 32 on sec. 153 StPO with further citations.

5. Riess, ibid., 19, 20, 28 on sec. 153 StPO. Kleinknecht-Meyer, Strafprozessordnung, 38 th. edit. Munich 1987, 7 on sec. 153 StPO.
6. Riess, ibid., 39 on sec. 153 StPO.
7. Kleinknecht-Meyer, ibid., 16 on sec. 153 StPO.
8. There is some dispute on points of detail here—cf. Riess, ibid., 85 on sec. 153 StPO.
9. Cf. Riess, ibid., 1 on sec. 153. Hermann, Zeitschrift für die gesamte Strafrechtswissenschaft Vol. 96, pp.467; Hirano, ibid., pp. 1087.
10. Sec. 233 StGB.
11. Sec. 174 subsec. 4 StGB; Dreher-Tröndle, Strafgesetzbuch, 44th. edit. Munich 1988, 13 on sec. 174 StGB.
12. Sec. 60 StGB.
13. Originally sec. 153 a StPO, since 1974 sec. 153 b StPO.
14. Riess, ibid., 2 on sec. 153 b StPO with further citations.
15. Today sec. 153 e StPO. On the background, cf. Riess, ibid., under the background to sec. 153 c StPO.
16. Sec. 153 a subsec. 1, sec. 467 subsec. 5 StPO.
17. Riess, ibid., 61 on sec. 153 a StPO.
18. Sec. 153 a subsec. 2 StPO.
19. Cf. for example Hans Joachim Hirsch, Zeitschrift für die gesamte Strafrechtswissenschaft Vol. 92, pp. 218 ff.; Dencker, Juristenzeitung 1973, pp. 149 f.
20. Hermann, ibid., pp.471; Riess, ibid., 14 on sec. 153 a StPO with further citations.
21. Decisions of the Federal Constitutional Court, Volume 22, pp. 49, 81.
22. Hans Joachim Hirsch, ibid., pp. 231 ff.
23. Cf. Riess, ibid., 8 on sec. 153 a StPO; Kleinknecht-Meyer, ibid., 12 on sec. 153 a StPO.
24. Sec. 356 StGB.
25. Sec. 115 b of the Federal German Code of Regulations for Lawyers (Bundesrechtsanwaltsordnung).
26. Decisions of the Federal Court of Justice in Criminal Cases, Vol. 28, pages 174, 176—Riess, ibid., 8, 9 on sec. 153 a StPO.
27. Heinz, as yet unpublished lecture at the Symposium on Juvenile Criminal Law in Constance, October 1988.
28. Decisions of the Federal Court of Justice in Criminal Cases, Volume 28, pages 69, 70 f.
29. Cf. on this Dielmann in Goltdammer's Archiv für Strafrecht 1981, pp. 563 ff., and Blau in Revue Internationale de Droit Pénal 1983, pp. 932.
30. Jescheck, Lehrbuch des Strafrechts Allgemeiner Teil, 4th edit., Berlin 1988, pp. 71; Riess, ibid., 1 on sec. 153 StPO; Blau, ibid., pp 936; a different view is put forward by Walter in Zeitschrift für die gesamte Strafrechtswissenschaft Vol. 95, pp. 56 ff., as there is no agreement as to the guilt of the accused.
31. Sec. 37 subsec. 1 Narcotics Act.
32. Riess, ibid., 126 on sec. 153 a StPO.
33. Sec. 37 subsec. 2 Narcotics Act.
34. Cf. Dreher-Tröndle, ibid., 10 a preceding sec. 56 StGB.
35. Cf. sec. 153 c StPO.
36. Sec. 154 b subsecs. 1-3 StPO.
37. Sec. 154 b subsec. 4 StPO. It enjoys no discretion in this, cf. Riess, ibid., 10 on sec. 154 b StPO.
38. Cf. sec. 153 d StPO.
39. Sec. 154 StPO.
40. Sec. 154 c StPO.
41. Sec. 154 d StPO.
42. For young adults up to the age of twenty-one, cf. sec. 109 subsec. 2 JGG.
43. Sec. 45 subsec. 2 (2) JGG.
44. Sec. 45 subsec. 2 (1) JGG, cf. Eisenberg, Jugendgerichtsgesetz, 3rd. edit. Munich 1988, 19 ff. on sec. 45 JGG and Brunner, Jugendgerichtsgesetz, 8th. edit. Berlin 1986, 10 ff. on sec. 45 JGG, both of them with citations of examples drawn from practice.
45. Sec. 45 subsec. 1 JGG. As regards the specific requirements cf. § 15 JGG.
46. Eisenberg, ibid., 17 on sec. 45 JGG.
47. Sec. 47 JGG.
48. Cf. on the separate questions arising here Eisenberg, ibid., 10-15 on sec. 45 JGG.
49. Brunner, ibid., 4a-4b on sec. 45 JGG.
50. Cf. Grünhut in Zeitschrift für die gesamte Strafrechtswissenschaft, Vol. 64, pp. 128 ff.; Russ in Strafgesetzbuch, Leipziger Kommentar, 10th. edit. Berlin 1985, 1, 3 preceding sec. 56 StGB; Stree in Schönke-Schröder, 23rd. edit. Munich 1988, 5 on sec. 56 StGB.

51. Cf. Grünhut, ibid., pp. 132 ff.; Russ, loc. cit.; Stree, loc. cit.
52. Sec. 56 StGB.
53. Sec. 23 StGB in the version of the Third Criminal Law Amendment Act (Drittes Sträfrechtsanderungsgesetz) of 4 August 1953, Federal Law Gazette (Bundesgesetzblatt) I 1953, pp. 735.
54. Sec. 56 subsecs. 1 and 3 StGB; cf. Russ, ibid., 26, 27 on sec. 56 StGB; Jescheck, ibid., pp. 676 f.; Decisions of the Federal Court of Justice in Criminal Cases, Volume 24, pages 40, 46 f.
55. Stree, ibid., 31 on sec. 56 StGB.
56. Cf. sec. 56 subsec. 2 StGB in the version of the 23rd. Criminal Law Amendment Act of 13 April 1986—on this see Greger, Juristische Rundschau 1986, pp. 353.
57. Decisions of the Federal Court of Justice in Criminal Cases, Volume 29, pages 370, 372.
58. Secs. 56 a-56 d StGB.
59. Sec. 56 e StGB, sec. 453 StPO.
60. Sec. 56 f StGB, sec. 462 a subsec. 2 StPO.
61. Sec. 453 StPO.
62. Sec. 56 g subsec. 2 StGB.
63. Russ, ibid., 5 on sec. 56 g StGB.
64. Sec. 453 StPO.
65. Cf. Wendisch in Löwe-Rosenberg, Strafprozessordnung, 24th. edit, Berlin 1987, 3, 4 on sec. 453 StPO.
66. Sec. 453 subsec. 1, third sentence, StPO.
67. Greger, ibid., pp. 354 f.
68. Horn in Systematischer Kommentar zum Strafgesetzbuch, Vol. I, 5th. edit., Frankfurt am Main 1988, 38 on sec. 56 StGB.
69. Sec. 35 subsec. 1 Narcotics Act, sec. 451 StPO.
70. Cf. sec. 35 subsec. 4, 5 Narcotics Act.
71. Sec. 36 Narcotics Act.
72. Dreher-Tröndle, ibid., 10 a preceding sec. 56 StGB.
73. Sec. 63 StGB.
74. Sec. 64 StGB.
75. Sec. 67 b StGB.
76. Horstkotte, ibid., 68 on sec. 67 b StGB.
77. Federal Court of Justice, Monatsschrift für Deutsches Recht 1975, 724; Horstkotte, ibid., 52 on sec. 67 b StGB.
78. Sec. 67 c subsec. 1 StGB.
79. Cf. Horstkotte, ibid., 90 on sec. 67 c StGB.
80. Sec. 67 b subsec. 2, sec. 67 c subsec. 1, sec. 68 a StGB.
81. Sec. 67 b subsec. 2, sec. 67 b subsec. 1, sec. 68 b StGB.
82. Cf. Horstkotte, ibid., 75, 112 on sec. 67 b StGB.
83. Sec. 68 d StGB together with sec. 463 subsec. 2 and sec. 453 StPO.
84. Sec. 67 g subsecs. 1-3 StGB together with sec. 463 subsec. 5 and sec. 462 StPO.
85. Sec. 67 g subsec. 5 StGB; cf. Dreher-Tröndle, ibid., 6 on sec. 67 g StGB.
86. Cf. Jescheck, ibid., pp. 72.
87. Sec. 59 StGB—on this see Stree in Schönke-Schröder, ibid., 17 on sec. 59 StGB.
88. Sec. 59 a subsecs. 2 and 3, sec. 59 b subsec. 1 StGB.
89. Sec. 59 a subsec. 3 StGB—on this see Greger, ibid., pp. 354.
90. Sec. 59 b StGB together with sec. 453 StPO.
91. Decisions of the Federal Court of Justice in Criminal Cases, Volume 28, pp. 338, 340; Russ, ibid., 7 on sec. 59 b StGB.
92. Supreme Bavarian Regional Court (Bayerisches Oberstes Landesgericht), Monatsschrift für Deutsches Recht 1976, pp. 333; Russ, ibid., 5 on sec. 59 StGB.
93. Cf. Dreher-Tröndle, Strafgesetzbuch, ibid., 4 preceding sec. 59 StGB.
94. Wendisch, ibid., 3 on sec. 453 StPO.
95. Cf. sec. 27 JGG, Jescheck, ibid., pp.72, a different view is expressed by Brunner, ibid., 2 on sec. 27 JGG.
96. Eisenberg, ibid., 6, 13 on sec. 27 JGG.
97. Sec. 29 JGG.
98. Sec. 30 subsec. 2 JGG.
99. Sec. 30 subsec. 1 JGG.
100. Sec. 30 subsec. 1, sec. 62 subsec. 1 JGG.
101. Sec. 30 subsec. 2, sec. 62 subsec. 2 JGG.
102. Cf. Brunner, ibid., 2 on sec. 27 JGG.
103. Eisenberg, ibid., 15, 16 on sec. 27 JGG.
104. Sec. 21 subsec. 1 JGG; Eisenberg, ibid., 10 on sec. 21 JGG.
105. Sec. 21 subsec. 2 JGG; Eisenberg, loc. cit.
106. Eisenberg, ibid., 6 on sec. 21 JGG.
107. Secs. 22, 23, 26, 26 a, 58 JGG.
108. Sec. 26 a JGG; Eisenberg, ibid., 31 on sec. 26 a JGG.
109. Sec. 57 subsecs. 1 and 2 StGB.
110. Sec. 57 a subsec. 1 StGB.
111. Decisions of the Federal Constitutional Court, Volume 45, pp. 187, 243 ff.

112. Stree in Schönke-Schröder, ibid., 2 on sec. 57 a StGB with further citations.
113. Russ, ibid., 15 on sec. 57 a StGB.
114. Sec. 57 subsec. 3. sec. 57 a subsec. 3 StGB.
115. Secs. 454, 454 a, 462 a subsec. 1 StPO. For the exceptions cf. Wendisch in Löwe-Rosenberg, ibid., 26, 37 on sec. 462 a StPO.
116. Secs. 78 a, 78 b Organisation of the Courts Act (Gerichts-verfassungsgesetz).
117. Sec. 82 JGG, As regards suspension of the remainder of a sentence of youth imprisonment, cf. secs. 88, 89 JGG.
118. Sec. 67 e StGB, secs. 463 subsec. 3, 454, 462 a subsec. 1 StPO.
119. Cf. the report by Hermann in Zeitschrift für die gesamte Strafrechtswissenschaft, Vol. 97, pp. 721.
120. Kühne and Miyazawa, Kriminalität und Kriminalitats-bekämpfung in Japan, Wiesbaden 1979, pp. 135 ff.; Kuhne in Zeitschrift für die gesamte Strafrechtswissenschaft, Vol. 85, pp. 1086 ff.; Miyazawa in Zeitschrift für die gesamte Strafrechtswissenschaft Vol. 95, pp. 1027 ff.; Matsuo in Revue Internationale de Droit Pénal 1983, pp. 1096 ff.

Chinese Criminal Law and Its Recent Development

*by Yu Shutong**

Legislating of the Code

Criminal justice in new China has a history of forty years, but it was not until the end of the 70's that the prerequisites for legislating a comprehensive and systematic criminal code were provided. Before that time, policies and some decrees had been serving as criteria for administrating criminal justice, though several regulations regarding the punishment of counter-revolutionary crimes, corruption and crimes of undermining the national currency were promulgated during the 50's. The Criminal Code of the People's Republic of China was unanimously approved in July 1979 by the National People's Congress, the highest State power of China, after penetrating deliberations by several thousand deputies to the Congress, and came into effect on New Year's Day the following year. The subsequent implementation of the Code has eloquently proven that it is in complete conformity with the reality of the country and is efficacious for cracking down on criminality. Prosecution of crimes according to the Code, along with other effective measures for the comprehensive treatment of criminality, leads to stability, peace and security for the nation. The crime rate in China stayed around the level of 0.05 percent plus consecutively for the four years up to 1988, but last year saw a drastic increase in crime and the rate rose to about 0.07 percent. Of course, such alarming growth should be taken seriously though China remains one of the countries with the lowest crime rate in the world. Of all the crimes reported, theft accounted for about 80 percent, but the incidence of violent crimes like murder, robbery and intentional explosions were also up. Crimes associated with gangs abroad, such as trafficking in narcotics, smuggling of gold and relics, and counterfeiting of currency, credit cards and even passports also increased during 1988.

The Chinese Criminal Code takes the concepts of Marxism, Leninism and Mao Zedong as its guide. It proclaims publicly that its tasks are to use criminal punishment to struggle against all counter-revolutionary and other criminal acts in order to safeguard the system of the people's democratic dictatorship and the smooth progress of the cause of socialist construction.

The Code takes the Constitution as its basis. Article 28 clearly stipulates: "The State maintains public order and suppresses treasonable and other counter-revolutionary activities; it penalizes acts that endanger public security and disrupt the socialist economy and other criminal activities, and punishes and reforms criminals."

China's legislature adheres to the rule that the legislation should be geared to the real needs of the country. The Criminal Code was formulated in the light of the concrete experiences of the country's nationalities in carrying out the people's democratic dictatorship, accumulated through decades of revolution and construction. In the process of its drafting, a vast number of files and dossiers were examined and actual crimes researched.

It should be emphasized that the Chinese Code has drawn on what will be useful to us from foreign legal theory and practice, though we are opposed to simply copying foreign laws without due consideration of one's own. Foreign friends used to ask me

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whether the Chinese legal system belongs to or copies the common law system, or the civil law system, or the Soviet system, and I would reply that our legal system on the whole is different, not only from the Western legal systems (both the common law and the civil law), but also from the Soviet and Eastern European systems. For, in our view, it is impossible for a legal system to be established and function efficiently if it ignores the real situation and the concrete conditions of the country, but nor will it be an effective and progressive one if the legislators seclude themselves from the outside world, without absorbing useful things from foreign legal systems.

Basic Principles of the Code

In answer to the question of what basic principles the Code adheres to, replies from various scholars are fundamentally identical but with slight differences. In my view, apart from some cardinal principles laid down by the Constitution, like the principle that "all citizens are equal before the law," which are applicable to all laws and regulations, there are four principles that are most significant for the Criminal Code.

1) Combining Punishment and Leniency: This means that we deal with each case on its own merits, take account of the circumstances of different crimes and the characters of different authors of crime so as to punish only the minority of them and reform the majority. There are both severe and lenient sanctions in the Code. For serious crimes, some severe punishments are provided, while acts of which the circumstances are clearly minor and the harm is not great are not to be deemed crimes, and consequently, not to be punished. Among the five principal penalties, there is the lightest one, the penalty of control, which is a punishment to be executed in the community without confining the offender in prison; at the same time, a kind of most severe penalty, capital punishment, is provided. All the legally-prescribed punishments stipulated by the respective articles are *relatively* fixed ones rather than *absolutely* fixed ones, so that the courts have a discretion to select within a certain range the most adequate penalty for the specific crime. For juvenile delinquents, or an offender who surrenders voluntarily or one who is coerced or induced to participate in a crime, or one who commits crime by negligence, or for criminal attempt, or for preparation of crime, etc., various forms of leniency in sentencing are stipulated for example, meting out a lesser punishment or a mitigated punishment, or even complete exemption from punishment. On the other hand, a heavier punishment is given for ringleaders of criminal groups, or principals in a joint crime, or recidivists, or professional offenders, or instigators, etc.

2) Nullum Crimen Sine Lege and Nulla Poena Sine Crimena: What acts constitute a certain offence, what are the *actus reus* and *mens rea* of individual crimes, and what penalty should be imposed on a certain offender—all these matters are defined in relevant articles as clearly as possible. No act can be deemed a crime without explicit mention in the Code, and a penalty should be imposed accordingly within the range of the legally-prescribed punishment. Nevertheless, it should be pointed out that the Code also provides a strictly-restrictive system of analogy. Where a crime is not expressly stipulated in the Special Provisions of the Code, the court hearing the case is permitted to punish the perpetrator according to the most closely analogous article of the Special Provisions of the Code, on the condition that the matter should be submitted to the Supreme People's Court for approval.

3) Punishment Can Only Be Imposed on Those Who Are Responsible for the Crime: Only the people whose own acts,including active and passive ones, run counter to the Criminal Code, have to bear criminal responsibility. To punish the accused's family members or relatives or friends who have nothing to do with the crime is categorically for-

bidden, unless they intentionally joined in the crime. And then in execution of the penalty of confiscation of property (one of the three supplementary punishments provided by the Code), it is forbidden to confiscate any property other than the personally-owned property of the accused, so property that belongs to or should belong to his or her family members is exempt from confiscation.

4) Combining Punishment and Education: The penalty does not pursue the goal of retaliation, and its purpose is not simply to punish the criminals. We believe that the overwhelming majority of criminals can be remoulded, and we do have the ability and the possibility to re-socialize them. Therefore, the penalty should be oriented to educate offenders as well as to punish them; that means it is imposed on criminals not only to deprive them of the opportunity to commit further crimes and to warn those who are likely to be plunged into the criminal mire, but also to re-educate criminals, helping them to turn over a new leaf.

Territorial Effects of the Code

With regard to the sphere of effect, the Chinese Criminal Code follows the doctrine of territorialism, combining with the necessary personalism and protectionalism in some special cases. To all who commit crimes within the territory of China, including those aboard a ship or an aeroplane belonging to China, the Code is of course applicable. And if either the act or consequences of a crime takes place within the territory, the crime is to be deemed to have been committed within the territory. As for crimes committed outside its territory, the applicability of the Code depends on the characteristics and circumstances of the crime, which can be divided into the following three groups:

1) The Code is applicable to citizens of the People's Republic of China who commit crimes of counter-revolution, counterfeiting national currency or valuable securities, corruption, accepting bribes or disclosing State secrets, posing as State personnel to cheat and bluff or forging official documents, certificates and seals outside the territory of the People's Republic of China.

2) The Code is applicable to citizens of the People's Republic of China who commit crimes outside the territory of the People's Republic of China other than the crimes mentioned above, on the condition that the Code stipulates a minimum sentence of not less than a three-year fixed term of imprisonment for such crimes.

3) The Code may be applicable to foreigners who commit, outside the territory of the People's Republic of China, crimes against the State of the People's Republic of China or against its citizens, provided the Code stipulates a minimum sentence of not less than a three-year fixed term of imprisonment for such crimes and that they are punishable pursuant to the law of the locality as well.

Criminal Responsibility

The characteristics of the provisions of the Chinese Criminal Code regarding criminal responsibility are as follows:

1) The age for bearing criminal responsibility is sixteen. Minors under the age of fourteen are entirely exempted from criminal responsibility, even if they commit acts harmful to society. Minors aged fourteen but under the age of sixteen shall partially bear criminal responsibility, that is to say, they are responsible criminally only in cases involving murder and manslaughter, serious injury, robbery, arson, habitual theft or other acts seriously undermining social order. For delinquents aged fourteen to seventeen but younger than eighteen, the Code requires the trial court to give them a lenient punishment —to be specific, a lesser penalty within the range of the legally-prescribed punishment, or a mitigated penalty below the minimum level of the legally-prescribed punishment. And then, when minors are not punished because they are under sixteen, the heads of

their families or their guardians are to be ordered to subject them to discipline, or when necessary, the minors may be given shelter or rehabilitation by the Government.

2) An intoxicated person who commits a crime shall bear criminal responsibility.

3) The Code stipulates different responsibilities for consummation of crimes, attempted crimes and preparations for crime. Besides this, it is prescribed in the Code that those who voluntarily discontinue the crime or voluntarily and effectively prevent the consequence from occurring during the process of committing a crime shall be exempted from punishment or given a mitigated punishment.

4) Joint intention is made an indispensable condition for a joint crime, and therefore a negligent crime committed by two or more persons jointly is not to be punished as a joint crime.

5) An accomplice, that is one who plays a secondary or supplementary role in a joint crime, shall, in comparison with the principal offender, be given a lesser punishment or a mitigated punishment or be exempted from punishment, while the ring-leaders of a criminal group or the principal offenders are to be punished more heavily.

Kinds of Punishment

There are five kinds of principal punishment stated in the Code—namely, control, detention, fixed-term imprisonment, life imprisonment and the death penalty—along with three kinds of supplementary punishment—namely, fines, deprivation of political rights and confiscation of property.

Principal punishments cannot be imposed concurrently upon the same criminal, while supplementary punishments can be imposed either independently or concurrently with a principal one. Apart from these, there is a special penalty called deportation, which is to be applied in an independent or supplementary manner only to foreigners who have committed crimes in China.

The terms of the first three kinds of punishment are as follows: no less than three months and no more than two years for the penalty of control; no less than fifteen days and no more than six months for detention, and, no less than six months and no more than fifteen years for fixed-term imprisonment.

What will be of interest to you is the penalty of control and the death penalty. Control as a kind of punishment derived from the practice of criminal justice of the past two decades, and it has proven an effective measure for re-moulding offenders who commit misdemeanours. The criminals are not to be confined in prison, but are left in the communities where they used to live or work, but they are under the supervision of the masses. They are obligated to abide by laws and decrees, actively participate in collective productive labour or work designed by the community, report regularly on their own activities to the public security organ and obtain approval from that body if they want to change residence or to leave the area. The principle of "equal pay for equal work" is applicable to them as well.

China has reserved the death penalty as the heaviest punishment as is the case in most countries in the world. It is used to suppress those who commit the most heinous crimes, doing especially serious harm to the society. This kind of criminal constitutes only a trivial fraction of the inhabitants. And, certainly, it serves as a powerful deterrent for cracking down on such criminality. An attitude of extreme carefulness, prudence and circumspection is taken by the legislature and the courts towards the use of capital punishment. Many strict restrictions in this regard are provided in the Code in order to curb its use as much as possible, or even to exclude its practical application. For example, to point out just some of the restrictions:

1) The death penalty is prescribed only for some serious crimes, such as counter-revolution, murder and manslaughter, rob-

bery, rape, trafficking or smuggling of narcotics, abducting and selling of people, etc.; and, moreover, the death penalty is applicable to these crimes only if the circumstances of the crime are especially serious, or its harm to society is especially serious, or the methods of the crime are particularly cruel and odious, or the crime leads to death or serious injury. And even then it should also be pointed out that capital punishment is prescribed in articles only as an *alternative* punishment, which means that some other form of punishment such as fixed-term imprisonment and life imprisonment are provided in the same article for the court's discretion.

2) It is forbidden to impose the death penalty either on juvenile perpetrators who are under the age of eighteen when committing the crime, or on women who are pregnant during the trial.

3) A sentence of death penalty, even a final one given by a court of second instance, has to be submitted to the Supreme People's Court for review and approval, though for some of the clearly heinous crimes explicitly listed in a special decision of the Standing Committee of the National People's Congress (which is the highest State power in my country), the Higher People's Courts in the provinces, which are autonomous regions and municipalities directly under the central government, are authorized to review and approve the sentence of death.

4) A special system of suspension of execution is prescribed for the death penalty. The system is one of the creations of the Chinese Code. The relevant article stipulates that in the case of a criminal who should be sentenced to death, but for whom immediate execution is not essential, a two-year suspension of execution may be pronounced at the time the sentence of death is imposed; the criminal will be put into prison and reform-through-labour carried out and the results observed. If the criminal truly repents during the period of suspension, he is to be given a reduction of sentence to life imprisonment upon the expiration of the two-year period; and, if he not only truly repents but also demonstrates meritorious service, he is to be given a reduction of sentence to not less than fifteen years and not more than twenty years of fixed-term imprisonment upon the expiration of the period. Only those who have resisted reform in an odious manner, provided the evidence of such behaviour is verified, are to be executed upon a ruling or an approval of the Supreme People's Court. As a matter of fact, among those who have been sentenced to death, only a tiny fraction of them were executed immediately, and the overwhelming majority were given a suspension of execution; and amongst the latter, the absolute majority, or almost all of them, have been given a reduction of sentence, and sometimes several reductions; thus, execution of criminals is kept to the minimum.

Practical Application of Punishments

Criminal justice in China follows strictly the principle of "taking facts as the basis and laws as the criterion." The Code clearly stipulates that the penalty should be imposed on the basis of the crime, the nature and circumstances of the crime and the degree of harm to society, in accordance with the relevant stipulation of the Code. The courts are not allowed to impose punishments outside the range of legally-prescribed penalties unless there are other special stipulations in this regard. It must be pointed out that either a heavier or lesser punishment means a punishment within the limits specified in the article, and only the so-called mitigated punishment means a punishment below the minimum limit of the legally-prescribed punishment.

A recidivist is defined by the Code as one who has been sentenced to a punishment of not less than a fixed-term imprisonment, and who commits within three years after the punishment has been completely served or after release as the result of a pardon anoth-

er crime punishable by not less than a fixed-term imprisonment. For a recidivist, the Code prescribes that a heavier punishment should be imposed.

With regard to probation, parole and reduction of sentence, there are also some special prescriptions peculiar to China and based on the actual experience of this country, which I don't want to expound today in order to save time.

There is a provision of leniency towards voluntarily surrendering criminals, which originated in China. To someone who voluntarily surrenders after committing a crime, a lesser punishment may be given. Those among them whose crimes are relatively minor may be given a mitigated punishment or be exempted from punishment; even those whose crimes are relatively serious may also be given a mitigated punishment or exempted from punishment provided they demonstrate meritorious service.

The main characteristic of the Chinese probation system is that probation is pronounced concurrently with the sentence. In the case of a criminal who is to be sentenced to detention or fixed-term imprisonment for not more than three years, where, according to the circumstances of his crime and his demonstration of repentance, it is considered that applying a suspended sentence will not in fact result in further harm to society, probation may be pronounced at the time he is sentenced. The probation in respect of a sentence of detention lasts for a period not less than the term of the sentence pronounced and not more than one year; and for fixed-term imprisonment, not less than the term of the sentence and not more than five years. During the probation period, the criminal is turned over by the security organ to a work unit or a grassroots organization for observation, and if he commits no further crime, the sentence originally pronounced will not be executed upon the expiration of the probation period. However, if he commits any further crime, the suspension will be revoked and the punishment originally pronounced will be executed.

The conditions for receiving parole by a prisoner are prescribed as follows: he must have served not less than half of his penalty of fixed-term imprisonment or not less than ten years of his penalty of life imprisonment; true repentance must have been demonstrated by him; and, it must be believed beyond doubt that he won't cause further harm to society.

The reduction of sentenced penalties is also a special system of China's own development. Any prisoner may have his/her penalty reduced by a ruling issued by the court, if she truly repents or demonstrates meritorious service when serving punishment. However, the term of penalty actually executed should not, after one or more reductions, be less than half of the term originally pronounced, and for those sentenced to life imprisonment, it should not be less than ten years.

Categories of Crime Prescribed in the Part on Special Provisions in the Code

Every article in this part stipulates one or more crimes with the punishment for them. There are a total of eighty-nine articles defining over one hundred counts, which are divided into eight categories by the objects being undermined:

1) Crimes of Counter-revolution: These are all acts endangering the People's Republic of China committed with the goal of overthrowing the political power of the Republic and the socialist system—for example, colluding with foreign states in plotting to harm the sovereignty, territorial integrity and security of the Motherland, plotting to subvert the Government or dismember the State, etc.

2) Crimes of Endangering Public Security: These are all acts endangering public security and placing an unidentified great number of people or a great amount of property in danger—for example, arson, breaching

dikes, causing explosions, poisoning, sabotaging means of communication in a manner sufficient to bring about their overthrow or destruction.

3) Crimes of Undermining the Socialist Economic Order: The common feature of this category of crimes consists of going against the laws and regulations regarding economy management, undermining the regular activities of economic management and therefore undermining the national economy—for example, smuggling, speculating, counterfeiting the national currency or valuable securities, illegally chopping down trees and denuding forest areas, etc.

4) Crimes of Infringing the Rights of the Individual and the Democratic Rights of Citizens: The sphere of this category of crimes is universally known, encompassing intentional killing, killing by negligence, intentional injury, injury by negligence, rape, abducting and selling of persons, sabotaging elections, depriving of the legal freedom of religous belief, and infringing upon the customs and habits of minority nationalities, and so on.

5) Crimes of Property Violations: As is the case in other countries, this category includes robbery, seizing of property, larceny, fraud, kidnapping, and so on.

6) Crimes of Disrupting the Order of Social Administration: Entries in this chapter are numerous, all of them directed against the social order, endangering social security in various manners—for example, posing as State personnel to cheat and bluff, assembling a crowd to disturb order in public places, assembling a crowd to block traffic or undermine traffic order, hooliganism, gambling, stealing and exporting precious cultural relics, and so on.

7) Crimes of Disrupting Marriage and the Family: For example, interfering with the freedom of marriage of others by violence, bigamy, abusing members of the family with serious circumstances, and so on.

8) Crimes of Dereliction of Duty: This is a category of crimes committed by State personnel, including demanding or accepting bribes, disclosing State secrets, engaging in self-seeking misconduct, subjecting to prosecution persons who are clearly known to be innocent or protecting from prosecution persons who are clearly known to be guilty, subjecting prisoners to corporal punishment and abuse, and so on.

Most of the articles in the part of the Criminal Code containing Special Provisions describe concrete acts criminally labelled, thus explicitly defining the *actus reus* and *mens rea* of the crime. Let's take perjury, for example. Article 148 of the Code gives a description of it in detail as follows: during investigation and adjudication, a witness, expert witness, recorder or interpreter who, with respect to circumstances having an important bearing on the case, intentionally gives false evidence or makes a false expert evaluation record or translation, with the intention of framing another person or concealing criminal evidence. In this way, the conditions regarding the subject, purpose, acts and other circumstances for constitution of the crime are laid down explicitly in law, and this prevents people confusing an offence with a non-criminal act. Certainly, besides such descriptive provisions, there are also simple counts like intentional killing, and what we call "blank" counts, which means one has to look up other laws and regulations in order to understand what concrete acts the count really denotes. For example, in order to understand the actual conception of those crimes of violating the laws and regulations regarding the control of monetary affairs, foreign exchange, gold and silver, industrial and commercial affairs, or engaging in speculation, which is provided for by Article 117, you have to consult the above-mentioned laws and regulations.

All the legally-prescribed punishments in the articles of Special Provisions are *relatively* fixed ones and frequently alternative ones, with a range going from minimum to maximum. There are not any *absolutely* fixed punishments in these articles, not to say unidentified punishment. For example, the legally-

prescribed punishment usually reads: the perpetrator of a certain crime "is to be sentenced to not less than three years and not more than seven years of fixed-term imprisonment," or "is to be sentenced to not more than five years of fixed-term imprisonment, detention or control, and may in addition be sentenced to a fine."

Reform-through-Labour

For prisoners in custody, a policy of reform-through-labour is implemented. Anyone who is sentenced to detention, fixed-term imprisonment, life imprisonment or the death penalty with suspension of execution, provided that he or she can labour or work, is obligated to do so during the period of confinement. The purpose of this policy is to re-mould his/her ideology, freeing him/her from bad influence and habits, and to re-socialize him/her into someone who can live on his/her own labour, abide by the law and be useful to society. Labour is a principal way of reforming criminals though it's not the only one. It is indispensable for fostering a correct world outlook and value and for cultivating a sense of responsibility in prisoners. Prisons in China are practising a policy of "combining punishment and education" and of "reform first, production second." Besides education through labour, prisoners are also offered moral and ethical education, legal enlightenment and technical training. The prisoners are treated in a spirit of humanitarianism, with torture, corporal punishments and humiliation of their dignity by prison officers strictly forbidden on pain of criminal sanction.

The system of reform-through-labour has been effective and successful over the past forty years, resulting in the re-moulding and re-socializing of a great number of ordinary and counter-revolutionary criminals, including the last Emperor of the Qing Dynasty and many Japanese, puppet Manchurian and Guomindang war-criminals. According to some sample statistics, among those who have served a term of imprisonment, only 4-6 percent of them committed a crime again after their release; in some places, the percentage is even lower.

In recent years, some new developments have come into being in this field.

The Chinese Government has worked out plans gradually to turn the prisons, reform-through-labour centres and in particular the juvenile rehabilitation centres into special schools for reforming and training. Various regular classes have been set up in prisons. After a systematic education in literacy and technique, prisoners may also become middle school graduates or obtain technical qualification certificates if they pass the required tests and examinations.

Recent years have witnessed the introduction of many new ways of mobilizing public participation in helping re-mould the prisoners. To cite a few examples: 1) famous scholars, writers, educators, artists, musicians and sportspeople are invited to call on prisoners, have heart-to-heart talks with them showing concern about their present and future, and send them books and musical instruments so as to encourage them to make more effects to reform themselves; 2) former prisoners who have already turned over a new leaf after release are organized to persuade current inmates to re-mould themselves; 3) family members, relatives and friends of the prisoners are encouraged and provided with every facility to admonish and educate them; 4) some of the inmates are organized to visit factories and mills, rural areas and exibitions in order that they can educate themselves by seeing the new developments of the country with their own eyes.

The resettlement of released prisoner has always been in the centre of the prisons' concern. Nowadays, the majority of prisons have adopted a return-visit system consisting of keeping in touch with the released offenders, helping them gain access to schools or obtain employment.

Criminal Provisions Other Than the Code

Having acquainted you with this summary of the Code, I would like to shift to a brief introduction of some new developments in this field in the past few years. There have been some new stipulations and revisions of certain provisions which can be divided into three categories:

I. From 1981 on, the Standing Committee of the National People's Congress has approved several important decision regarding criminal law. Now let me take some of them as an example.

Some criminals were taking advantage of the incompleteness of the legal system and some loopholes in management and tried every means to undermine the socialist economic construction, which was in the process of reforming the economic structure and the implementation of the policy of opening up to the outside world and vitalizing the economy, and economic crimes like smuggling, speculating in foreign exchange, embezzling of public property, stealing and unlawful selling and exporting of precious cultural relics, and demanding or accepting bribes have been rampant over the past few years. In order to crack down on such crimes, the Standing Committee of the National People's Congress has passed a Decision on the Severe Punishment of Criminals who Seriously Undermine the Economy. The characteristic of this decision is to make the punishment of the abovesaid crimes more severe than that stipulated by the Code. For example, according to Article 118, the highest limit of punishment for smuggling and speculating is a ten-year fixed-term of imprisonment, but now for such crimes a punishment of up to more than ten years of imprisonment can be imposed, or life imprisonment, or even the death penalty, if the circumstances are especially serious.

A few years later, in 1988, the Standing Committee added two supplementary decisions in this respect, one on the punishment for smuggling and the other concerning the punishment of corruption and bribery. Pursuant to these supplementary decisions, any person who unlawfully exports precious relics, precious animals and products of them, gold, silver or precious metals, or unlawfully imports and exports narcotics, munitions, arms or forfeited currency is deemed to be criminally responsible of smuggling. Also, any agency, corporation or enterprise shall bear criminal responsibility if it engages in smuggling. Not only governmental workers can be deemed to be perpetrators of corruption, but also the workers of collectively-owned economic organizations and people who are in charge of public property. The crime of corruption has been further defined in detail. Embezzling public money is made an independent court. And demanding bribes is now included in the conception of bribery.

In order to further improve public security and to protect more effectively the lives and property of citizens, the Standing Committee has approved a decision on severe punishment of criminals who seriously endanger public security, which provides courts with the discretion to impose a punishment heavier than the highest limit stipulated in the Code, for the following seven categories of criminal: 1) ring-leaders of criminal hooligan groups or those who carry lethal weapons to engage in criminal hooligan activities, when the circumstances are serious, or those who engage in hooligan activities causing especially serious harm; 2) those who intentionally injure other persons, causing serious injury or death, when the circumstances are odious, or those who commit violence and do injury to State personnel and citizens who accuse, expose or arrest criminal elements and stop criminal acts; 3) ring-leaders of groups that abduct or sell people, or those who abduct or sell people with especially serious circumstances; 4) those who illegally manufacture, trade in, transport, steal or forcibly seize guns, munitions or explosives with especially serious circumstances or causing serious conse-

quences; 5) those who organize reactionary superstitious sects or secret societies and use feudal superstition to carry out counter-revolutionary activities, seriously endangering public security; 6) those who lure women or force them into prostitution, or provide shelter for them, when the circumstances are especially serious; 7) those who impart criminal methods, when the circumstances are especially serious.

II. In most of the special laws and regulations passed by the Standing Committee of the National People's Congress or the State Council, there is usually a special chapter or some articles stipulating the legal responsibilities or the rewards and sanctions, sometimes including the criminal sanctions. The specific features of those stipulations concerning penal sanctions are: firstly, they are all attached to the Criminal Code, and therefore the cardinal principles and provisions of the General Part of the Code are valid and binding in the implementation of those stipulations; secondly, they do, as a rule, stand along with other sanctions like disciplinary, administrative and civil ones, and only those acts which due to their seriousness have already constituted a crime have to be designated as criminal; thirdly, these stipulations generally do not fix concrete penalties for crimes and just leave it to the Code.

Perhaps we can divide these articles into three groups according to their wording and presentation. The first group consists of those articles which clearly provide that the crime can be punished pursuant to a certain article of the Code. Take Article 63 of the Patent Law, for example, which stipulates that for stealing another's patent, the directly responsible person is to be prosecuted according to Article 127 of the Criminal Code; Article 66 of the Law again provides that, for dereliction of duty, if the circumstances are serious, the person in charge of patent affairs in the Patent Bureau has to bear criminal responsibility according to Article 188 of the Criminal Code. The second kind of articles are those giving descriptions of the criminal acts, which supplement the relevant articles of the Code, for example, Article 173 of the Code has stipulated a penalty for stealing and exporting precious cultural relics, but without a concrete description of the act. Now Article 31 of the Law on Protection of Cultural Relics provides that the following acts are to be punished according to the above-mentioned article of the Code: 1) embezzling or stealing State-owned cultural relics; 2) stealing and exporting precious cultural relics or speculating in such relics, when the circumstances are serious; 3) intentionally damaging precious cultural relics or historical sites protected by the State, when the circumstances are serious. Meanwhile, paragraphs 2 to 4 of the same Article provide respectively that excavating on one's own accord historical sites or ancient tombs is to be deemed as theft, and selling on one's own accord self-kept precious cultural relics to foreigners is considered stealing and exporting such relics. The last group of articles consists of those which, while describing the criminal acts which are to be subjected to criminal prosecution, do not, however, point out clearly which article of the Criminal Code is to be quoted and applied. It is the courts who are authorized to select the most appropriate article. For example, Article 26 of the Law on Accounting provides that whoever from amongst leading administrative personnel, accountants or other citizens counterfeits, remakes or intentionally eliminates accounting certificates, account books, if the circumstances are especially serious, is to be prosecuted according to the law. Article 29 of the same Law stipulates that leading personnel or other people who retaliate against accountants who are conscientiously performing their duty strictly pursuant to law, are to be subjected to administrative sanction; and if the circumstances are serious also have to bear criminal responsibility according to the law.

As a matter of fact, such stipulations make up the Particular Part of the Criminal Code. To name some more special laws and regu-

lations which contain such criminal sanctions, we can list the Law on Forestation, the Law on Prairie, the Law on Economic Contracts, the Law on Sanitation of Foodstuff, and the Law on Medicine Management, and so on and so forth. In my view, to supplement and concretize the Particular Part of the Criminal Code in such manner would be an important short-term measure in the period before a comprehensive revision of the Code is possible.

III. There is an important special law in Chinese legislation, namely the Regulations on Punishment of Armymen who Violate their Duty (Provisional). The Regulations have been drafted on the basis of experience in the implementation of military rules and disciplines accumulated through decades of revolutionary struggles. The Regulations, in reality, form a special chapter in the Particular Part of the Code. What would be interesting for you is that they are dependent on and at the same time independent from the Criminal Code.

The dependency of the regulations finds its expression in the following: 1) the Regulations do not have a general part of their own, with the exception of a small number of special provisions. Therefore, the stipulations of the Code regarding criminal responsibility, the kinds of punishment, the principles for sentencing, etc. are basically applicable to the violations of the Regulations; 2) the Regulations contain only those criminal acts which have not been provided for the the Code; henceforth, all kinds of killing, arson, spreading poison, robbery, rape and hooliganism, being ordinary crimes, even though the perpetrators are armymen or employees of the armed forces, have to be dealt with pursuant to the Code; and likewise, corruption, accepting bribes by servicemen are also to be punished according to the Code, because this kind of act hasn't been stipulated by the Regulations specifically.

The relative independence of the Regulations from the Code is manifest in the difference of some of their provisions from those of the Code. For example: 1) Their territorial effect is wider. The term "battlefield" and "area for military actions" would sometimes mean places outside China's territory as in the case of an anti-aggression war, during which our army has sometimes to fight and pursue enemy troops outside the national boundaries. 2) In respect to penalties, the punishment of control is not applicable, since such a penalty does not include confinement and therefore is incompatible with the situation in the army. On the contrary, the Regulations have added a supplementary punishment, that is, the deprivation of awarded military medals, badges and honourable titles. 3) They provide a new measure for implementation of probation. According to the Code, if a criminal being pronounced as under probation commits no further crime during the probation period, then, upon the expiration of the probation period, the sentence originally pronounced is not to be executed. However, the Regulations stipulate differently—that is, for a criminal sentenced to less than three years' fixed-term of imprisonment and pronounced under probation who constitutes no practical danger, the original sentence can be quashed if he has demonstrated meritious service. 4) The Regulations, anyway, have provided also some criminal acts that are quite similar to those defined in the Code, such as the leaking of military secrets, leaving one's military post without permission, dereliction of duty, secretly crossing national boundaries or borderlines, etc. According to the principle of superiority of special laws over general ones, all these acts are to be dealt with pursuant to the Regulations and, therefore, the Code is inapplicable.

Some Other New Developments Relating to Criminal Law

From the second half of 1985 onwards, the Chinese Government has been implementing a bold plan to popularize basic knowledge

about the Constitution and a dozen and so other laws like the Criminal Law, the Criminal Procedural Law, the General Principles of Civil Law, the Civil Procedural Law (tentative), the Marriage Law, the Law on Military Service, etc. among the citizens, in particular governmental officials and young people, including teenagers. The campaign, which is to be accomplished in five years or more, is expected to play a significant role in, amongst other things, preventing and controlling criminality. It should be mentioned above all that the State Educational Commission has already made it a rule to include "Law ABC" as a required course in the curriculum of universities and colleges, as well as middle and primary schools. Several hundred million people have gone through the initial stage of this campaign and a great number of governmental functionaries are beginning to shift to the study of other laws and regulations, which are closely related to their own services.

There exists a unique feature in China's legal system which is called people's mediation. It also plays an important part in the prevention and control of crime. Since quite a number of criminal cases develop from minor civil conflicts such as succession disputes, petty injury, marriage, divorce, disagreements within the family, neighbourhood or community disputes, etc., the timely and peaceful solution of such conflicts through mediation is of great importance. At present, about one million People's Mediation Committees have been established, composed of approximately seven million volunteer-mediators, who are mainly veteran workers, teachers or housewives. Every year they settle a great number of disputes, which account for about four times the number of civil proceedings solved by the courts. Mediation, being a voluntary procedure, does not prevent any party from going to court if he refuses to have the matter mediated or disagrees on the mediation decision. It's wonderful to know that in China mediation is called by many people "the first front in the prevention of crime."

In recent times, penolists, criminologists, procurators, judges and practitioners have been very active in discussing how to revise the present Code in order to further improve it. Some questions are at the centre of public attention. For example—Is it necessary to enhance the role of the fine? Is it beneficial to deem a legal person as criminal? How should the crime of speculating be defined? Is it the time to establish a crime against the State instead of the counter-revolutionary crime? Is it preferable to include the provisions regarding the punishment of armymen who have violated their duty in the Particular Part of the Code as one of its component chapters? And, in what way can we coordinate or unify all the provisions concerning criminal sanctions? and so on. Many interesting proposals have been put forward.

Before closing my presentation, I would like to say a few words about the comprehensive treatment of criminality.

We Chinese always maintain that criminality is a kind of complicated social phenomenon, and that in order to prevent and control it, a policy or strategy of comprehensive treatment should be carried out. Criminal justice constitutes only one of the component parts of this comprehensive treatment; to be exact, it's only the last resort in the war against criminality. What we call comprehensive treatment actually means general mobilization and common efforts, under the direction and with the co-ordination of the central government, of the whole of society, including the judicial organs, governmental agencies, social organizations, enterprises, schools, families and even every individual citizen, to prevent and control criminality, making use of legal, administrative, cultural, educational and moral measures. My dear colleagues, perhaps you won't consider me as too ambitious if I solemnly suggest from this rostrum that we join our efforts and cooperate even more closely in the fight against criminality in order to prevent, control and at last eliminate crimes all over the world.

Investigation and Prosecution of Offences in England and Wales

*by John Wood**

1. Introduction

Although the United Kingdom is governed from Westminster there are three legal systems covering England and Wales, Scotland, Northern Ireland, each with different elements of control and each with procedures which differ from the others. It is with the system in place in England and Wales that this paper is concerned but it will be necessary to make reference to the other countries of the United Kingdom for the sake of completeness.

2. Political Control

There is no Ministry of Justice in the United Kingdom, the responsibility for political control being distributed between various Ministers, and when I say political control, I mean control of the police and other investigators and control of prosecutions and the Courts. I shall deal with each Minister in turn.

a) Home Office

The Home Office, or Internal Affairs Ministry, is one of the biggest in the United Kingdom and has responsibility for a large number of topics including:

i) Criminal policy
ii) Criminal justice
iii) The police
iv) Broadcasting
v) Immigration and nationality
vi) Prisons

As part of its criminal justice role, the Home Office is responsible for the organisation and management of the Magistrates Courts throughout England and Wales. The administration in Scotland and Northern Ireland is separate. I should explain that in England and Wales there is a four tier criminal court system which I shall explain later.

Most of the legislation in the United Kingdom in relation to criminal justice is instigated by the Home Office unless that legislation is instigated by the Lord Chancellor's Department.

b) Lord Chancellor's Department

The Lord Chancellor is a member of the British Cabinet, he is the Speaker of the House of Lords and he is also the Senior Judge in the House of Lords, which is the highest Court in the United Kingdom. The Lord Chancellor appoints the Judges in all the Courts and also appoints Magistrates. He is responsible for the administration and funding of the legal aid scheme which enables defendants who do not have sufficient money to be represented by lawyers in a criminal trial.

c) Attorney General

The position of the Attorney General is rather curious and there are many in my country who do not understand it and who cannot see how the Attorney General resolves several conflicts of interest.

The Attorney General is an elected member of the House of Commons. He is a lawyer and always what is called a Queen's Counsel, which means he is recognised as a senior and able lawyer. He is the Legal Adviser to the Government in relation to England, Wales and Northern Ireland both in

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civil and criminal matters.

The Attorney General is the Minister responsible for the Crown Prosecution Service and the Serious Fraud Office. In this role he is not acting as part of the Government and no other Minister, not even the Prime Minister, can influence him in making his decisions in criminal cases. Indeed, there is one very famous case where the Prime Minister of the time tried to do so, and there was such a public scandal that the Government had to resign. That was the Campbell case in 1924. In making decisions in criminal cases the Attorney General must not let himself be influenced by political motives, he must only be influenced by what is good for the British public.

3. Criminal Investigation

i) Police

There is no national Police Force in England and Wales or Scotland. In Northern Ireland there is a single Force, the Royal Ulster Constabulary.

In England, there are 43 main Police Forces, all established in different ways. The oldest and largest Force is the Metropolitan Police in London which was established in 1829 and covers the whole of greater London, apart from the City of London the financial area of London whose Force was established in 1839.

The Municipal Corporations Act 1835 and a later Act of 1882 required the appointment of committees known as Watch Committees whose duty it was to establish Police Forces in the boroughs in England and Wales, boroughs being places with reasonable large populations. The County Police Act 1839 gave power to Justices of the Peace, that is to say Magistrates who are unpaid Judges in the lowest tier criminal courts, to establish a Police Force for a county, but excluding the boroughs for which Forces had been established.

During the last thirty years there has been a gradual reduction in the number of Forces and since the Police Act 1964 there are no borough Forces and a number of county Forces have been amalgamated. The Minister with responsibility for the Police is the Home Secretary and he has direct control of the Metropolitan (London) Police. The administrative control of the other Police Forces, including the City of London, is the responsibility of the Police Committees which comprise elected members of the local authority and magistrates. [1]

A police officer, whether he is the Chief Officer or a Constable, is a servant of the Crown even though he is paid by his Police Authority and is the subject of discipline in the case of most ranks by the senior officers. [2]

There are a number of other Police Forces which have a limited jurisdiction or a specialised role. For example, the Ministry of Defence has a Force which is responsible for patrolling and securing Ministry property and investigating criminal offences committed against that property. The British Transport Police is responsible for policing railway trains and, in London, the buses. The Atomic Energy Police is responsible for policing all sites where there is nuclear power and within 15 miles of those sites.

ii) Other Criminal Investigation Bodies

There are two important Departments which have a substantial investigative role. These are the Inland Revenue and Customs and Excise. The Inland Revenue Investigation Branch deals with false tax returns and attempts to defraud the Revenue in the whole for the United Kingdom. Customs and Excise investigate smuggling and a tax on goods known as Value Added Tax or VAT in the United Kingdom. Both have very extensive powers to assist in their investigations and, additionally, conduct the prosecutions in England and Wales. Neither the Inland Revenue nor the Customs and Excise carry on the prosecutions in Scotland or Northern Ireland (see later).

Any person who makes or attempts to

make a profit through the sale or purchase of stocks and shares, and in doing so obtains any price-sensitive inside information, commits a criminal offence.[3] The Financial Services Act 1986 gives the Secretary of State for Trade and Industry power to appoint Inspectors in investigate, and these Inspectors can require any person who has relevant information to answer.[4] Perhaps it will be convenient if I refer now to two interesting cases in relation to insider trading:

1. Mr. Jeremy Warner, a Financial Journalist employed by The Independent newspaper, wrote an article in respect of a particular investigation indicating that he had in his possession information that would be useful to the Inspectors appointed by the Secretary of State. The Inspectors requested Mr. Warner to give that information, but he declined on the basis of the confidentiality of the receipt of the information. The Inspectors went to the High Court to force Mr. Warner to disgorge the information, but the Judge found in his favour. However, the Inspectors appealed to the Court of Appeal and that Court said that in the particular circumstances it was incumbent upon Mr. Warner to disclose the information and its source.[5]
2. Mr. Brian Fisher was alleged to have obtained price sensitive information and bought shares in Thomson Tealine some hours before the announcement of a takeover bid for the company. After two days of legal argument, the Trial Judge decided that Mr. Fisher had not "obtained" the information but had been given it without any opportunity for him to prevent that information being passed on. "Obtaining" in the context of insider dealing involved actively seeking or acquiring information.[6] Clearly this decision was extremely unwelcome to the authorities in the United Kingdom and the Attorney General referred the matter to the Court of Appeal for a ruling upon the point at issue. The Court of Appeal reversed the decision of the Judge and said that "obtained" should not be narrowly interpreted and included information that the offender sought or was given whether or not he asked for it.

Prosecutions

i) Crown prosecution service

Before 1986 there were many prosecutors in England and Wales and very little control was exercised over them. There were three types of prosecutor who conducted prosecutions on behalf of the police:

a) Lawyers employed by the Local Authority
b) Lawyers employed by the Police Authority
c) Lawyers in private practice.

The first two types were paid by either the Local Authority or Police Authority, often occupied offices in police stations and were the subject of direction by the police. Even if a lawyer advised that there was not enough evidence to ensure a reasonable prospect of convicting the defendant, it was open to the police to ignore that advice and continue with the prosecution. The fact that there was a large number of cases where the defendant was found not guilty was a great concern to those working in the criminal justice system. Lawyers in private practice also had to do what the police required of them, the only difference with the first two types being that the private lawyers were paid fees by the police on a case by the police on a case by case basis.

In 1978 the concern for the failure of so many prosecutions and the attitude of the police in prosecuting was such that a Royal Commission was set up to investigate the powers and duties of the police, the criminal process and other features of criminal procedure and evidence.[6]

The report of the Commission is, as you would expect, a most comprehensive document and I wish to quote two paragraphs where it comments upon the separation of

the roles of the investigator and the prosecuting lawyer which is relevant in relation not only to the work of the Crown Prosecution Service but also the Serious Fraud Office:

> "6.23 The analysis of the acquittal statistics in the preceding paragraphs provides one base for looking critically at the current arrangement for police prosecutions. The empirical evidence that the acquittal statistics provide gains support from some people with wide experience of prosecution work who have cited us instances where evidentially weak cases have been continued by the officer in charge of the case despite and sometimes in the face of contrary advice from the lawyer who has conduct of the prosecution. It has also been put to us that indictments are sometime overloaded, that is that more charges than necessary are included on the indictment, thus creating extra work for the court without affecting the sentence. The implication is that the investigator's and the lawyer's functions in the prosecution process should be made separate and distinct."
>
> "6.24 This approach is also supported by another line of reasoning. Although there is no evidence that the police act other than impartially it is said to be unsatisfactory that the person responsible for the decision to prosecute should be the person who has carried out or been concerned in the investigation. A police officer who carries out an investigation, inevitably and properly, forms a view as to the guilt of the suspect. Having done so, without any kind of improper motive, he may be inclined to shut his mind to other evidence against the guilt of the suspect or to overestimate the strength of the evidence he has assembled. The police are not required to seek legal advice or, if they are given it, to accept it before deciding to prosecute except in those limited number of cases which are the province of the Director of Public Prosecutions. There is a close supervision over police decision to prosecute but there are within the organisation and by no means all Forces have Prosecuting Solicitors' Departments, or if they have them, consult them on prosecution decisions."[7]

In the second paragraph is a reference to the Director of Public Prosecutions. The Office of Director of Public Prosecutions was created in 1879 in order to advise on major prosecutions, was abolished in 1884 but recreated in 1908. Between 1908 and 1986 the Office dealt with all the major criminal cases, not investigating them, but prosecuting them after the police investigation had taken place. Those included all murder cases, all cases of spying and terrorism, major fraud and other cases of great public interest. The head of the Department was the Director of Public Prosecutions and when the Office was at its busiest he was assisted by about 80 lawyers. It was in the power of the Director of Public Prosecutions to require cases to be sent to him and in those cases he could override the wishes of the police. Thus, if the lawyer examining the papers came to the conclusion that the evidence was not sufficient to continue proceedings he would stop the prosecution. Equally, in those cases where the police did not wish to prosecute, the Director of Public Prosecutions could do so.

In its report the Phillips Commissions recommended that a Prosecution Service should be established. The commission used these words:

> "7.3 We consider that there should be no further delay in establishing a Prosecuting Solicitor Service to cover every police force. This should, in our view, be structured in such a way as both to recognise the importance of independent legal expertise in the decision to prosecute and to make the conduct of prosecution the responsibility of someone who is both legally qualified and is not identified with the investigative process, (we are here

concerned with fairness); to rationalise the present variety of organisational and administrative arrangement (in order to improve efficiency); to achieve better accountability locally for the Prosecution Service while making it subject to certain national controls (fairness and openness are both involved here); and to secure change with the minimum of upheaval and at the lowest cost possible. This is the sense of almost all of the evidence to us on this point. A very few witnesses defend the use of private solicitors as prosecutors for the police, on the grounds that their experience of defence and prosecution work makes them more effective prosecutors and gives them enhanced impartiality and that using them offers greater flexibility of prosecution arrangements particularly in country areas. We have some doubts about the validity of these arguments but our main reason for recommending the phasing out of the private solicitor in favour of an organised service is that the use of the former makes it virtually impossible to achieve some of the important objects which we believe are desirable; in particular greater conformity of general prosecution policies, enhanced efficiency, and accountability for the efficient use of resources and for the execution of general prosecution policies."[8]

It took some time for the recommendations of the Phillips Report to be brought into effect mainly because of a difference of opinion whether the new prosecuting service should be based on national or local control. Ultimately, the government decided upon national control and the Prosecution of Offences Act 1985 created the Crown Prosecution Service, a Service designed to be responsible for the prosecution of all offences investigated by Police Forces in England and Wales. The head of the Service is the Director of Public Prosecutions but his Department has been merged into the Service, as have all those prosecuting offices controlled by Local and Police Authorities. The Crown Prosecution Service had an extensive role in the prosecution of fraud, but not the investigation, but such was the volume of work that cracks began to appear in the system, and criticism was being voiced by may in the Government, in Parliament and in the financial institutions of the City of London.

ii) Other prosecutors

Customs and Excise and the Inland Revenue have their own Prosecutions Department, but the work is limited to those criminal offences within the remit of those Departments such as smuggling and tax fraud. The Department of Trade and Industry has a regulatory role, and minor offences such as failing to file statutory information in relation to companies, including annual accounts, are prosecuted by the Legal Branch. That Legal Branch also has a major role in relation to insider trading. In addition, private citizens may institute criminal proceedings in which they have an interest but few do so.

In Scotland, the Procurators Fiscal prosecute every offence, including serious fraud, and also all those offences prosecuted by Custom and Excise, Inland Revenue, Trade and Industry and others in England and Wales. A private citizen may prosecute only if he had leave of the court. In Northern Ireland, prosecutions are conducted by the Director of Public Prosecutions (Northern Ireland), except where serious fraud is involved when it is conducted by the Serious Fraud Office.

iii) Serious fraud office

There was, of course, a time when, certainly as far as the City of London was concerned, the maxim "an Englishman's word is his bond" would never have been challenged. For decades the City operated in many respects like a cosy little club—something which has both advantages and disadvantages; one of those advantages was the innate ability of a small close-knit com-

munity to impose its own standard and discipline on its members. If a member began to resort to sharp or dishonest practices, that fact quickly became known and he would be shunned. But in the last few years there has been great parliamentary and public criticism that major offenders have not been prosecuted for serious fraud.

Where enquiries into apparent irregularities revealed evidence of fraud, that would usually be passed to the Police or the Crown Prosecution Service with a view to further investigations but investigations by the Police and prosecutions by the Crown Prosecution Service would take a very long time, if they got under way at all.

A Committee appointed by the Government under the Chairmanship of Lord Roskill, a Lord of Appeal, to recommend improvements in investigation and prosecution of fraud had some strong comments to make. Paragraph 1 on page 1 of the Report[9] had this to say:

> "The public no longer believes that the system in England and Wales is capable of bringing the perpetrators of serious frauds expeditiously and effectively to book. The overwhelming weight of the evidence laid before us suggests that the public is right. In relation to such crimes, and to the skilful and determined criminals who commit them, the present legal system is archaic, cumbersome and unreliable. At every stage, during investigation, preparation, committal, pre-trial review and trial, the present arrangements offer an open invitation to blatant delay and abuse. While petty frauds, clumsily committed, are likely to be detected and punished, it is all too likely that the largest and most cleverly executed crimes escape unpunished."

In an address to the 81st International Seminar, the former Director of Public Prosecutions, Sir Thomas Hetherington, had this to say:

> "The principal weakness in our arrangements for the prosecutions and investigation of fraud identified by Lord Roskill was their fragmentation. Most serious fraud offences were investigated by the Police. But that is not as neat and simple as at first it may sound; as I have already pointed out in England we do not have national police forces but a total of 43 separate police forces organised on a geographical basis. Although each force has its own group of officers—fraud squad—dedicated to the investigations of fraud, the size and experience of those squads is variable. The longest such established squad is the Metropolitan and City Police Company Fraud Department (a combined unit) which was set up in 1946. Its present size is very modest having regard to the size of its commitments."

I should say at once that, having often worked alongside fraud squad officers in my 30 years as a prosecutor, as police officers I find them of the highest calibre. Sir Thomas Hetherington went on to say:

> "But, at the end of the day, experience has shown that it is simply not possible for a police force to generate within its own organisation the wide range of skills and experience necessary for the investigation of complex commercial fraud. Broadly speaking, these skills are accounting expertise, with particular reference to any specialist background (e.g. a commodity market or the reinsurance market) against which the fraud is alleged to have occurred; and legal expertise in respect of the legal framework of the sphere of activity within which fraud is alleged to have occurred, as well as criminal practice and procedure and the complex rules of evidence. Just as important are the investigatory skills which are the major contribution of the police. The mounting of a successful prosecution for

fraud will always be dependent on those responsible for the investigation identifying at an early stage the matters most likely to reveal the commission of criminal offences and what those offences might be. Their efforts need to be concentrated on building up a case founded on admissible evidence and focusing on the main participants. For years, police officers tended to approach fraud on the basis of a wide ranging investigation embracing not only the central issues but also a number of peripheral matters which do not affect the main offenders but only the minnows. This usually leads them up a number of alleys adding greatly to the length of the investigation. So often investigations carried out in this way conclude with a mountain of paper delivered to a prosecuting lawyer who then identifies a fundamental flaw in the case which cannot and could not have been remedied. If only this could have been identified to the investigation officer at an early stage, enormous waste of time and effort would have been prevented and those resources diverted to another case, probably with better result."

Furthermore, it is extremely difficult for a lawyer coming to a case after its investigation to assimilate such a vast quantity of detail.

The involvement of accountancy in the investigation process was until recent years wholly exceptional, but has now become accepted. About 4 or 5 years ago the Director of Public Prosecutions pioneered a scheme, known as Fraud Investigation Groups, under which frauds would be investigated on something of a co-operative basis with the police consulting the Director of Public Prosecutions at an early stage and accepting advice and also the assistance of a number of accountants recruited to the staff of the Director. These arrangements had just begun to operate fully by the time Lord Roskill's Fraud Trials Committee carried out its study, but it concluded that they did not go far enough.

Sir Thomas Hetherington also pointed out that the Roskill Report noted the wide investigative powers available to the Department of Trade and Industry which were not available to the Police or the Crown Prosecution Service for the purpose of investigating fraud. In relation to companies and those conducting a range of businesses, such as insurance, which the Department of Trade and Industry supervises, there are extensive powers to require the production of documents and to give explanations about the conduct of the affairs of the business or company.[10] If fraud was found, it was reported to the Crown Prosecution Service. Consequently it has frequently been necessary for the Police or the Crown Prosecution Service, when trying to investigate an allegation of fraud, to stop their own investigations and ask the Department of Trade and Industry to conduct an investigation into the affairs of the company under its powers. Whilst the end result may be very similar, this was another procedure which served only to add delay.

The suggestion by Lord Roskill was for one organisation which would take on all the functions of detection, investigation and prosecution of serious fraud cases. In fact, that has not proved possible; but we believe that in practice what we are doing will come very close to it.

Section 1 of the Criminal Justice Act 1987 —passed as a result of the Roskill recommendations—states that the Director of the Serious Fraud Office:

> "May carry out in conjunction with the police investigations into any suspected offence which appears to him to involve serious or complex fraud."

You will wish to note that the Serious Fraud Office is completely separated from the Crown Prosecution Service. The whole idea of the Serious Fraud Office is based on

bringing together the investigation and prosecution functions but, for constitutional reasons, the police remain under separate command even though they are located in the same building and in constant daily contact with affairs of the Serious Fraud Office.

iv) Differences between crown prosecution service and serious fraud office

It will be recalled that the Phillips Committee recommended that the function of investigation and prosecution should be kept separate and this is the basis upon which the Crown Prosecution Service carries out its work. The Police investigate—they can, of course, always ask for legal advice but seldom do so—and when the investigation is complete, or when an arrest is made, the papers are passed to the Crown Prosecution Service. Although the Police may make an arrest, as soon as the defendant is brought to Court, all decisions whether to continue the prosecution and the charges to be laid against the defendant are entirely for a lawyer in the Crown Prosecution Service.

It is ironic that only a few years later the Roskill Committee recommended that in relation to serious and complex fraud, the lawyers—and the accountants—should be involved in the investigation. Section 1(3) of the Criminal Justice Act 1987 states:

> "The Director (of the Serious Fraud Office) may investigate any suspected offence which appears to him on reasonable grounds to involve serious or complex fraud."

And section 1(4) says:

> "The Director may, if he thinks fit, conduct any such investigation in conjunction either with the police or with any other person who is, in the opinion of the Director, a proper person to be concerned in it."

4. Powers of the Serious Fraud Office

Extensive powers of investigation are given to the Director by Section 2 of the Criminal Justice Act 1987. When the Criminal Justice Bill (1986) was under consideration by Parliament, concern was expressed at the range of powers, and there is no doubt that their use will be carefully scrutinized. It is, therefore, essential that great care is taken, not only in the decision whether to use the powers, but also in the manner of their exercise.

There are two conditions precedent to the exercise of Section 2 powers:

(a) The Director must be investigating a suspected offence which appears to him on reasonable grounds to involve serious or complex fraud (Section 1(3)); and
(b) It must appear to him that, for the purposes of the investigation, there is good reason to exercise the powers for the purpose of investigating the affairs, or any aspect of the affairs, of any person (Section 2(1)).

The Director may, if he thinks fit, conduct any investigation under Section 1 (3) in conjunction either with the police or with any other person who is, in his opinion, a proper person to be concerned in it. Generally the Office will conduct enquiries, usually with assistance from the police, but inevitably there will be cases where outside expertise will need to be brought in.

By Section 2(2), the Director may by notice in writing require the person whose affairs are to be investigated, or any other person whom he has reason to believe has relevant information, to attend before the Director at a specified time and place and answer questions or otherwise furnish information with respect to any matter relevant to the investigation. An amendment contained in the Criminal Justice Act 1988 makes it clear that the time for compliance with such requirement may be expressed as being im-

mediate. Clearly those exercising the power must act reasonably (apart from anything else, 'reasonable excuse' is a defence in any prosecution of a person for failing to comply with a requirement), and it would normally be unreasonable to expect a person to answer questions immediately if he wishes first to consult his professional advisers. Equally, it will often be unreasonable to expect a person to break important business appointments.

Failure without reasonable excuse by any person to comply with a requirement imposed under Section 2(2) is a summary offence for which he is liable on summary conviction to imprisonment for six months or a fine or both (section 2(13)). Where a person, in purported compliance with a requirement under Section 2(2), makes a statement which he knows to be false or misleading in a material particular, he is guilty of an "either way" offence for which he is liable on conviction upon indictment to imprisonment for two years or a fine or both; and on summary conviction, to imprisonment for six months or a fine or both (Section 2(14)). Summary trial is by Magistrates alone. Trial on indictment is by Judge and Jury. Destruction of documents with a view to frustrating an investigation can lead to imprisonment of up to seven years on conviction upon indictment or six months on summary conviction or a fine or both (Section 2 (16)).

Where an accused makes a statement in response to a requirement imposed by Section 2(2), that statement is *not* admissible against him in any prosecution (other than under section 2(14)) unless, when giving evidence himself, he makes a statement inconsistent with it (Section 2(8)). It will, therefore, be apparent that investigators will have to use their judgement whether or not to use Section 2(2) or whether to attempt to take a statement after caution as in a normal police investigation. As the normal rules of evidence will apply to the latter, where (inadmissible) admissions have already been made by an accused in response to a requirement under Section 2(2), considerable care will have to be taken to expunge the mandatory nature of the Section 2(2) requirement from the mind of the accused so that any after-caution statement will be admissible.

Recently the Home Secretary has announced that he is considering abolishing the right of silence when interviewed by the Police. Of course, one cannot make someone answer questions when he is not willing to do so but in these circumstances it is proposed that the Judge, when addressing the Jury, and the prosecutor may comment unfavourably upon the failure of the defendant to explain himself at an early stage instead of leaving it to the trial. There is also a proposal that failure to answer may in some cases amount to evidence in support of the prosecution case but this is very controversial and may not be accepted by Parliament.

It is interesting to compare the powers of the Secretary of State for Trade & Industry under Sections 432(2) and 447 of the Companies Act 1985. Section 432(2) enables the Secretary of State to appoint Inspectors to investigate and report where there are circumstances suggesting that a company's affairs are being conducted fraudulently, that officers of a company have been guilty of fraud, misfeasance or misconduct, or that shareholders have not been given all the information which they might reasonably expect. Section 447 gives the Secretary of State power to require a company to produce books or papers for inspection and provide an explanation of any of them. A crucial difference between these powers and the powers under Section 2 is that answers given by an accused notwithstanding that they were not given voluntarily, are *admissible* in a subsequent prosecution. It may, therefore, be tempting to allow the Department of Trade and Industry to investigate, in those cases which undoubtedly will exist, where investigatory powers could be exercised either by that Department or by the Serious Fraud Office. The Director's policy is that his office will take the lead if the case is primarily one

of serious or complex fraud, but the Department of Trade and Industry will do so where criminal offences form part only of a wider investigation into the alleged mismanagement of a company. A report made under Section 432(2) of the Companies Act 1985 is published, and whilst a report under Section 447 of that Act is not, Section 3(3) of the Criminal Justice Act 1987 enables it to be disclosed to a member of the Serious Fraud Office.

It will be apparent that Section 2(2) can be used to question not only the potential accused but also the potential witnesses. The evidence of a recalcitrant witness can, therefore, be extracted in this manner and subsequently drawn up in the form of a witness statement.

The Section 2(2) power will also be useful in relation to the interview of potential witnesses who are professional advisers, bank officials and others who are under an actual or supposed duty of confidentiality. Such persons are often slow to discuss their clients' affairs, but now feel free to do so as it is compulsory.

By Section 2(3) the Director may, by notice in writing, require a person under investigation or any other person to produce at a specified time and place any specified documents which appear to the Director to relate to any matter relevant to the investigation or any documents of a specified class which appear to him to be related. The Director may take copies or extracts from such documents or require the person producing them to provide an explanation of any of them. Whilst the statutory power is merely to take copies or extracts from them, the common law power to seize evidence of a criminal offence remains (see Chic Fashions (West Wales) Ltd v Jones, Ghani v Jones.[11])

As with the Section 2(2) power, an amendment contained in the Criminal Justice Act 1988 makes it clear that the time for compliance with such a requirement may be expressed as being immediate. Again, the exercise of the power must be reasonable: whilst it may be appropriate to expect the immediate production of a single or small number of documents, a larger number may take rather longer. The admissibility of explanations given and statements made by accused in subsequent criminal proceedings against them is the same as for admissions made under Section 2(2). Documents compulsorily produced by accused are, however, admissible against them.

Section 2(4) provides that a search warrant for documents may be issued where:

(a) a person has failed to comply with an obligation under Section 2 to produce them; or
(b) it is not practicable to serve a notice under Section 2(3) in relation to them; or
(c) the service of such a notice in relation to them might seriously prejudice the investigation.

The warrant is obtained from a Justice of the Peace on information under oath laid by a member of the Serious Fraud Office. It authorises a police constable to enter (by force if necessary) the premises, search and take possession of the appropriate documents. Section 2(6) provides that unless it is not practicable in the circumstances, the constable shall be accompanied by an "appropriate person" (a member of the Serious Fraud Office or a non-member authorised by the Director to accompany the constable). This is to enable advice to be immediately available on what to seize and what not to seize. In practice, a lawyer or accountant will always accompany the police.

As with Section 2(2) and whether or not a warrant is sought or obtained, Section 2(13) makes it an offence for a person without reasonable excuse to fail to comply with a requirement imposed on him under Section 2(3) for which, on summary conviction, he is liable to imprisonment for six months or a fine or both. The criminal sanction under Section 2(14) applies to explanations or statements given under Section 2(3) which are

knowingly false or misleading in a material particular, or are recklessly made and are false or misleading in a material particular. In addition, however, Section 2(16) provides that any person who knows or suspects that an investigation by the Police or the Serious Fraud Office into serious or complex fraud is being or is likely to be carried out and falsifies or conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects are or would be relevant to such investigation, shall be guilty of an "either way" offence unless he proves that he had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation on conviction upon indictment, he is liable to imprisonment for seven years or a fine or both; and on summary conviction, he is liable to imprisonment for six months or a fine or both.

Special mention must be made of lawyers and banks. Section 2 powers cannot be used to require a person to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to furnish the name and address of his client (Section 2(9)). There is a comparable provision (without the exception) in Section 177(7) of the Financial Services Act 1986.

Section 2 powers cannot be used to require a person to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on any banking business unless either the person to whom the obligation of confidence is owed (i.e. the client) consents to the disclosure or production, or the Director has personally authorised the making of the requirement. Where it is impracticable for him to act personally, the authorisation may be given by a member of the Serious Fraud Office designated by the Director for the purpose (Section 2(10)). The Deputy Director and Chief Accountant are designated to act in the Director's absence.

In practice, it will seldom if ever be necessary for prosecutors to use either the disclosure or the evidential provisions of the Bankers' Books Evidence Act 1879. In an appropriate case, the Director can authorise the use of Section 2 powers to procure any bank documents (including documents such as correspondence which would not be disclosable under the 1879 Act); and bank statements (or more properly the copies of the entries in the bank's books whose proof the 1879 Act was, in part, designed to facilitate) are nowadays invariably printouts from computers and thus more simply provable under Sections 68 and 69 of the Police and Criminal Evidence Act 1984.

Whilst Section 2 powers will often be exercised by members of staff, the Director also has power to authorise any competent investigator (other than a police officer) who is not a member of the Office to exercise on his behalf all or any of the Section 2 powers (Section 2(11)). This is a necessary corollary of the power granted to the Director by Section 1(4) to conduct an investigation "in conjunction with any other person who is, in the opinion of the Director, a proper person to be concerned in it." There are similarities with the power of the Secretary of State for Trade and Industry to appoint inspectors, and the Director could appoint, for example, a barrister, solicitor, accountant, or indeed a civil servant such as a Customs or Revenue investigator, who was not a member of the office. The exclusion of police officers, despite the Roskill recommendation to the contrary, is because they remain subject to the command, control and discipline of their chief officers rather than of the Director, and such a position would be incompatible with their carrying out an investigation under the control of the Director.

Where someone has been so authorised, no person is bound to comply with any requirement imposed by the person exercising powers by virtue of the authority unless that per-

son has, if required to do so, produces evidence of his authority (Section 2(12)).

5. Use of Section 2 Powers

An interesting point arose in the Guinness case where a notice under Section 2 was served upon the solicitors acting for the Guinness Company.[12] The criminal prosecution is one of the biggest and most important ever to come to an English criminal court and the seven defendants are some of the best known figures in the commercial field in England. The case arises out of an hostile takeover bid by Argyll Public Limited Company for Distillers Public Limited Company, the makers of some well-known brands of gin and whisky. Distillers did not wish to be bought by Argyll and asked Guinness Public Limited Company, another very well-known manufacturer of alcoholic drinks, to come to its rescue. Guinness agreed to do so. You must remember that when a takeover bid is made, payment is usually made by offering shares in the bidding company and cash to the holders of the shares in the company to be taken over. This means that the company making the bid must try and keep its share price from moving too low otherwise the cost will be very expensive. The allegation is that some of the Directors of the Guinness Company together with advisers and friends manipulated the market in order to keep the price artificially high. The notice required them to produce the affidavits and exhibits filed by the parties in proceedings taken by Guinness against their former Directors Ernest Saunders and Thomas Ward in respect of the sum of £5.2 million paid to Ward. I should say that we did not realise and had not been told that some of the evidence had been filed following a ruling by the Judge that it was to be regarded as confidential to those proceedings. The Judge's ruling was tantamount to a requirement that evidence should be presented to the Court and Saunders accepted it as such.

As a result he asked the Divisional Court to set aside the Section 2 notice as being unfair and in breach of the Chancery Judge's ruling of confidentiality. But what was much more worrying to me was that Saunders' Counsel submitted that as soon as a person was charged, the offence was no longer a "suspected offence" within the meaning of the Section 1(3) of the 1987 Act and, therefore, a notice could not be served. The effect of this submission would be felt not only by the Serious Fraud Office but also the Department of Trade & Industry and the Bank of England in relation to their powers respectively under the Financial Services Act 1986 Sections 105 and 177 and the Banking Act 1987 Section 43.

We, of course, argued that an investigation of a suspected offence does not come to an end when a person has been charged with an offence. A prosecuting authority is under a duty to investigate until trial or, indeed, until satisfied that because further evidence has come to light the proceedings should be terminated.

A further argument was that it would be contrary to the Codes of Practice for the detention, treatment and questioning of persons by police officers for the Director of the Serious Fraud Office to require a person who has been *charged* with an offence to answer questions. However, there was nothing in the Codes of Practice which inhibits the Director from exercising his powers to require the production of documents from a person who has not been charged; or to require a person in respect of whom there are no grounds to suspect of an offence to answer questions.

The Divisional Court, I am pleased to say, came down in my favour and said there is no reason why I should not serve notices under Section 2 of the 1987 Act after the defendant has been charged. But the Court went on to say that if the notice was served upon a suspect, that person should be cautioned before being required to answer. This is hard to accept because where a notice is served, the recipient is bound to answer on penalty of fine or imprisonment; that is im-

possible to square with a caution which tells a person he is not obliged to answer unless he wishes to do so.

6. Letters of Request

English law is very restrictive as to the form in which it will admit evidence. Broadly speaking, facts relied upon by the prosecution must either be proven by oral testimony or by a written statement in a prescribed form by the witness which is then read to the court *with the consent of the accused* or in the form of an agreed statement of admitted facts. Again, this must be with the consent of the accused. Such a situation inevitably leads to the defendants insisting on their right to have witnesses attending from abroad to give oral testimony on the basis that there is at least a chance that the witness will refuse to attend and the evidence will be lost to the prosecution. This means that, even where another country has provision in its law for accepting letters of request (or commission rogatoire as it is usually known in Europe), the most careful and helpful response will be of little practical value to the English prosecutor unless the relevant witnesses are willing to come to this country to testify.

The Criminal Justice Act 1988 places requests by way of commission rogatoire on a formal footing and facilitates the admission of the evidence as a result.

Hitherto requests for assistance have not been on either a statutory or treaty basis. The United Kingdom does not have mutual assistance treaties with any country of the world—much to our disadvantage—but the Home Secretary is on record as saying that he is preparing legislation to put this right. The only arrangements we have for the mutual exchange of information are contained in Memoranda of Understanding between the Department of Trade & Industry in England and equivalent Ministries in Japan, Canada and the United States.

The Director of the Serious Fraud Office may make disclosure of information in his possession to overseas Governments, regulatory bodies and professional institutes for the purposes of prosecution or discipline. This is a power given by Section 3 of the Criminal Justice Act 1987.

The provisions about letters of request will be very helpful. The procedure will be for a Court in our jurisdiction, at the request of the prosecutor, and, where proceedings have been started, by a defendant to issue a letter of request to an appropriate authority in a country outside the United Kingdom to obtain evidence. This evidence will generally be admissible in the criminal proceedings without witnesses being required to give oral evidence.

7. Video Links

This follows on naturally from what I have just said about letters of request. There may well be witnesses who are prepared to provide testimony for use in proceedings in England but who would not be willing or able to come to this country in order to so. The Criminal Justice Act 1988 makes provision for their evidence to be taken live by a video link between the courtroom in England and a point in the country where the witness is resident. The legislation will ensure that the party wishing to adduce it does not lose the benefit of the evidence simply because of the unwillingness of the witness to travel but at the same time preserve the rights of the other parties to cross-examine that witness.

8. Other Procedural Changes in Criminal Justice Act 1988

The most important of these is a radical (at least to English law), change in the rules relating to documentary evidence. At present documents do not prove themselves but must be produced by a witness. Moreover, the effect of our hearsay rule will be modified so that a statement made by a person in a document shall be admissible in crimi-

nal proceedings as evidence of any fact of which direct oral evidence by him would have been admissible. This may be of some comfort to those of you who have never had to struggle to prepare an application by your country to an English Court for the extradition of a fugitive offender. The main purpose of the change is to sweep away unnecessary restrictions and limitations on the ability of English Courts to admit relevant evidence in relation to fraud cases. But the new rule will be of general application since it would be wrong in principle to have different rules of evidence for different classes of criminal case.

9. Regulatory Enforcement

Regulation of the securities markets in the United Kingdom has undergone dramatic changes recently. Following change in the investigation and prosecution of major fraud, so has there been change in regulation of securities markets. How has this come about? Broadly it stems from a report made to the British Government by Professor L.C.B. Gower into regulation of the markets and followed disquietly at the manner in which markets were being administered and regulated following the demise of two investment businesses.[13]

The cases at Lloyds of London where it is alleged that money invested by "names" had been used by underwriters and others for their own use and benefit with the attendant difficulties in pursuing a speedy criminal investigation, together with changes in the rules of the Stock Exchange leading to rationalisation and internationalisation, played their part in persuading the British Government that new methods were needed to regulate investment business. Professor Gower's report led to the passing of the Financial Services Act 1986.

Financial Services Act 1986

What we call the long title to the Act, that is to say the matters which the Act seeks to address, reads as follows:

> "An Act to regulate the carrying on of investment business; to make related provision with respect to insurance business and business carried on by Friendly Societies; to make new provision with respect to the official listing of securities, offers of unlisted securities, takeover offers and insider dealings; to make provision as to the disclosure of information obtained under enactments relating to fair trading, banking, companies and insurance; to make provision for securing reciprocity with other countries in respect of facilities for the provision of financial service; and for connected purposes."

You will see from that title that the primary purpose of the Act is to regulate the carrying on of investment business. Investment business is defined in the Act as dealings in Government and public securities, stocks and shares of a company, debentures, instruments entitling the holder to subscribe for government and public securities, as well as certificates and other instruments conferring various rights of property or acquisition in relation to investments.

No person is allowed to carry on or purport to carry on investment business in the United Kingdom unless he is an authorised person or exempted person in accordance with the terms of the Financial Services Act. In order to be authorised a person must be a member of a recognised self-regulating organisation or is authorised under the Insurance Companies Act 1982 to carry on insurance business which is investment business or is a registered friendly society carrying on investment business.

A self-regulating organisation is a body which regulates the carrying on of investment business of any kind by enforcing rules which are binding on persons carrying on business of that kind either because they are members of that body or because they are otherwise subject to its control. The Finan-

cial Services Act has granted powers to the Secretary of State for Trade and Industry to regulate investment business but a large number of his powers have been transferred to the Securities and Investments Board, of which the Chairman and members must be appointed jointly by the Secretary of State and the Governor of the Bank of England. The composition of the board must be such as to secure a proper balance between the interests of investment businesses and those of the public.

Orders transferring powers to the Securities and Investments Board were approved by Parliament early in May 1987 by the Secretary of State. The Board's responsibilities will include determining whether firms are fit and proper to carry on investment business either by granting direct authorisation or by recognising self-regulating organisations and professional bodies, membership of which will confer authorisation. The Government's intention is to transfer virtually all the remaining transferable powers but the Act itself leaves many of the detailed requirements to be fulfilled by rules and regulations.

There are a number of self-regulating organisations and they are:

The Securities Association which includes the Stock Exchange. The Financial Intermediaries Managers and Brokers Regulatory Association.

The Association of Futures Brokers & Dealers.

The Investment Management Regulatory Organisation.

The Life Assurance and Unit Trust Regulatory Organisation.

The titles explain the nature of the business which these organisations will regulate and they have had to satisfy the Securities and Investments Board that their rules provide investors with protection equivalent to that provided by the Board. The also must demonstrate effective arrangements for monitoring and enforcing compliance with those rules and each organisation will normally regulate only certain types of investment business.

Other Regulatory Organisations

Institutions carrying on the business of bankers are regulated by the Bank of England in accordance with the provisions of the Banking Act 1987. Lloyds of London is exempt from the provisions of the Financial Services Act 1986 because the regulation of business there is conducted under the terms of the Lloyds Act 1982. There was considerable debate when the Financial Services Act was being discussed in Parliament as to whether Lloyds should be brought within its terms, and the Opposition Labour Party was very anxious that Lloyds should be part of the new scheme of regulation. It was decided not to include them but a Commission of Enquiry under Sir Patrick Neill QC was asked to examine whether the protection for investors at Lloyds was sufficient in the light of the terms of the Financial Services Act. He came to the conclusion that it was, but no doubt Parliament will keep a close watch on the manner in which Lloyds is regulated and if anything should go wrong no doubt it will be required to come within the terms of the Financial Services Act.

Conclusion

All this is very new. It will be interesting to see how it works in practice. Certainly, we are dedicated to make it work well and to improve greatly the manner, and speed effectiveness by which we deal with fraud and to ensure that offenders are swiftly brought before our Courts.

Notes

1. Police Act 1964 S.
2. Fisher v Oldham Corporation 1930 2 Kings Bench Reports page 364.
3. Company Securities (Insider Dealing) Act 1985 Sections 1, 2, 4, 5.

4. Financial Services Act 1986 S. 177.
5. 1988 2 Weekly Law Reports page 33.
6. Phillips Commission. The Royal Commission on Criminal Procedure Command Paper 8092 January 1981.
7. Phillips Commission Report p. 131.
8. Phillips Commission Report p. 144.
9. Roskill Committee. Fraud Trials Committee 9 December 1985.
10. Companies Act 1985 Sections 432 and 447.
11. Chic Fashions (West Wales) Ltd. v Jones [1968] 2 Queens Bench Reports page 299. Ghani v Jones [1970] 1 Queens Bench Reports page 693.
12. Saunders v Serious Fraud Office [1988]
13. Gower Report. Report of Professor L C B Gower Command Paper 9125. January 1984.

SECTION 2: PARTICIPANTS' PAPERS

Fair Administration of Police Responsibility in the Administration of Criminal Justice

*by Jithakirthie Wijeratne Jayasuriya**

Sri Lanka is the heir to a rich legal tradition developed and nurtured by indigenous as well as foreign rulers over a period of several centuries. The great chronicle, Mahavansa, is replete with examples of instances in which ancient rulers have upheld the rule of law and administered criminal justice without fear or favour.

From ancient times until now the administration of criminal justice has been facilitated by the availability of a body of written laws in which the applicable principles have been articulated with a reasonable degree of certainty and clarity. Though the Penal Code, the Evidence Ordinance and the Criminal Procedure Code were enacted only at the end of the nineteenth century, attempts have been made to codify the criminal laws even in the early decades of that century. It has been said that as far back as 1801 Governor North, the first British Governor to rule over the maritime provinces of Sri Lanka, had planned the promulgation of a Code of Criminal Law which James Dunkin had drawn up on the basis of the Dutch Law as amended since 1796 and that in 1829 C.J. Ottly and P.J. Marshall had informed Governor Barnes that they "wish to see the penal consequences of crime as accurately defined by positive enactments as possible."

The administration of criminal justice in Sri Lanka is a responsibility which has devolved on a variety of institutional mechanisms and personnel. The system consists of components which play different but connected roles.

The legislature promulgates laws, the Police prevents and detects breaches of these laws, the prosecutors present charges against those detected by the Police in contravening the law. The judiciary sifts out the guilty and imposes upon them those sanctions which the legislature provides. The executive, especially the Prisons administration, enforces the sanction imposed by the judiciary. Would these organs act in concert as parts of an integrated system or should they act in isolation and perhaps in confrontation with each other is what we are here to discuss. There is a need, a growing need and perhaps a crying need for integration in the criminal justice system. Integration must not be misunderstood as a concept where both parties lose their identity and a new identity emerges. It is not the mixing of yellow and blue which makes green. Integration is a interlocking which strengthens all the parties which join together. Integration must not be viewed as a step which affects independence of the individual components. Independence is the right to function within the sphere of each component unit free from interference. Integration is the recognition by one unit of the objectives of the other. Would it not be more effective if the component units act as a integrated system?

Police Functions

Police work is not confined to protecting life and property and enforcing the law. Here is a list of some more important police func-

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tions which are performed by the Sri Lankan Police in society's day to day efforts to protect it's citizens.

1. Enforcing the criminal law
2. Investigating criminal offences
3. Crime prevention
4. Conducting prosecutions
5. Maintaining order in public places
6. Guarding persons and facilities
7. Regulating traffic
8. Controlling crowds
9. Regulating and suppressing vice
10. Gathering information about political and subversive activities
11. Monitoring elections

Police/Public Relations

It is frequently alleged that the deterioration of relationships with the public has been one of the more important problems to confront the police in recent years. Particular concern has been voiced about the loss of contact with certain sections of the community; for example, ethnic minorities and young people. The decline in relationships has been attributed principally to a reduction in the level of communication between Police and public because of the removal of officers from foot patrol work. The situation has also been affected by the fact that the Police have had to cope with increased public demand for Police services outside strict Police functions, particularly in the control of subversion and anti-government uprising, which have been politically motivated. Therefore a reappraisal by the Police of their role is necessary. Police cannot overcome crime unless Police/public relations are put on a sound footing creating a climate in which co-operation may readily take place.

The improvement of relationships with the public is a key factor in combating crime. For the furtherance of this objective, specialists in public relations have been entrusted to establish good relationships with the public. Studies and surveys conducted have shown that the nature of the calls made on the Police, showed that crime-related calls to be in the minority. The greater proportion of demand consists of service calls dealing, for example, with lost property, missing persons, sudden deaths, disturbances, nuisances and disputes.

With a view to maintaining or improving relations between the Police and public, the following may be adhered to.

- Better provision for dealing with relatively minor complaints.
- Simply increasing the amount of Police/public contact may not be productive unless the quality of some contacts if better.
- Responding readily to requests for help may increase public satisfaction.
- Increasing Police-initiated contacts on matters concerning crime prevention.
- Responding differentially to particular groups such as motorists, unemployed or ethnic minorities.
- Informing the public of Police powers and capacities, and making known Police policies and the reasoning behind them, may help disarm some criticisms of the Police and direct others along more realistic and constructive channels.

At present, this country makes the absurd demand that the Policeman should play perfectly both the roles of Dr. Jekyll and Mr. Hyde. On one had he is expected to gain and keep the respect and co-operation of the public, a vital ingredient for the efficient prevention and detection of crime. On the other hand, the Policeman is asked to execute the essential but unpleasant business of enforcing criminal laws, traffic control and administer the traffic laws much to the annoyance of the public.

Discretion and the Enforcement Of the Law

It is generally assumed by the public that the Police enforce the criminal laws and preserve the peace mechanically by arresting those who have deviated from the legislated norms of accepted behaviour. This concept of mechanical enforcement of all criminal laws dramatically underplays the difficulties of the Police role. First, the Sri Lankan Police do not have the resources to enforce all criminal provisions equally. Second, the other components of the criminal justice system cannot cope with all law violators.

Furthermore, there are in the law books certain laws relating to social conduct which are often unpopular, ambiguous, and outdated; examples of this social conduct are drunkenness and gambling. The intent of the legislature is to apply these laws to the activities of certain kinds of criminals. If the Police did not enforce these laws fully, some of the commonly accepted activities of law-abiding citizens would be affected, and society would suffer.

Justice Charles Breitel, who has had extensive administrative, legislative, and judicial experience, stresses this point as follows:

> If every Policemen, every prosecutor, every court and every post-sentence agency performed his or its responsibility in strict accordance with rules of law, precisely and narrowly laid down, the criminal law would be ordered but intolerable.

Defining, grading and fixing levels of punishment for all acts made punishable by the criminal code, whether it be a serious crime or a minor violation, is persistently difficult. Many marginal offenders are channeled through the criminal process. That is, although they are guilty of serious offences as defined by the Penal Code, they may not be habitual and dangerous criminals. It is not in the interest of the community to treat marginal offenders as hardened criminals, nor does the spirit of the law require us to do so. Framing statutes that identify and prescribe every nuance of human behaviour is impossible; a criminal code has no way of describing the difference between a petty thief who succumbs once to a momentary impulse.

Making such distinctions such as characteristics of the individual offender which differentiate him from other offenders in personality, character, socio-cultural background, the motivations of his crime, and his particular potentialities for reform or recidivism, is vital to effective law enforcement.

Such decisions involve decision-making, not strictly governed by legal rules but rather by a significant element of personal judgement as follows: by Police and prosecutors in making arrests and in bringing charges, by judges in imposing penalties, and by correctional authorities in determining how offenders shall be treated in prison and when they shall be released on parole. In short, policemen, prosecutors, judges and correctional authorities are personally responsible for dealing individually with individual offenders, for prescribing rigorous treatment for dangerous ones, and for giving an opportunity to mend their ways to those who appear likely to do so. Both the individual's future and the general safety of the community depend on the quality of such decisions.

That a Policemen's duties compel him to exercise personal discretion many times every day is evident. Crime does not look the same on the street as it does in a legislative chamber. How much noise or profanity makes conduct "disorderly" within the meaning of the law? When must a quarrel be treated as a criminal assault; at the first threat or at the first shove or at the first blow, or after blood is drawn, or when a serious injury is inflicted? How suspicious must conduct be before it could be considered "reasonable" to effect a lawful arrest. Every Policemen, however, complete or sketchy his education, is an interpreter of the law.

Every Policemen, too, is an arbiter of social values for he meets situation after situation, for which invoking criminal sanctions is a questionable line of action. It is obvious that a boy throwing rocks at a school's windows is committing the statutory offence of vandalism but it is often not at all obvious whether a Policeman will better serve the interest of the community and of the boy by taking the boy home to his parents or by arresting him.

Who are the boy's parents? Can they control him? Is he a frequent offender who has responded badly to leniency? Is vandalism so epidemic in the neighbourhood that he should be made a cautionary example? With juveniles especially, the Police exercise great discretion. Finally, the manner in which a Policeman works is influenced by practical matters; the legal strength of the available evidence, the willingness of victims to press charges and of witnesses to testify, the temper of the community, the time and information at the Policemen's disposal. Much is at stake in how the Policeman exercises this discretion. If he judges his conduct not suspicious enough to justify intervention, the chance to prevent a robbery, rape, or murder may be lost. If he overestimates the seriousness of a situation or his actions are controlled by panic or prejudice, he may hurt or kill some one unnecessarily. His action may even touch off a riot.

According to Davis, Police Officers make far more discretionary determinations in individual cases than any other class of administration. When dealing with precise rules, where principles and other guides keep discretion limited or controlled, decision makers seldom err. The greatest and the most frequent injustice could occur where rules and principles provide little or no guidance, where political or other favoritism may influence decisions, and where the imperfections of human nature are often reflected in the choices made. An incorrect decision by a Police Officer can precipitate a riot or culminate in subsequent criminal activities by an offender. An unjustified arrest can seriously or perhaps permanently affect the future of any individual's life.

Thus it is seen that the use of discretion is the heart of Police work and has to be based on sound and balanced judgement.

The nature of police work is such that most decisions by Police Officers have to be made within the span of a few moments and perhaps under emotional, apprehensive, hostile environment and within the physical context of the most aggravated social problems. Yet, the police officer is just as accountable for these decisions as the judge or corrections official is for decisions deliberated for months. The effective, efficient and fair administration of Criminal Justice constitutes one of the most meaningful goals of any society. But problems, diverse in nature and diverse in dimension, continue to beset the system and its integral components.

Although most countries of the world pursue the same fundamental criminal justice goals, the prevention and control of crime within the framework of the law, their respective criminal justice systems and processes vary. These variations proceed from the confluence of the Governmental, legal and Court systems peculiar to each country.

The general complaint has for long been that the different elements in the system—the Police, the Prosecutors, the Courts and the correctional services—have isolated themselves and worked within water-tight compartments. In recent times, however, the concept of the totality of the system seems to be gaining ground, and the fact that each has a direct influence on the effectiveness of the others is being accepted. The activities of various agencies must be co-ordinated so as to enable the criminal justice system to function as a coherent whole.

It is true that each agency has its own role to play and its operational independence must be guarded against unwarranted interference by others. But there is no doubt that a decision made by one agency without due consideration to the proper roles of others ad-

versely affects the whole process of criminal justice. The need of the hour, almost everywhere in the world, is to rid society of the fear of crime, and this to a large extent depends on the efficiency and the effectiveness of the Criminal Justice System, particularly in rendering quick justice which is an end worth striking for.

The oft repeated dictum that justice delayed is justice denied incorporates the essence of criminal justice. Delays in the administration of criminal justice not only cause serious harm to society and to the individuals concerned but also defeat the very purpose of criminal justice. Delays in the investigation and trial of crimes more often than not lead to a miscarriage of justice. The guilty person may escape because of the weakening effect of delays on the evidence. On the other hand, an innocent person who is acquitted after a protracted trial suffers irreparable damage to his body, mind, reputation and property. The injustice of this is all too apparent.

It must however be borne in mind that although elimination of delays in the administration of justice is a very desirable end, the means of measures adopted for that end should be fair and just.

Speed without fairness is not justice at all. Thus those who operate such an integrated system of criminal justice, namely the Police, the Prosecutors, the Judges and the correctional authorities should be aware of the main objective and endeavour to reconcile the need for speed with that for fairness. This problem could be resolved to a great extent if the activities of the various agencies involved in the criminal process are properly co-ordinated.

The Police and the Prosecution in Criminal Justice Administration

*by Samuel B. Ong**

The first pillar of criminal justice administration is the police. In our country, if we speak of the police as one of the pillars of criminal justice administration, we do not refer simply to the Police Department. For in the Philippines, there are three investigative agencies which have police powers. They are:

1) Integrated National Police (INP);
2) The Philippine Constabulary (PC); and
3) The National Bureau of Investigation (NBI).

The INP is under the administrative supervision of the National Police Commission (NAPOLCOM). This commission is under the Office of the President. The police, however, is under the operational supervision of the Philippine Constabulary. The constabulary is under the Department of National Defense.

The PC, in addition to having operational supervision over the police, likewise has its own investigative unit called the Criminal Investigation Service (CIS).

Then we have the NBI which is under the Department of Justice.

What distinguishes these three investigative agencies from one another?

The police and the CIS wear uniforms, but the NBI does not.

The educational qualification of a policeman is that he must have at least 60 units of a college course. A mere high school education is required to become a member of the PC. Through years of experience in investigation, a soldier may later be assigned with the CIS. To be an NBI agent, the applicant must be a lawyer.

Another point of distinction is visibility. The police can be found in every municipality of the country. The PC can be found only in provincial capitals while the NBI can be found only in regions.

In point of cases handled, the three investigative agencies handle all kinds of crimes. Normally, however, the NBI handles only sophisticated or complex crimes, crimes of national or international significance and cases which the police and the CIS cannot solve. This is not to mean that the NBI is better than the two. Rather, the NBI has aids in criminal investigation and detection. Some of these are: 1) polygraphy; 2) dactiloscopy; 3) ballistics; 4) medico-legal experts; 5) questioned document experts; 6) forensic chemistry and others. The police and the CIS do not have these aids and if they have, the same is deficient or is not staffed by experts.

With the creation of the Office of the Ombudsman and the Sandiganbayan, an office and court created to investigate and hear cases of government officials and employees who have committed a crime related to their work or have acquired unexplained wealth, the NBI, in addition to the prosecution staff of the Ombudsman, was also made an investigating arm.

The NBI therefore can investigate all government officials and employees from the highest to the lowest ranked except the President of the Philippines, the Chief Justice of the Supreme Court and the heads of Constitutional bodies.

The scorecard of the NBI for calendar year 1989 is 3,281 crime cases investigated.

* NBI Agent, National Bureau of Investigation, Department of Justice, Philippines

Statistics, however, are only meaningful in that they represent quantitative data. Intangibles such as quality and concept of operations constitute the more important part.

Preferential attention was given to cases where the respondents/suspects are government personnel whether civil, police or military. It was also given to illegal recruitment and anti-organized crime cases where the victims are predominantly the poor and the underprivileged. Due to this preferential attention, the NBI has acquired increased confidence from the people.

Among the many cases handled by the NBI of great significance is the finding of Jessie Barcelone, an eyewitness to the shooting of the late Senator Benigno Aquino, Jr., husband of our President, by his military escorts. This was due mainly to informants reposing their trust in our Bureau. Of equal significance is the notorious Wakaoji kidnap case where our President ordered two parallel operations: one, to ensure recovery of the victim alive and the other, to capture the culprits. With lead NBI participation, a covert operation resulted in Wakaoji's safe return.

Let me now start with the first pillar of criminal justice administration, the Police.

Before starting, allow me to define crime as penalized by Philippine laws.

Crime or felony is an act or omission punishable by law. They are committed not only by means of deceit (dolo) but also by means of fault (culpa). There is deceit when the act is performed with deliberate intent and there is fault when the wrongful act results from imprudence, negligence, lack of foresight or lack of skill.

As the agency tasked with the job of investigating criminal cases, the police investigator must endeavor to involve the public in its solution. They must not limit themselves with material evidence gathered at the scene of the crime but must locate witnesses to its commission. Of course there will be initial reluctance from those who witnessed the commission of the crime, but a good investigator must inculcate in the mind of the witnesses that it is their duty as citizens of the republic to do their share in the solution of crimes and that no investigator, no matter how good and experienced he is, can solve a crime all by himself. The witnesses must also be informed that crime prevention and crime solution is not the exclusive domain of the police but requires the concerted cooperation of the public. If the public is aware of this duty, then crimes can be minimized at its lowest and manageable level. It would be sheer folly though to claim that crimes can altogether be prevented with the cooperation of the public. This bold assessment is derived from the positivist theory on criminal law, that is, that man is subdued occasionally by a strange and morbid phenomenon which constrains him to do wrong in spite of or contrary to his volition. Further, that crime is essentially a social and natural phenomenon, and as such, it cannot be treated and checked by the application of abstract principles of law and jurisprudence nor by the imposition of a punishment, fixed and determined a priori; but rather through the enforcement of individual measures in each particular case after a thorough investigation conducted by a competent body of psychiatrists and social scientists.

After a crime is reported, the police investigator goes to the scene of the crime, secures it and gathers physical evidence. He shall thereafter take the written statements of the complainants and witnesses. After this initial action the investigator can "invite" the person suspected to have committed the crime. The police has the right to detain for custodial interrogation the suspect for the following number of hours:

1) 12 hours for crimes punishable by light penalties;
2) 18 hours for crimes punishable by correctional penalties; and
3) 36 hours for crimes punishable by afflictive penalties.

If at the end of said hours, no prima facie evidence is established against the suspect, he must be released at once; otherwise, the investigator is liable for a charge of arbitrary detention. During the custodial interrogation, the suspect should not be subjected to torture, physical, psychological or degrading punishment.

It should be emphasized here also that after a suspect is invited or picked up, he should at once be informed of his Constitutional rights, namely, the right to remain silent and not give any statement; that it is his right to be represented by counsel of his own choice; and, that any statement he gives might be used for or against him in any proceedings be it civil, criminal or administrative. Any statement given by the suspect without the assistance of a lawyer of his own choice is inadmissible in evidence.

If on the assessment of the investigator there exists a prima facie evidence against the suspect, he should forward the records of the case to the Prosecutors' Office.

The Prosecutors' Office is under the Department of Justice. To simplify, every province and city has a Prosecutors Office. Municipalities in rural areas do not have a Prosecutors' Office. In instances where there are no prosecutors assigned to a municipality, it is usually the chief of police or station commander as we call them, who acts as prosecutor. Municipalities in Metro Manila are under the jurisdiction of a single Prosecutors Office.

The head of a Provincial Prosecutors' Office is known as the Provincial Prosecutor. Next in rank is the Deputy or Assistant Provincial Prosecutor. What follows are the 1st, 2nd, 3rd and so forth assistant provincial prosecutors. The number of assistant provincial prosecutors depends upon the classification of the province as to population and income. The same applies to the City Prosecutors' Office.

The head of the Prosecutors' Office does not conduct investigations forwarded to them by the police. This is done by the assistants.

After a case is forwarded to the Prosecutors' Office, the investigating prosecutor summons the police investigator, the complainants and witnesses either to confirm their written statements or ask clarificatory questions. He shall thereafter also summon the suspect and his witnesses, if they have given written statements, either to confirm their written statements or ask clarificatory questions. After he is through with his investigation, the investigating prosecutor thereafter evaluates the evidence. If in his assessment an offense has been committed and the suspect is probably guilty thereof, he makes a resolution to that effect and submits the same to the Provincial Prosecutor or City Prosecutor as the case may be.

The Provincial Prosecutor or City Prosecutor, in turn, studies the resolution and if he agrees with the findings of the investigating prosecutor, he files a criminal complaint with the Court with a recommendation as to the amount of bail for the accused temporary liberty.

If the investigating prosecutor believes that the evidence is not sufficient to establish prima facie evidence, he directs the police investigator to conduct further investigation.

If on the other hand, he believes that no prima facie evidence was established against the suspect, he makes a resolution to that effect and recommends that the case be dismissed. If dissatisfied with the findings, the aggrieved party which is usually the complainant can file a petition for review with the Justice Department. The department can reverse or affirm the investigating prosecutors findings.

All criminal cases filed in Court are prosecuted under the direction and control of the Prosecutors' Office. However, the crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including both the guilty parties, if they are

both alive, nor, in any case, if he shall have consented or pardoned the offenders. The offenses of seduction, abduction, rape or acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardians, nor in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.

Plea bargaining is allowed in Philippine criminal jurisprudence. The accused, with the consent of the Court and the prosecutor, may plead guilty to a lesser offense than that charge which is necessarily included in the offense charged in the criminal complaint.

A person charged in Court has many fundamental and statutory rights. They are: 1) to be presumed innocent until the contrary is proven; 2) to be present and to defend in person and by attorney at every stage of the proceedings, that is, from arraignment to the promulgation of the judgment; 3) to be informed of the nature and cause of the accusation; 4) to testify as witness in his behalf. But if a defendant offers himself as a witness, he may be cross-examined as any other witness. His neglect or refusal to be a witness shall not in any manner prejudice or be used against him; 5) to be exempt from being a witness against himself; 6) to be confronted at the trial by and to cross-examine the witnesses against him; and 7) to have compulsory process issued to secure the attendance of witnesses in his behalf.

The administration of criminal justice in the Philippines leaves much to be desired. It is not that the different pillars are not aware of their defined duties and functions but rather on complex reasons.

Number one is the apathy of the community in assisting the police in crime prevention and investigation. The reason for this is due to the presence of a considerable number of misfits in the police and the military. Every now and then, you read in the papers and hear in the radios and televisions of the participation/connivance of the police and/or military in almost all kinds of crimes committed such as carnappings, robberies, hijackings, white slave trade and other big crimes. Some are also very abusive. Their abusive manners and their participation in crimes can be traced to two factors. Their low salaries is roughly ¥20,000.00 a month. Another is their mistaken notion that they are over and above the civilians. This hangover of power was the result of their being spoiled during the past regime. It is an admitted fact that in order to stay in power, the dictator must have the full backing of the military.

Even with the recent upgrading of their salaries, the same is still considered below the poverty line. The government cannot give them more due to our enormous foreign debt.

In order to re-educate them on their proper functions and to redirect their values, the President has directed the military hierarchy and the NAPOLCOM to call the soldiers to the barracks and the policemen to their stations. The purge is still continuing. Many have been suspended and dismissed summarily and others charged in military tribunals.

To change their attitude towards the police and the military, the NAPOLCOM and the military are in a vigorous campaign to involve the community in all their meetings involving peace and order. After an initial resistance, the community is slowly and increasingly attending these meetings. As to whether the community will finally cooperate wholeheartedly is a matter that will be answered only by time.

Judicial Independence in Thailand

*by Niwet Comephong**

Judicial independence means that it is desirable that in disposing litigations judges perform their function independently, free from fears of any kind. To what extent it is recognised and enhanced and whether the situation is satisfactory are interesting questions. Legally, judicial independence is guaranteed by various provisions of laws. Section 173 of the Constitution provides that judges are independent in the trial and adjudication to cases in accordance with laws. There are also other statutes supporting this. And it is not an exaggeration to say that all jurists and lawyers recognise judicial independence.

Nevertheless, during about forty years of our present system, challenges and questions on judicial independence have been raised. In this report, the writer will be presenting the nature and accounts of these challenges and questions. But as a background it is necessary to begin with a brief overview of the administration of justice in Thailand.

Ministries are the highest governmental bodies. There are fourteen of them, each having one or more Ministers to take responsibility and one Permanent Secretary as head of the officials. Ministry of Justice is responsible for the administration and efficient functioning of Courts of Justice.

There are three levels of Courts in the present Thai Judicial system: Courts of First Instance, the Court of Appeals and the Supreme Court. Magistrates' Courts, Provincial Courts, Criminal Courts, Civil Courts, Juvenile Courts, Labour Court and Tax Court are Courts of First Instance. Magistrates' Courts and Provincial Courts hear both criminal and civil cases while Criminal Courts hear only criminal cases. The Court of Appeals has appellate jurisdiction in all criminal, bankruptcy and civil matters tried in Courts of First Instance throughout the country. The Supreme Court is the court of ultimate appeal for all cases throughout the nation, whether civil, bankruptcy or criminal.

There is no jury system in Thailand. Judges in all Courts deal with both points of facts and points of laws. In a criminal case, judges determine guilt or innocence of the accused. If the accused is found guilty, then the judge will convict and sentence him. Offences are listed in the Penal Code as well as in a number of Acts. The Court procedure is regulated by the Criminal Procedure Code.

Judges are Government officials. Their selection and tenure are provided in the Judicial Service Act. Selection is done by examinations. Successful candidates must undergo a one-year training before the King appoints them to be judges of Courts of First Instance. Then they are on a journey in the judicial career being subject to series of appointments, transfers and promotions to higher ranks, or of punishments, of which the most severe is dismissal. Their compulsory retirement age is sixty. Promotion in terms of pay rise is a yearly event while promotion to higher ranks comes in approximately every five years. Roughly speaking, judges begin their career from being judges of Courts of First Instance before getting promotion to judges of the Court of Appeals and lastly the Supreme Court judges.

Under the constitution of Thailand as well as the Judicial Service Act, appointments, promotion, transfers and removals of judges

* Justice of the Supreme Court, Thailand

of every rank are made by the King upon the recommendation of the Judicial Service Commission. The Judicial Service Commission, therefore, is designed to serve a twofold purpose: to uphold the independence of the judiciary and to be responsible for the administrative control of all judges. The Judicial Service Commission is composed of twelve members: four are *ex-officio*, namely the President of the Supreme Court, the Chief Justice of the Court of Appeals, the first Vice-President of the Supreme Court and the Permanent Secretary of state for justice; four are elected from among other vice-presidents of the Supreme Court and senior justices of the Supreme Court or other justices of equal ranks; and the other four are elected from the list of retired judges. Retired judges qualify for membership in the Judicial Service Commission no matter what their ranks were while in service, so long as they are not practicing lawyers, Members of Parliament, or holding any political posts. The last eight members are elected for a term of two years by judges of all Courts. The Commission is presided over by the President of the Supreme Court. As for punishment or disciplinary action, a judge may be dismissed from the service only for proven misconduct, incapacity or infirmity. The Minister of Justice may appoint a board of discipline for inquiry. When the inquiry is finished, the board must submit the report of such inquiry to the Minister of Justice through the immediate superior of the accused judge and the Permanent Secretary of State for Justice who is required to make comment on the report. If the board, the immediate superior of the accused judge, the Permanent Secretary, or the Minister opines that the accused judge committed an offence according to the charge, the Permanent Secretary shall report to the Judicial Service Commission for final consideration. If the Judicial Service Commission is satisfied that the accused judge is guilty as charged, it shall, having regard to all circumstances of the case, issue a direction for his dismissal, suspension of pay rise or probation by which the Minister of Justice will make an order accordingly. In case of incapacity or infirmity, the retirement of the judge concerned may also be ordered by the Minister with approval of the Judicial Service Commission. However, as a judge is appointed by the King, his said dismissal or retirement must also be advised to the King for a royal decree of the revocation of the judgeship.(See Appendix)

Questions on judicial independence came to the fore two decades ago when the Judicial Service Act was revised in such way as judicial independence was thought to be affected. Demonstration was launched against such changes until the law was revised back to earlier provisions. A couple of years later, when a new constitution was being drafted, question of judicial independence was in full swing. Comments, criticisms, questionnaires, discussions as well as research on it were undertaken. The most interesting of all was a panel discussion conducted by the Thai Bar Association in 1973. The topic was: Should the Judiciary be separated out to form an independent institution? Comments, criticisms, and research made and conducted at the Thai Bar Association panel discussion today represent the current situation as they did when they were first made and conducted.

Lawyers and jurists are divided on this issue. Some are satisfied that under the present system judges are sufficiently independent in trial and adjudication to cases. Retired Justice Kamthorn Puntulap and retired Justice Bunyat Sucheeva who both were Permanent Secretaries of State for Justice are among them. Justice Bunyat is the former President of the Supreme Court. Here is their opinion and rationalisation:

In practice, judges' promotion, transfer and pay rise are handled by three important mechanisms or bodies, the Permanent Secretary of State for Justice, the Minister of Justice, and the Judicial Service Commission. The Permanent Secretary who is tradi-

tionally appointed from among judges is the one to present record of judges' services to the Minister and the Judicial Service Commission. The Minister then nominates candidates to the Judicial Service Commission for promotion transfer and pay rise. But, don't forget, the Minister can do nothing else other than propose. On the other hand, each member of the Judicial Service Commission is entitled to propose as the Minister is. Suppose that Judge A is proposed by the Minister to the Judicial Service Commission for appointment as a Civil Court judge, and the latter disagrees. Each member of the latter may propose or nominate judge B to substitute judge A and make a decision by voting. And if the vote is in favour of judge B, The Minister, being defeated, cannot compel the Judicial Service Commission; because his only duty is to propose. But if the Minister's proposal is approved by the Judicial Service Commission, the Minister may proceed on. Therefore, the Judicial Service Commission is the supreme body as it is not only entitled to approve the Minister's proposal, but it may also disapprove and propose something else and its resolution must be heeded by the Minister within thirty days otherwise the matter must be resubmitted to it for reconsideration. And its second resolution must be immediately heeded, nothing else can be done. This is a security measure balancing between the Executive and the Judicial Service Commission. The cases where the Minister does not agree to the first resolution of the Judicial Service Commission and the matter has to be resubmitted are very rare. Justice Bunyat confirmed that during his office as Permanent Secretary of State for Justice (1970-1974) there were only two cases; and in both cases the Judicial Service Commission reaffirmed its first resolutions.

They admit the important role of the Judicial Service Commission in protecting judicial independence and point out the importance of its components. To illustrate that the present system is satisfactory they elaborate on its development. In the past the founder of Thammasat University and the Bar Association representative used to qualify for members of the Judicial Service Commission; and at one time the Judicial Service Act provided that the Minister of Justice be the chairman of the Judicial Service Commission. Moreover, some time in the past five members of the Judicial Service Commission were to be appointed by the King on the Parliament's approval. It was in 1957 that the law was revised so as to have the Supreme Court President as chairman of the Judicial Service Commission instead of the Minister of Justice and the appointment system was repealed, and this is the present system. Therefore, to them, the Minister is not influential at present.

As for the Minister's role in disciplinary action, here is their explanation: It is true that the Minister of Justice may appoint a board of discipline for inquiry against a judge. But the law set very strict conditions before the Minister can do so. Firstly, the judge must have been primarily found by his superior to have committed a disciplinary offence punishable by dismissal. Secondly, members of the board must be judges who are receiving a salary higher than that of the accused judge. And thirdly, upon finding the judge guilty, the board must hand over the case to the Permanent Secretary of State of Justice for review and making comments to the Minister. If the Minister is of the opinion that the judge is guilty and should be punished, he must submit the case to the Judicial Service Commission for approval. So it is the Judicial Service Commission who controls the Minister. And such control is effective because the Judicial Service Commission's resolution is final. Moreover, punishment can only be inflicted for personal conduct, not for having decided a case in one way or the other.

Their justification for having the Permanent Secretary who is an executive personnel as member of the Judicial Service Commission is that he is the only one in the

total number of twelve; so his objection or vote is meaningless. In addition, they point out that it is desirable to have the Permanent Secretary of State for Justice as a member of the Judicial Service Commission so that he will provide information for it.

Despite his confidence in judicial independence and the existing system, Justice Bunyat is of the opinion that Courts of law should be separated out independently; i.e. even the administrative business office should come under the Courts. This is because at present we have the problem of delay in trial and adjudication. This, among other things, is due to inadequate facilities. The task of providing facilities for Courts is that of the Ministry of Justice which plans the budget. The budget plan must be submitted to the Civil Service Commission as well as the Budget Bureau. The problem is that the Ministry's budget plan is always cut by the Civil Service Commission. If the Judiciary is separated, the administrative office of the courts itself can set the budget for Courts.

Many others seem not to believe in the present system. They suggest the separation of Courts of Justice from the Ministry of Justice. Among them are the Honorable Seni Pramoj, the former Prime Minister, and former judge Sermsuck Tepakam. Here is their elaboration on this issue.

Separation of powers is necessary. If we do not separate the Judiciary from the Executive, their co-operation will make judges determine cases as the Executive wants. Whenever an individual sues the government he will always looses the case whether or not it is right. It's evident that this is not fair. Again, if the Legislative co-operates with the Judiciary, the law passed by the former, be it right or not, will be followed by the Judiciary. The sufferer is the people who is subject to such law and judgment. Moreover, the Judiciary is one of the three Powers. The other two, the Legislative and the Executive have been separated independently for a long time, both legally and practically. But the Judiciary remains unseparated. The Legislative or the National Assembly is not under any body. Members of parliament are independent in making laws. They are eligible to pass no-confidence vote against the Cabinet causing Ministers to leave their office. The Executive, the Cabinet, in return, is eligible to order dissolution of Parliament ending membership and requiring new election. But how about Courts who exercise the Judicial power? Are they really independent as prescribed in the Constitution? In contrary, the Act on Court Organisation provides that all Courts of law are under the Ministry of Justice. Although the Constitution provides that judges are independent in trial and adjudication to cases, the Judicial Service Act which sets forth provisions on judges' discipline empowers the Minister of Justice who is an Executive and a politician to do judges favourably or adversely. He is empowered to set up a board of discipline for inquiry against a judge; and promotion in terms of pay rise is to be proposed by the Permanent Secretary of State for Justice who is under the Minister of Justice. Therefore, a judge who is closely associated with the Minister will never be dismissed despite his misconduct as the Minister does not order his inquiry. A good but non-associated judge may be proposed by the minister to the Judicial Service Commission for suspension of pay rise. Even the Supreme Court President who is head of the Judiciary has to submit letter for leave of absence to the Minister of Justice. When political sector is in position to do a favour or an adverse to judges as afore-mentioned, judges feel unsecured and not independent in dispensing litigations as provided by the Constitution. They said this is good grounds for separation of the Judiciary from the Ministry of Justice or the Minister.

They admit that provisions of law support judicial independence and in the past there has been no doubt about it. But, according to Judge Sermsuck, it was because we have had Permanent Secretary of State for Justice

who possessed high respectability, dignity and prestige. But that is the matter of personality, not principle. We are now talking about principle and possibility. In the light of principles and possibility, it is evident that the system of having the Judicial Service Commission guarantee judicial independence does not look like what we have expected at all. It is true that legally and practically the Ministry of Justice as well as the Permanent Secretary has no power and duty to interfere with judges' discretion in trial and adjudication to litigations. But atmosphere and environments may have pushing and forcing power on the exercise of discretion. The remark of Praya Atthagaree Nipon, one-time Minister of Justice was cited which reads:

"I believe in the motto saying that people may enjoy justice of Courts through three major principles, namely: we must have intelligent judges; we must have faithful judges; and, the most important of all, judges must be independent in adjudication to litigations. The last principle is very important. With respect to judicial independence, to me, if independence is simply a word or letter, we cannot call it independence. Every judge must have the feeling in his own mind that he is really independent. This may be achieved not only through an individual judge's mind but also with the outsider's contributions. And, as I understand it, it is the duty of the Ministry of Justice and particularly the Minister to create such atmosphere so that judges may have such feeling."

And with regard to the role of the Judicial Service Commission and the Permanent Secretary of State for Justice, former Justice Sermsuck raised four questions:

Firstly, at the meeting of the Judicial Service Commission, do its members check facts of information concerning judges' service and suitability provided by the Permanent Secretary of State for Justice? All information are collected by the Executive sector in their own way.

Secondly, if some information is not disclosed by the Permanent Secretary at the Judicial Service Commission meeting, then the Judicial Service Commission would not have known of the information favourable or unfavourable to the judge.

Thirdly, in considering the case, has it been the case for decades that all or each member of the Judicial Service Commission discuss about only the judges whose names are familiar or impressive to them or him; leaving many others unmentioned or unconsidered?

Fourthly, so far the Permanent Secretaries of State for Justice have been appointed from among judges; then things have been fine and smooth. What, if a judge who has been appointed the Permanent Secretary has to resign from judgeship?

They would like to see separation of Courts to form an independent institution so that we have check and balance with the other two Powers. They proposed check and balance between the Judiciary and the Legislative by having the Legislative make no-confidence vote against the Judicial Service Commission performance or even conduct of its individual members; and the Judiciary decide whether any law contradicts the provisions of the Constitution. As to relationship between the Judiciary and the Executive they would like to see no check and balance. They should work amicably, side-by-side, each being responsible to the National Assembly who represents the people, the owner of the country, they said.

Another school of thought seems to be in the middle. It insists that only criminal law Courts are Judiciary and should be separated independently; other tribunals or Courts should not. Professor Dr. Amorn Chantarasomboon is its representative. Here is his contention:

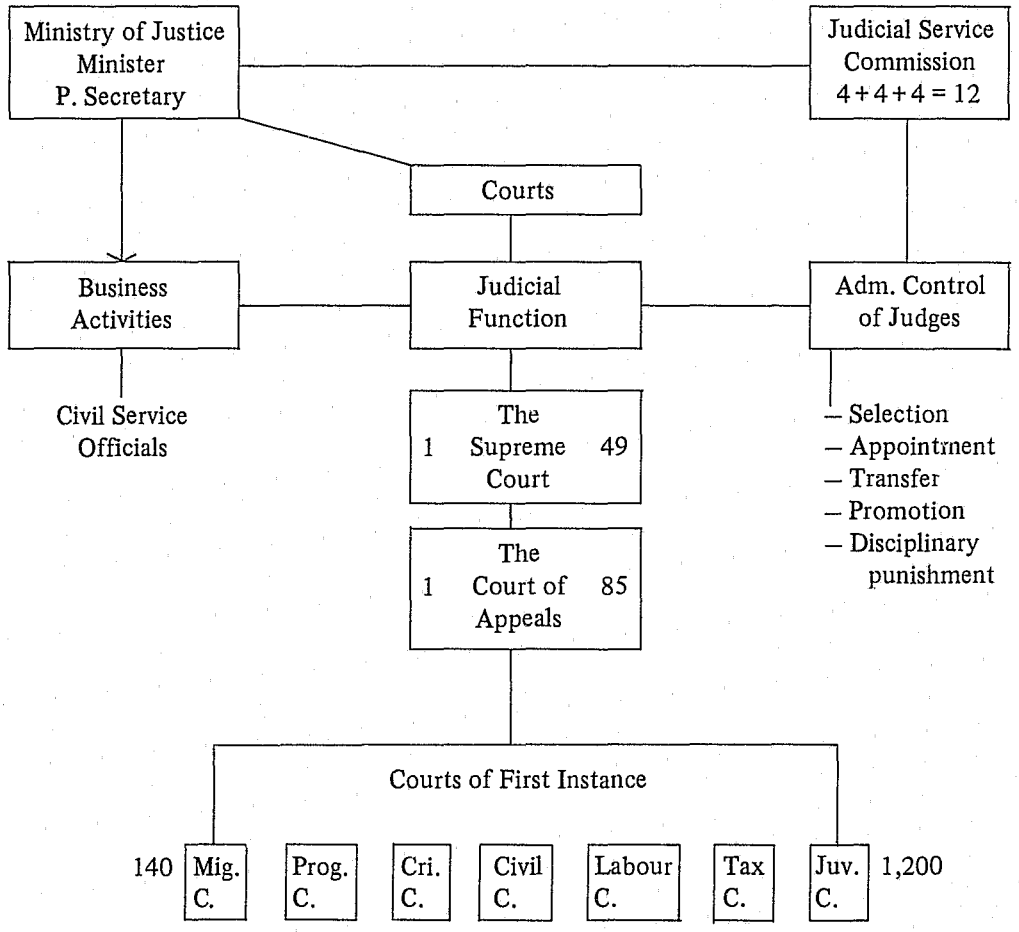
Which institution should be enhanced or given independence depends on its own power and duty. Whether or not law Court should be separated from the Ministry of Justice depends on what we mean by "the Judiciary." There are several tribunals other than Courts of Justice. They are Administra-

tive Court, and Labour Court. Not all determining tribunals are the Judiciary. Only criminal law Court is judiciary. Therefore only criminal law Court should be separated independently from the Ministry of Justice. Is the concept of three separate powers agreeable with the democratic principle? In fact, the concept of three separate powers was created by Montesquieu. He kept pondering and looking for the way to guarantee security and stability of the people and he came up with the concept of three separate powers. What was created by Montesquieu was aimed at reducing the King's power. The King in those days was so much powerful. And the European King at that time treated the people so badly that political scholars started asking themselves how to reduce the King's power. And as a result, the answer was to separate the King's power. The concept of three separate powers is obsolete. It was created long time ago by political scholars to reduce the King's power. So, when the King is no longer powerful, this concept has been abandoned. Our present Courts are under the administrative control of the Judicial Service Commission. We are all aware that the Judicial Service Commission is the body which is not subject to the public approval. It is independent. The separation of the Judiciary or Courts may or may not agreeable with the democratic principle. In Japan, as you are well aware, there is separation of powers. There, the Supreme Court judges must receive public approval for their judgeship every ten years. This is democratic. But in our system a judge begins his career from the age of twenty-five until the age of sixty, thirty-five years. Truly speaking, our Judiciary is not really democratic, because the public does not have to approve the judgeship. In the U.S.A., the Supreme Court judges are appointed by the president on the Senate's approval. The U.S. Senate is not the people's representative but the representative of the states. Therefore Professor Amorn is of the opinion that the appointment of the U.S. Supreme Court judges is a little bit democratic.

Professor Amorn also raised question on the control of the Judiciary. In our system, he said, members of the Judicial Service Commission are elected from among the inner professional group. When they are so independent and judgeship requires no public approval as the Japanese system and no outsiders may be appointed to judgeship of Courts of various levels. Who will take control of them? If the proponents of judicial separation admit that a judge may be impeached, the principle seems fair. Japanese judges may be impeached. As he states, there must be check and balance in state mechanisms.

Appendix

Judicial Administration in Thailand



Prison Overcrowding and Its Countermeasures

*by Pang, Sung Yuen**

I. Introduction

Overcrowding in society generates many social problems, however, there can be no more difficult task in society than that of managing and maintaining discipline in overcrowded penal institutions.

Overcrowding in penal establishments mean more than just shortage of accommodation for the inmates. It also means that communal facilities have to be shared, programmes may have to be curtailed, staff have to supervise more inmates and stress and tension between staff and inmates as well as amongst inmates increases. An increasing penal population and consequent overcrowding poses particular difficulties for a penal administrator in providing safe and humane conditions for the custody and treatment of offenders. An overcrowded prison provides a volatile setting where minor incidents can quickly escalate into major issues.

The problem of overcrowding in penal establishments is an universal phenomenon and Hong Kong is no exception. This paper attempts to outline the strategies adopted by the Hong Kong Correctional Services in tackling this particular problem through a historical account of its major development.

Hong Kong had its first jail, the Victoria Gaol set up on 30 April 1841 shortly after becoming a British Colony. The population of Hong Kong increased rapidly with the persistent political and social turmoil in Mainland China which resulted in a vast influx of refugees to Hong Kong. The population in Hong Kong jumped from 32,983 in 1851 to over 625,166 in 1920. With the tremendous increase of population in the territory, crime rate and penal population simultaneously increased in proportion. The shortfall in prison facilities was quickly recognised and a female prison was built in 1920 for 250 at Lai Chi Kok. in 1937 the Stanley Prison was completed with accommodation for 1,578 males. However, the penal population was continuously rising and the muster of Stanley Prison rose to 2,908 just one year after it became operational.

The significant increase in the prison population was not surprising as shortly before the Second World War (1937-1941), the incoming refugees had brought about a population of 1.6 million, with 500,000 homeless people and the problem of a rising crime rate.

During the years 1942-1945, the Prison Service was disrupted and the prison buildings badly damaged. The result was that Victoria Prison and Lai Chi Kok (female) Prison were no longer usable. In the last quarter of 1945, all offenders were placed in Stanley Prison regardless of sex, age, degree of criminality or number of previous convictions. This situation persisted until the reopening of Victoria Prison and Lai Chi Kok Prison in July 1946 and October 1947. From then onward, the Prison Service tackled the thorny problem of prison overcrowding through strategies of classification, categorisation, segregation, differentiated treatment programmes, intensified industrial training and expanded prison industries and a strengthened management supervisory system including an Inspectorate Section and a Complaints Investigation Unit.

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II. Development after the Second World War

(A) The Period from 1946 to 1960

At the time Victoria Prison was planned to be re-opened, the then Prisons Department began to look for cost-effective alternatives to the overcrowding situation and the first pilot scheme was to remove young male prisoners from Stanley Prison and to introduce special rehabilitative programmes for them. A number of unused food storage huts near Stanley Prison were taken over at the end of 1946 and became Hong Kong's first open institution for delinquents, accommodating boys aged up to 16 years from Stanley Prison.

The pilot scheme proved to be workable and a Training Centre for young prisoners aged between 16 and 18 was formally established at the end of the year, again using war-time food storage huts near Stanley Prison.

For delinquent boys under the age of 16, a special programme was designed in 1951 for them to be trained for a minimum period of 2 years in the Stanley Reformatory School which was transformed from the open institution for young delinquents established in 1946. However, with the availability of a new Boys' Home at Castle Peak in February 1953, the boys from the Stanley Reformatory School were all transferred to the new Boys' Home and the management of these boys was then handed over to the Social Welfare Department.

The training centre concept had proved to be very successful and the whole programme was formalised by the enactment of the Training Centre Ordinance on 6 March 1953.

The influx of refugees from China in the 1950s not only brought about a tremendous increase in the local population but also various social and economic problems. The growth of triad societies (illegal gangs) and their diversified illicit activities, resulted in serious disturbances in October 1956. Over a thousand law breakers were admitted to Victoria Prison and Stanley Prison in a few days posing serious overcrowding problems for the prison administration. In order to relieve this pressure, additional accommodation was immediately located. Chimawan Prison was opened in late 1956 by converting dormitory blocks of a Disabled Persons' Home on Lantau Island. In 1958, Tai Lam Prison was also opened by converting dormitory blocks previously used by construction workers of the Tai Lam Chung Reservoir. These two new prisons considerably eased the overcrowding caused by the sudden influx of remands and prisoners during that period of time.

It was quite clear that the main strategy towards prison overcrowding at that time was the use of abandoned premises for modification and convertion into prison accommodation.

(B) The Period from 1960 Onwards

In 1959, the penal population recorded an increasing number of drug addicts being admitted to prison. It was reflected by the fact that nearly ten thousand persons were imprisoned for drug related offences in the year. A pioneer programme was set up in Tai Lam Prison for short term prisoners who were drug addicts, experimenting with a rehabilitative approach. In early 1969, the Drug Addiction Treatment Centre Ordinance was enacted which provided a specific in centre treatment programme and compulsory aftercare supervision. Following amendments to the legislation in 1974 and 1986 respectively, an addict offender can now be detained in a drug addiction treatment centre for a period from 2 months to 12 months, dependent on his progress towards the treatment programme, followed by a period of 12 months statutory aftercare supervision.

Another new penal programme, the Detention Centre programme for young male first offenders, was enacted by the Detention Centre Ordinance in March 1972. This programme characterised by its "Short, Sharp, Shock" regime proved most effective

with young "first" offenders.

Experience showed that an indeterminate period of detention, subject to minimum and maximum limits, together with other therapeutic measures, could be an effective catalyst in eliciting cooperation and optimal response on the part of the inmates. The high success rate of more than 90 percent for the Detention Centre also lent support to the value of post-discharge supervision in causing the offender to live a law-abiding life. The Detention Centre Ordinance was amended in September 1977 to include young adults of 21 to under 25.

To cater for prisoners with mental problems and whose mixing with other prisoners would prove most problematic, a Psychiatric Observation Unit was first established at Victoria Prison in June 1961. With the increasing number of prisoners suffering from various forms and degrees of mental disorder, a purpose-built psychiatric centre—Siu Lam Psychiatric Centre—came into operation in November 1972.

The differential treatment programmes each caring for an unique group of offenders, together with a more deliberate classification system has become the foundation in dealing with the various problems of treatment and cases of prisoners among which prison overcrowding is but one.

In 1973, 1,830 persons under the age of 21 were committed to the various penal establishments which represented over 18 percent of the penal population at that time. There was a clear indication that the penal population was on the average younger and a steady increase was noted on the number of offenders sent for various penal programmes.

Various problems arose, including overcrowding, inadequate facilities and shortage of staff, which eventually resulted in a major disturbance in Stanley Prison in 1973. Following the disturbance, a Departmental Board of Enquiry was convened and arrangements were made for prison experts from the Home Office, United Kingdom to visit Hong Kong to advise on improving the structure, security and administration of prisons.

The Board of Enquiry subsequently identified four major causes leading to the 1973 riot. Firstly, more young offenders were admitted into the penal institutions, of which a group were committed for crimes of violence and were in general more aggressive in behaviour. Secondly, increasing resentment from prisoners were noticed upon staff's stricter control to prevent trafficking in unauthorised articles, including illicit drugs. Thirdly, staff shortage had imposed a heavy burden on staff whilst carrying out their duties, and finally but not the least, was the problem of overcrowding which caused a shortage of accommodation and inadequate facilities.

Following the Board of Enquiry's recommendation and to tackle the overcrowding situation, a new system of categorisation of prisoners was introduced with emphasis on the level of security required. This categorisation system, as follows, has since been adopted:

Category A is given to a prisoner whose escape would be highly dangerous to the public or to the Police or to the Security of Hong Kong and for whom the very highest conditions of security are necessary.

Category B is given to a prisoner for whom the very highest conditions of security are not necessary but for whom escape must be made very difficult.

Category C is given to a prisoner who cannot be trusted in minimum security condition but lacks any ability or resources to make a determined bid to escape.

Category D is given to a prisoner who can reasonably be trusted to serve his sentence in minimum security conditions.

Prisoners were classified between Catego-

ry A to Category D and located to institutions designated to accommodate the specific categories of prisoners. Four institutions, namely, Chatham Road Centre, Ma Hang Prison, Pik Uk Prison and Hei Ling Chau Addiction Treatment Centre came into operation in 1974 and 1975. The added accommodation brought relief to the overcrowding problem and since 1970 thirteen new institutions have been built.

However, in mid 1988, the policy of the government in dealing with illegal immigrants from China changed, resulting in more Chinese illegal immigrants being brought to court and committed to prison. This change in policy has brought about a drastic increase in the penal population. Towards the end of 1988, the number of Chinese illegal immigrants sentenced to prison represented over 20 percent of the total penal population. Resultant overcrowding in the penal establishments is being experienced and majority of the institutions has an occupancy rate exceeding the regular capacity.

The development after 1973 has been more technical and very much dependent on a projection of the penal population. Better designed penal institutions were built with specific purposes to cater for special categories of prisoners. Electronic security devices including closed circuit television were provided to some institutions housing prisoners who posed a higher security risk. Prison industries were expanded with the recruitment of professional staff in the management and co-ordination of industrial activities within the penal establishments, aimed not only at satisfying the primary goal of engaging prisoners in useful work but the most important of all, better utilisation of human resources in the penal system.

The added security supervision and expanded industrial activities helped, to a large extent, in easing the tension caused by various problems encountered by the prison administration, among which overcrowding was the main concern.

Among other improvements, it was decided as far as possible to adopt the United Nations' Standard Minimum Rules for the humane treatment of prisoners.

These rules cover various aspects of accommodation, sanitation and hygiene, health and medical services, diets, letters and visits, exercise, recreation, work, religion and welfare, education as well as complaint handling. The enforcement of standards in institutions is monitored through regular visits by Senior Officers from Correctional Services Headquarters. In addition, the Inspectorate and Internal Audit Team from headquarters also conduct full and surprise inspections to all institutions by rotation. This involves the checking of all procedures and treatment programmes by the relevant subject officers to ensure that laid-down policies and standards are adhered to. Since the inception of the Complaints Investigation Unit in March 1979, channels for the expression of grievances by prisoners have been greatly enhanced with assurance that remedial action will be taken on justified complaints. The provision of specific channels for grievance hearing and redress minimises the need for prisoners, who have a legitimate complaint, to resort to drastic measures. To ensure adequate channels of communication between inmates and the authority, frequent visits to institutions by headquarters staff and Justices of Peace, and other outside bodies, such as prison visitors, are included in all programmes.

The pay scale for disciplined staff was also revised and the higher pay not only attracted better qualified staff but also improved staff retention. In respect of staff training, the Staff Training Institute set up in September 1958 and rebuilt in November 1967 was gradually expanded to provide better facilities for professional training. It is believed that treatment programme can only be effectively implemented and staff-inmate conflict minimised by a professional staff, the prospect of which is contingent upon an efficient and responsive staff training programme.

More emphasis is now being placed on the general welfare of the prisoners and Welfare Officers have played an important role as a bridge between the management and the prisoners. Also the establishment of the psychological unit has been able to provide counselling and psychological services to prisoners in need.

Recently, the enactment of Prisoners (Release under Supervision) Ordinance in October 1987 introduced two schemes i.e. the Release under Supervision Scheme and the Pre-release Employment Scheme to promote the better re-integration of offenders into society. Under the Release under Supervision Scheme, the ordinance empowers the Governor of Hong Kong, acting on the recommendation of a Release under Supervision Board, to order the release under supervision of any prisoner who has served not less than one half or 20 months of a sentence of three years or more.

The Pre-release Employment Scheme allows a prisoner who is serving a sentence of two years or more to apply to the Release under Supervision Board for an earlier release within the last six months of his discharge after allowing for remission. Upon the Board's recommendation and following approval by the Governor, the prisoner will be required to work in the community in the day time and reside in a half-way house under aftercare supervision until the date of his actual discharge.

The improved penal programmes and facilities have humanised the prison regime by more effectively mitigating the negative effects of imprisonment, which is very necessary in times of prison overcrowding when provisions of new penal institutions are not readily available.

III. Conclusion

The problem of overcrowding in Hong Kong penal institutions is determined by a number of external factors which are beyond the control of management. These external factors include the population boom, the political and social climate of the neighbouring countries, the changing social and economical conditions of Hong Kong, the judicial interest and social value towards certain offences and sentencing options. We in Hong Kong have taken active steps to deal with the overcrowding problem and the following measures could summarise the Hong Kong experience:

(i) The provision of adequate accommodation through imaginative use of resources. This means not only the building of new penal institutions but also the change in use of certain penal institutions to cope with the sudden influx of a particular type of inmates on temporary basis until such time as a new penal institution could be built.
(ii) The long-term planning for provision of new penal institutions based on a projection of penal population.
(iii) The enactment of legislations to provide different treatment programmes for different types of prisoners/inmates, i.e. Training Centre Ordinance, Drug Addiction Treatment Centre Ordinance, Detention Centre Ordinance and Prisoners (Release Under Supervision) Ordinance.
(iv) Classification and categorisation of prisoners. An effective classification system will reduce not only the risk of escape and disturbance but also enhance the utilisation of resources.
(v) The provision of new facilities such as electronic devices for supervision, industrial workshop complex for work and exercising facilities help to maintain proper supervision over prisoners, engage them in meaningful work and provide them with adequate exercise and recreational facilities when not required to work which helps to ease the tension among the increasing penal population.
(vi) Improvement of staff training and

professionalism—Better pay has helped to attract and retain better qualified staff in the Service. The development of professional training is essential to the successful implementation of penal programmes and policies.

(vii) Provision of monitoring bodies and channels of complaints and grievance redress—The provision of an Inspectorate Office and internal audits has helped in the early identification of defective institutional practices or problems before they escalate into crisis situations. The existence of channels for complaints also provides an outlet for otherwise pent up tensions and conflicts and thus the possibility of their developing further is minimised.

(viii) The provision of a humane prison regime—The Hong Kong Correctional Services has been able to implement most of the United Nations' Standard Minimum Rules for the Treatment of Prisoners.

Appendix A

Population Summary–Accommodation and Muster (as at 30.6.1988)

Institution	Certified accommodation for prisoners/ inmates residents	Prisoners/ inmates	Remands	Residents	Illegal immigrants	Detainees (Vietnamese refugee from closed centres)	Total
Prisoners							
Stanley Prison	1,605	1,770	0				1,770
Lai Chi Kok Reception Centre	960	392	561				953
Shek Pik Prison	450	460					460
Pik Uk Correctional Institution	385	245	160				405
Victoria Prison	428	108			360	31	499
Ma Po Ping Prison	534	578					578
Tong Fuk Centre	375	364					364
Lai Sun Correctional Institution	218	220					220
Tai Lam Correctional Institution	540	599					599
Pik Uk Prison	600	622					622
Ma Hang Prison	220	224					224
Tung Tau Correctional Institution	240	280					280
Treatment Centre							
Hei Ling Chau Addiction Treatment Centre	938	922				0	922
Nai Kwu Chau Addiction Treatment Centre	136	98	4				102
Training Centre							
Cape Collinson Correctional Institution	200	207				592	799
Lai King Training Centre	260	254					254
Detention Centre							
Sha Tsui Detention Centre							
(Young offender)	176	183	0				183
(Young adult)	70	43					43
Psychiatric Centre							
Siu Lam Psychiatric Centre	120	154	5		1		160
Women Centre							
Tai Lam Centre for Women	261	299	33				332
Tai Tam Gap Correctional Institution	160	126	9				135
Half-way House							
Phoenix House	129			59			59
Bauhinia House	7			5			5
New Life House	30			26			26
Total	9,033	8,148	772	90	361	623	9,994

Appendix B

Average Daily Population by Institutions, 1983—1987

Institutions	1983	1984	1985	1986	1987
Stanley	1,617	1,436	1,450	1,487	1,554
LCKRC	870	766	832	814	775
SPP	—	350	445	456	449
PUCI	479	371	344	326	387
VP	435	335	310	354	410
MPP	555	521	543	501	528
TFC	376	301	311	334	346
LSCI	26	251	216	193	194
TLCI	588	498	544	558	554
PUP	523	478	504	581	590
MHP	185	198	207	209	209
TTCI	270	231	243	236	235
HLTC	848	845	809	917	831
NKTC	158	175	171	139	131
CCCI	329	225	204	208	194
LKTC	295	259	228	247	255
STDC	191	195	209	188	203
SLPC	139	151	154	152	155
TLCW	189	183	198	267	235
TGCI	105	94	103	119	106
Chimawan	33	266	187	—	—
Total	8,211	8,129	8,212	8,286	8,391

Note: Penal population includes prisoners, inmates, remands, illegal immigrants, and civil prisoners.

The Development of Non-institutional Treatment for Criminal Offenders in Japan

by Mitsugu Nishinakama *

I. The Outline of Non-institutional Treatment System in Japan

The main form of punishment provided by Japanese criminal statutes is imprisonment, but there are also various alternative methods of imprisonment in order to avoid the bad influence of imprisonment on the offenders, especially that of short-term imprisonment. Such alternative methods are as follows;

—administrative penalty system for a minor offence against traffic rules;
—suspension of prosecution which is decided at the discretion of the public prosecutor, who considers all the circumstances related to an offence;
—fine and minor fine as a property punishment;
—simple suspension of the execution of sentence;
—suspension of execution with probation;
—parole and supervision.

These methods except parole and probation expect the offenders' reform by their own repentance or by mental control under the pressure of execution and so on. In the meantime, the parole and probation systems have the fundamental characteristic that the offenders are supervised actively and their rehabilitation is strongly promoted. The Japanese parole and probation systems aim at the offenders' rehabilitation and reintegration into society. We call that system "KOSEI-HOGO" in Japanese.

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The Juvenile Law, which is the special code of criminal procedure for juveniles, was implemented and rehabilitation measures include the following:

—Juvenile probation which involves supervision of a juvenile who has been placed on probation by the Family Court.
—Training school parole involves supervision of a juvenile offender who has been conditionally released from the training school by the parole board. Incidentally, the decision to commit a juvenile offender to the training school is rendered by the Family Court.

The rehabilitation system of offenders in Japan is administrated by a single authority within the criminal justice branch. This authority, the Rehabilitation Bureau, is responsible for both adult and juvenile offenders and belongs to the Ministry of Justice and consists of 8 regional parole boards dispersed throughout the country and at least 50 offices. The main function of the regional parole board is the examination and determination of parole cases. The probation office is the organization which performs the basic rehabilitation services through offices located in each prefecture and four in Hokkaido Island.

II. Parole

(1) Outline of Parole System

Roughly speaking, the field of parole can be classified into two subject categories, namely, training school parolees and prison parolees. The term of a training school parolees' supervision is usually up to age 20,

and the period of prison parolees' supervision is for the remaining term of sentence. Those parolees are subject to the supervision of the probation office, and for the period of supervision, they must keep the specified conditions. If they do not comply with the conditions, or commit an offence, the decision of parole from prison can be revoked, or they can be reincarcerated.

As stated in the preceding paragraph, the authority do determine parole is vested in the regional parole board, and the panel of three board members makes the final decision about parole.

(2) Parole from Prison

The Old Penal Code of 1880 provided for the punishment system that adopted imprisonment as a basic punishment, and at the same time it provided for the system of conditional release of a prisoner prior to the expiration of his sentence. But the requirement of that conditional release was very strictly regulated in the beginning, and the number of prisoners who were allowed conditional release was very small. After that, the Old Penal Code was replaced by the present Penal Code in 1907 and the requirement of that conditional release was relaxed. As a result, the number of prisoners who were allowed conditional release increased marginally. But conditional release was primarily still a privilege, and it was not necessarily used effectively.

In 1949 the Offenders Rehabilitation Law was enacted. It provided for a basic framework of the present offenders rehabilitation system in Japan. According to this new law, parole is not merely a privilege but it is recognized as a significant positive method toward the offenders' rehabilitation.

In order to acquire parole eligibility, it is necessary that prisoners have served no less than one-third of the determinate sentence, or 10 years of the life sentence. As for those juvenile prisoners who were sentenced by the criminal court before they reached an age of 20, there is an exceptional relaxed reference in the Juvenile Law.

Parole examination is generally initiated upon receipt of the application from the head of the institution. Although the parole board is empowered to initiate parole examination in its own right, such cases are very rare.

On the procedure of parole examination, various information about an inmate is gathered from the institutional record, social report of the Volunteer Probation Officer, and inquiries to the relative agencies; for example, the progress of the inmate achieved in the institution, conditions at the place where the inmate is expected to return on release, especially the relationship with his or her family, the influence of the offence on the community, the possibility of criminogenic companionship after release and so on. In addition to the examination of this information, the parole board sends a board member to the institution to have the inmate in question interviewed as a mandatory procedure. When the panel consisting of three parole board members judges that the inmate really meets the following requirements, the panel decides to approve the application of parole. And on the decision, they determine a definite date of parole, the place where he should return, and conditions that the parolee should abide by during the period of supervision. The panel concentrates on the inmates behavior, whether repentance or remorse has been exhibited, the inmates' prospects of recidivism, and whether society will approve of the granting of parole.

Measures to Ensure the Appropriate Decision of Parole

One such measure is the investigation by the probation officer of the inmate. The probation officers who belong to the regional parole board are in charge of gathering and investigating various information and data concerning the inmate, and they report the result to parole board members. In order to promote effective pre-release inquiry and adjustment, board members provide the field probation officers at the probation office with

factual information about the inmate which was gathered through interview and examination of institutional records. Such preparatory investigation for parole is initiated not only after application for parole has been filed, but also before application.

In general, a certain probation officer of a parole board visits the correctional institution regularly to interview inmates and discuss cases with correctional officers. But, since 1981, for purposes of more effective use of this measure, some of the regional parole boards have probation officers work full time in large-scale prisons.

The second is adjustment of environmental conditions at the prospective destination of the inmate. It is very important for the rehabilitation of the offender to adjust to conditions at the prospective destination as well as be receptive to the educational system provided in prison. If there exists any obstacles hindering the parolee's rehabilitation, it is necessary to diminish them before release. Accordingly, the probation officer at the probation office and the volunteer probation officer who lives near the prospective destination of the inmate provide assistance to the inmate from the early stages and continue to do so in order to ease the adjustment process. The progress and results of adjustment are reported to the regional parole board which examine the case in question and to the prison officials who consider this information a vital resource for correctional education. Adjustment of environmental conditions is becoming one of the most important services at the probation office.

The third is the reference of an opinion to the concerned criminal justice authority with regard to parole examination. When they think it necessary for parole examination, the regional parole board will refer to a judge or public prosecutor. For example, in such grave cases as a crime concerning public security, a political crime or an atrocious crime, and in a case where an inmate has requested a reopening of procedure, the regional parole board will request opinions from other experts about that offender's parole. In regard to a judge, as a concerned authority with criminal procedure, he is expected to state his own opinion. Meanwhile, in regard to a public prosecutor, as a director of the execution of punishment and as a representative of public interest, he is expected to state his own opinion about an offender's parole.

On the other hand, if there is any opinion about parole previously expressed by the judge or public prosecutor who handled the case directly, the parole board has to take that opinion into consideration during parole examination.

The number of parolees released from prison in 1987 was 13,413 and the number of prisoners released on the expiration of term is 17,603. The parole rate is about 57 percent. The total number of inmates in prison was 45,958 at the end of 1987.

(3) Parole from Training School

The term of institutional treatment for juveniles who are committed to the juvenile training school by Family Courts is up to age 20, in principle. However, inmates who are nearing 20 but have not completed a full year at the training school may be detained past the age limit to fulfill the time commitment. There are also other exceptions made to the extension of term which involve the case when the juvenile displays considerable defective and criminal behavior and an extended period of stay at the training school is deemed necessary.

Most of the juveniles are released from training school on parole and juveniles who are released on the expiration of term are the exception to the rule. In 1987, the number of parolees released from training school was 5,813 and the number of juveniles released on the expiration of term amounted to 382. This is very different from adult parole.

The time when the parolee may be released is closely related with the treatment process in the training school. In terms of the duration of treatment, two types of treatment

process are utilized, namely, one is a short-term treatment lasting 6 months, the other is a long-term treatment lasting up to 2 years. The selection of treatment process is decided by the recommendation of the Family Court which commits a juvenile to the training school. Family Courts continue to have deep concern about the institutional and community-based treatment after the disposition of juveniles.

These treatment processes involve institutional correction and community-based treatment and are closely co-ordinated so as to reinforce continuity, with juveniles transferred smoothly from the institution to aftercare service agencies, facilitating the resocialization process.

Parole procedures from training school are similar to those of parole from prison. The process of parole application involves investigation by the probation officer, parole examination by the regional parole board, adjustment of environmental conditions at the prospective destination and so on.

(4) Significant Meaning of the Co-operation with the Other Concerned Criminal Authorities on Parole

In the procedure of criminal justice, parole supplies the bridge between the institutional treatment and the community-based treatment of offenders. In order to promote the implementation of parole, co-operation is necessary between regional parole boards and correctional institutions, prison, and training schools. Additionally, it is important that the concerned criminal justice authorities have a common understanding about parole and recognize its importance.

How to promote this understanding is one of the most important subjects in the present criminal justice system of Japan.

III. Probation

(1) Outline of Probation Services

Probation is the core element of the community-based treatment for offenders. It aims at the rehabilitation of offenders and juvenile delinquents through supervision and requires compliance with condition established to promote reintegration into the community.

The present laws specify the following five categories of offenders as the subjects of probation supervision:

i) Juvenile probationer (Generally referred to a "first type"): A juvenile who has been placed on probation by the family court. The legally prescribed maximum period of supervision for this category is up to 20 years of age or two years, whichever is the longer.

ii) Training school parolee (second type): A juvenile offender who has been conditionally released from the training school by the discretion of the parole board. The term of his or her supervision is usually up to age 20 with possible early discharge in case of good behavior. As for the case in which the term of custody has been to postponed in the training school, the period of his or her supervision is up to the end of the postponed term.

iii) Prison parolee (third type): An offender who has been released from prison on parole by the parole board. The period of parole supervision is for the remaining term of his sentence, except for cases of a life termer where the period of parole is for the rest of one's life unless he or she is awarded a pardon.

iv) Adult probationer (fourth type): An offender who has been placed on probation by the criminal court upon the pronouncement of suspended sentence of imprisonment or fine. The term of supervision ranges from one to five years, corresponding to that of suspension of the execution of sentence specified by the sentencing court.

v) Guidance home parolee (fifth type): A woman who has been conditionally released by the parole board from the

women's guidance home, a non punitive correctional institution for ex-prostitutes. The period of supervision is for the remainder of six months which the Anti-prostitution Law specifies as the maximum period of confinement for any inmate of the Home.

Supervision of those above-mentioned subjects is administrated by the 50 probation offices located throughout the country. Probation officers who are full-time officials employed by the Ministry of Justice carry out probation in close collaboration with volunteer probation officers. The probation officer or the volunteer probation officer keeps appropriate contact with the client and his family by means of visitations and interviews generally taking place twice a month or so. In doing so, they observe the client's behavior and give them supervision, assistance and material aids in accordance with the needs of the case involving all aspects of life. This can include housing problems, employment, medical care, and family adjustment and so on.

The probation officer and the volunteer probation officer carry out their supervision of the client, each utilizing his own skills and experience. But the number of probation officers is inadequate that the extensive use of volunteer probation officers is inevitable for the Japanese probation and parole system. It is not too much to say that the greater part of the community-based treatment for offenders is entrusted to volunteer probation officers in Japan. The number of probation officers who handle the cases ordinarily is about 620 and the average caseload of probation and parole per officer is about 140 cases. There are approximately 48,000 volunteer probation officers allocated throughout the country. (The supplementary table shows the total number of cases for five years.) The number of newly received probationers and parolees in 1978 amounted to 100,140 cases and about 70 percent of these involved juvenile probationers.

In the meantime, among those offenders who are placed on probation and discharged from an institution, there are some people who have no reliable relatives or no home to which to return because of the rejection by their families. The rehabilitation aid hostels which provide room and board and guidance for such people are run by the private sector. The first private aftercare hostel serving as a rehabilitation aid hostel for discharged offenders, was established in 1888. Since then, the number of private aftercare hostels rapidly grew, and now have a 100-year history in Japan. At the present time, there are 100 rehabilitation aid hostels for adult and juvenile offenders, and all of them are run by non-governmental bodies under the authorization of the Minister of Justice.

(2) Juvenile and Adult Probation

I have already described the parole system in Japan in the preceding paragraphs, therefore, here, I would briefly like to describe some problems about the juvenile and adult probation system which are often discussed between the probation office and the court.

1) Juvenile Probation

One problem is the eligibility for probation. It is closely related to the capacity to treat the juvenile delinquent in the probation office. One example is the probation for juvenile traffic offenders. Formerly there was general sentiment that probation was neither suitable nor effective for juvenile traffic offenders. Accordingly, the disposition of probation for juvenile traffic offenders was not granted by family court.

But after conducting research and evaluating treatment methods for juvenile traffic offenders through the group work method, it was proved that probation can be effective for juvenile traffic offenders as well as non-traffic juvenile offenders. As a result, the number of juveniles who are put on probation for traffic offences has increased and at present it accounts for about 70 percent of the total of juvenile probationers throughout

the country.

The second is about the individual data which is necessary for carrying out probation. Usually, before the final judgment, the family court investigator submits the social inquiry report about the juvenile, and the juvenile classification home formulates the juvenile record and recommendation on technical classification. These reports and records are available to the probation office as a precise and useful data during probation.

2) Adult Probation

Adult probation system in Japan was initiated in 1954, 5 years later than the initiation of other types of probation systems. Similar to juvenile probation, one problem is the eligibility for probation. Concerning the character of adult probation, many judges have thought that a suspended sentence accompanied by probation is a more severe disposition than suspended sentence not accompanied by probation. This is because an adult probationer who commits a crime imposing imprisonment during the probation period is not allowed a suspended sentence again and imprisonment is imposed. Furthermore, a technical violation of conditions may be a cause of revocation of suspension. Overall, there has been careful in implementation of a suspended sentence accompanied by probation.

On the other hand, authorities concerned with adult probation have actively carried out the system of provisional suspension of supervision for probationers on good behavior. Continual efforts are being made to develop a deeper understanding of the criminal courts and adult probation as a rehabilitation method for offenders.

A problem that needs to be addressed is the lack of necessary individual data on adult probationers. Unlike juvenile probation, we don't have the pre-sentence investigation system of the criminal court. Therefore, we do not have the social inquiry report about the juvenile made by the family court probation officer. It should be resolved fundamentally through legislation to adapt such an investigation system. But at present we expect that the necessary individual data be disclosed through the process of criminal procedure, and provided for probation offices.

IV. The Final Comment

Offenders rehabilitation services occupy the final position in the current criminal justice system. And it is strongly influenced by the function of other parts of whole the criminal justice system, the police, the prosecution, the judgment and corrections. In order to promote offenders' rehabilitation services more efficiently, mutual understanding and co-operation with the concerned authorities is necessary. Furthermore, more efforts should be made to gain the sufficient understanding about offenders' rehabilitation services among not only voluntary individuals like volunteer probation officers, but also ordinary residents in the community and the nation at the same time.

In a case where a parolee commits a grave crime during the period of parole supervision, the concerned authority is often condemned through the mass media.

Offenders' rehabilitation services primarily deal with the subjects who have the possibility of recidivism, namely, those who represent the lowest probability of recidivism. How to gain the nation's consensus considering such a viewpoint about the community-based treatment for offenders is one of the most important matters with which we are faced.

Number of Probationers and Parolees for Five Years

	1983		1984		1985		1986		1987	
	Placed under supervision in 1983	Case load as of Dec. 31, 1983	Placed under supervision in 1983	Case load as of Dec. 31, 1983	Placed under supervision in 1983	Case load as of Dec. 31, 1983	Placed under supervision in 1983	Case load as of Dec. 31, 1983	Placed under supervision in 1983	Case load as of Dec. 31, 1983
(The first type) Juvenile probationers	70,385	55,824	70,758	54,938	71,411	55,941	72,268	55,840	70,747	51,695
(The second type) Training school parolees	4,945	5,879	5,569	6,665	5,585	7,202	5,580	7,473	5,313	7,119
(The third type) Prison parolees	16,890	6,898	18,718	8,000	17,795	8,393	18,130	8,693	17,603	8,931
(The fourth type) Adult probationers	7,798	22,756	7,692	22,215	7,180	21,430	6,456	20,279	6,477	19,372
(The fifth type) Guidance home parolees	1	–	–	–	–	–	–	–	–	–
Total	100,019	91,357	102,737	91,818	101,971	92,966	102,434	92,285	100,140	87,117

SECTION 3: REPORT OF THE SEMINAR

Summary Reports of the Rapporteurs

Session 1: Fair Administration of Police Responsibility and Provision of Services to the Public: The Basis of Public Co-operation

Chairperson: *Mr. Jithakirthie Wijeratne Jayasuriya (Sri Lanka)*
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Introduction

A discussion was held to analyse in depth the problems the police encounter in their day to day duties in the fair administration of police responsibilities and provision of services to the public. The objective of the discussion was to explore the most suitable and effective measures that can be taken to overcome such problems. The participants made valuable contributions which were noted to be embodied under the relevant subtopics of this report. References have also been made to relevant portions of individual presentations of participants.

I. Police Roles and Functions

The multifarious duties performed by the police in the Asian and Pacific countries were discussed. The basic functions enumerated below were common to the police services in the region.

(a) Enforcement of the laws
(b) Maintenance of public order and tranquility
(c) Prevention, detection and investigation of crime
(d) Apprehending of offenders
(e) Protection of persons and property
(f) Control and administration of traffic

In addition to these functions police deal with extensive responsibilities such as social service activities which would include emergency medical care, assisting the helpless, relief and mercy operations, disaster control, typically military activities like riot control, gathering of intelligence, conducting counterespionage, border patrol operations, containment or suppression of local insurgency, eliminating physical hazards, counselling of juveniles and numerous other services. Awed by the multi-faceted role of the police, Paul Reige, reiterated an expression often quoted "NACH GOTT KOMMT GLEICH DIE POLIZIE" (after God comes the police). (Reige, Paul, Kleine Polizei GESCHICHTE INSTITUT HILTRUP, 1959 P. 27).

Through the years, many police systems have deviated from the ideal of all the roles, this role which ensures success in police work is the very role often most neglected. This is the police involvement in social service activities, which more than any other role attract public participation. This is significant because success in police work is predicated on public involvement. This is due to the nature of the police work.

Pointed development intensifies the demands on the time of the police, and many police officers, in their hierarchy of values, perceive that they have to give priority to what they consider their "first duty," that is, their role in the maintenance of law and order, and in the process often set aside their other role, namely, rendering social service

activities. By neglecting social service activities, which is the main attraction to get public co-operation in crime control, the police often fail to achieve the original end, which is "to protect life and property, preserve public tranquility, and to prevent and detect crime." Without public co-operation, the police cannot succeed in overall crime control. The Japanese Koban System has been successful due to the public support they get, largely become the best offices perform social service activities, such as visiting the homes in their best, giving advice to residents on crime prevention methods or counselling them on other daily problems, visiting the old and venerable residents, etc. It is therefore evident why the means should never be confused for the end.

Dr. Kirschner, an expert from Germany, pointed out that in his country certain outside agencies had relieved the local police of some police functions. He cited the case of supervision of traffic and collecting one of the fines being taken over by the municipal agencies.

A participant from the Philippines pointed out that, police are the front liners in law enforcement and should help the community, and there should be increased police visibility. This is achieved by regular foot and mobile patrols in pre-determined patrol beats, particularly in crime-prone areas.

II. Recruitment

This was discussed at length by the participant, and the representative from Barbados was of the opinion that the correct type of person should be taken into the police services with emphasis on their antecedents and background. It must be ensured that corrupt and dishonest persons be eliminated. A participant from Sri Lanka pointed out that selection of person to the police service should not be rushed and should be done in times of peace. He further pointed out that in his country, persons had been taken to the police service in a hasty manner due to the prevailing insurgency, resulting in the wrong type of person being selected. Subsequently it transpired that even subversives had been successful in infiltrating the Sri Lanka police service, causing irreparable damage to the security services.

I need not overemphasize the necessity of paying a greater attention to recruitment as if we fail at this point, the police service will suffer with the incorrect type of person in the organization. The correct physical requirements, education qualifications, record free of criminal connections, correct temperament and ability must be some of the chief criteria for selection. Political neutrality should be strictly observed.

A participant from Japan expressed the view that recruitment is an important function and that excellent students straight from school should be enlisted to the police services in Japan. Senior police officers go round to schools in order to attract students to join the police.

III. Impartiality and Discretion In Law Enforcement

The Chairman of the National Police Commission in the Philippines, Mr. Cicero C. Campos, in his presentation made at this conference states thus, "Racial and socioeconomic biases are elements of universal experience." In certain countries, the police look at blacks and slum dwellers as potential criminals. In countries where a Caste system exists, a social gap often prevails between the police and the lower Caste. In developing countries where student activism is very pronounced, lack of dialogue and suspicions that go with it create a milieu of hostility.

Overaction by going beyond the parameters of law and policy, often based on the socioeconomic status of the objects of abuse, militate against public expectation. And where police performance does not dovetail into public expectation, it is natural for resentment and alienation to set in.

Police often have a bias in favour of the well-to-do, officials, etc., and against the poor and underprivileged. Police would have to realize that professional success and acceptance by the community are based on credibility, in turn, largely anchored on impartiality. Much of the public esteem for the police will depend on whether the former can depend on the latter for protection from abuse of power by even those in positions of authority in government.

Mental training of the police, especially in making decisions, would have to be vastly improved because a crisis situation often confronts him and he would have to resort to snap decisions in seconds, for which the defence and prosecution lawyers would need months, or even years, to argue on.

It often would be counterproductive to apply the letter of the law against one who may have committed a minor infraction, especially if it be a victimless offence. The judicious use of discretion in instances such as this would project the humane side of the police, a matter that cannot but induce appreciation on the part of society. Discretion should, however, be distinguished from discrimination. Discretion seeks to be just, discrimination to be unjust.

According to Davis, police officers make far more discretionary determinations in individual cases than any other class of administration. When dealing with precise rules, where principles and other guides keep discretion limited or controlled, decision makers seldom err. The greatest and the most frequent injustice could occur where rules and principles provide little or no guidance, where political or other favoritism may influence decisions, and where the imperfection of human nature is often reflected in choices made. An incorrect decision by a police officer can precipitate more or culminate in subsequent criminal activities by an offender. Unjustified arrest can seriously or perhaps permanently affect the future of any individual's life.

Thus it is seen that the use of discretion is the heart of police work and has to be based on sound and balanced judgment.

The nature of police work is such that most decisions by police officers have to be made within the span of a few moments and perhaps under emotional apprehension, in a hostile environment and within the physical context of the most aggravated social problems.

Yet the police officer is just as accountable for these decisions as the judge or corrections official is for decisions deliberated for months. The effective, efficient and fair administration of criminal justice constitutes one of the meaningful goals of any society. But problems diverse in nature and diverse in dimension continue to beset the system and its integral components.

IV. Misconduct

(a) Corruption

It was the general consensus of the participants that corruption was prevalent in most countries in the world. Corruption is defined as "acts involving the misuse of authority by a police officer in a manner designed to produce personal gain for himself or for others." Corruption leads to lack of impartiality and unprofessional methods. It is quite common, in both developed and developing countries, to see or hear of policemen accepting bribes in exchange for non-enforcement of laws, particularly to those relating to gambling, prostitution and liquor offences. Corruption begets isolation, and isolation breeds corruption. And so the process goes *ad infinitum,* indeed, a vicious cycle. Most of the participants stated that there were internal agencies within the police service of their respective countries to deal with corrupt police officers. Dismissal was the penalty they had to pay if charges of corruption were proven.

(b) Police Brutality

There is not a day which passes without news of police brutality and torture, and in

spite of the administration taking stringent measures, police officers continue with these activities.

World organizations such as the "Amnesty International" and human rights organizations spotlight glaring cases of torture and police brutality in their news bulletins. This is a matter that this entire forum totally rejects and condemn such unconstitutional behavior of the police.

Case histories subscribe the thesis that in some countries the initial purpose for which the police was formed was for suppressing the masses for their colonial masters. Police recruits were taken from the destitute and from those that belonged to the lower socioeconomic level, with the sole purpose of being used as an instrument of oppression throughout colonial history. The third world has had, to a large extent, military type police force, established to ensure political control over the colony; law and order were equated with defence of the colony against insurgents and rival colonizing powers, resulting in militarized police forces. Continuation of these practices appear to still prevail, which accounts for torture and police brutality.

V. Police Public Relations

Paul Riege, in his history of the police, reiterated an expression often quoted, "After God comes the police." Reige made this statement after he became aware of the extent of police work. This ideal was embodied by Charles Roman and Richard Myne in the ninth principle, framed in 1829, which reads.

"To maintain at all times such a relationship with the public that gives reality to the historic truth that the police are the public and the public are the police"—the police being only members of the public who are paid to give full time attention to those duties which are incumbent on every citizen in the interest of the welfare and existence of the community.

Through the years, many police systems have deviated from the ideal. This is a basic reason why police authorities have been frustrated with regard to police work. There is a dearth of police effectiveness and public acceptability.

The improvement of relationship with the public is the key factor in combatting crime. Police presence in an area reduces the opportunity of a would-be offender to commit a crime, for it increases the risk of being detected and arrested. He would, therefore, be thwarted from a possible criminal act. Police visibility is achieved by regular foot and mobile patrols and presence of police outposts or substations, particularly in crime-prone areas. In countries like Japan and Singapore, police visibility has been enhanced through police boxes and neighborhood policing.

The undertaking of "police community relations" activities, public information rights and dialogues enhances police authority in the community.

VI. Inadequate Police Resources

Most of the countries in the third world suffer from inadequate police personnel and sophisticated equipment to meet the new challenges and demands made on the police. Understrength is one of the biggest drawbacks the police face in their day to day duties. The lack of vehicles, radio equipments to facilitate quick communication and modern firearms are some of the other factors which handicap the police. Training in modern techniques and technology is a badly felt need.

Conclusion

The time may have come in some countries for a change in the conception of the role of police, from an instrument of the power elite, otherwise referred to as the "establishment," to service for all citizens. This is due to the growing perception that police effectiveness, to a large extent, is determined

by an entity outside the police, namely, the public. This is in line with the fundamental truism that a police force which operates outside the context of community co-operation operates in a vacuum. And from a vacuum, nothing much can be expected, for as the philosophical maxim goes, "Nothing comes from nothing."

In the pursuit of this commitment, the police must strike a delicate balance between the rights of the citizenry to protection of "life, liberty and property," on the one hand, and on the other, the rights of the accused to "due process and his proverbial day in court." The British Commission on the Police described this in 1962 when it issued the statement: "The police should be powerful but not aggressive; they should be efficient but not officious."

Success in policing is predicated on police effectiveness. Police effectiveness in turn is premised on public acceptance. Finally, public acceptance is founded on the ideal, as promulgated by the pioneers of the modern police system, that is, a balance between Maintenance of Law and Order on the one hand, and on the other, the conduct of social service activities. Indeed, the new, emerging policeman is, in a way, "All things to all men."

Session 2: The Exercise and Control of Prosecutorial Discretion

Chairperson: Mr. Chaikasem Nitisiri (Thailand)
Rapporteur: Mr. A. Ranjit C. Perera (Sri Lanka)
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Introduction

This report is based on the material contributed by several of the participants at the 81st Seminar on Crime Prevention and Treatment of Offenders by way of their individual presentations and discussions on the topic of "The exercise and control of prosecutorial discretion." The objective of the discussion session was to explore the possibilities of aiming at a consensus to solve various problems and to explore the possibilities of adopting those solutions to the various systems as found in the respective States of the participants. Amidst these differences in the various systems of different countries, recommendations were made by the participants to remedy the problems envisaged in the exercise and control of prosecutorial discretion. Various procedural alternatives and the need for the changes in the substantive law in regard to these matters were suggested with the approval of the participants.

Rules Pertaining To Prosecutorial Discretion

Significance was attached to the question of the investigatory powers of the prosecutor. Some participants are of the opinion that the prosecutor should be in a position either to investigate by himself from the commencement of the investigation i.e., on receipt of the first information of a crime, and or to direct police investigation at all stages. Countries where the police is the only arm of investigation e.g., Thailand, Barbados, Nepal, Bangladesh, Nigeria, Kenya, Sudan, Western Samoa, etc., it was suggested with approval that the prosecutor should be able to interfere into unjust investigation at any stage, once it is brought to the notice of the authorities concerned that the police investigation is either unjust, improper or biased.

The participant from Thailand pointed out that the public prosecutor in his country cannot either initiate an investigation or direct the police during the investigation, thus resulting in an ineffective prosecution. His position was that the prosecutor appears on the scene only if and when the police submit the investigatory file to the public prosecutors office. Even if the public prosecutor

were to request the police to initiate an investigation on a particular offender, the police were not bound by such direction and very often this request is not carried out. Further he stated that this could lead to abuse of power by the police either by way of non-investigation of crimes and or improper investigation.

It was the view of the Bangladesh participant that this problem of abuse of power of investigation by the police is very acute in his country since the police has the sole authority both in investigation and prosecution of cases in the magistrate courts; this results in a very low rate of convictions. He also expressed the view that this problem was receiving attention in his country and was hopeful that the law in regard to this measure would be changed.

The Sri Lanka participant pointed out that the supervisory capacity of the Attorney-General (Public Prosecutor) enables him either to initiate investigations through the police or to discontinue unwarranted investigations. He also could interfere into all police investigation at any stage and direct the police on the lines he thinks is suitable in the situation. However in practice, a Sri Lanka prosecutor himself does not investigate or interrogate the suspects or witnesses, as it is done in Japan for example.

It was highlighted by the Japanese participants that even during the pre-trial stage of investigation the prosecutor not only has the authority to judge whether there is sufficient suspicion to bring a matter up for investigation but also has the sole discretion to judge whether or not the offender should be prosecuted, even if such suspicion exists.

Dr. Kirschner, a visiting expert of the Seminar brought in for comparison, the system prevalent in Germany where the prosecutor, though statutorily empowered to investigate, reserves the exercise of this right to be used for complicated and important cases.

There was an acknowledgement by the participants that the control of the public prosecutions and/or the supervision of the investigation either by personal participation with or without the police was most salutary in the present day context, since it would enable sifting of the important cases from the others which were not suitable for prosecution. The resulting position would be that a few worthwhile cases would be prosecuted, a high conviction rate reached, and thereby result in a quick disposal of justice. For example, the very high rate of conviction in Japan (99.9%) was inter alia due to the prosecutor's entry in to the investigation at the very outbreak of the crime.

The Principle Of Discretionary Prosecution

The principle of discretionary prosecution is interwoven with the legality (mandatory) and the expediency (opportunity) principle of prosecution. Some countries adhere to the legality principle and provide for mandatory prosecutions, where prosecutions are launched once there is a prima facie case being made on the evidence available at the end of the investigations. The supporters of this system argue that it is the tool for preventing potential abuse by officials of their power and therefore it is most effective safeguard for ensuring that the citizens are dealt with equally before the law. As against this the partisans of the expediency principle urge that the prosecutor's discretionary power express the demand of modern penal philosophy, in particular the notion of reformation and rehabilitation, as opposed to the outmoded absolute theory of punishment. They also state that the expediency principle makes a reasonable allocation of resources possible instead of forcing prosecutors and courts to deal with all kinds of violations of law including the very trivial ones, thus resulting in the overcrowding of the functions of courts and prisons.

It was pointed out by the Japanese participants that Art. 248 C.C.P. of Japan provides for the suspension of prosecution. The

non-institution of a prosecution may be made (even when there is sufficient evidence) if the prosecutor after considering the character, age and situation of the offender, the gravity of the offence, the circumstance under which the offence was committed, and the conditions subsequent to the commission of offence, is of the opinion that a prosecution is unnecessary. This decision of non-prosecution is non-prejudicial to any civil claim for damages by the victim or an interested party. The payment of compensation by the offender would in fact inure to the benefit of the offender with regard to the decision of non-prosecution.

The consensus among the participants was that the adoption of the Japanese system of the exercise of the discretionary principle of prosecution would be a salutory solution to the present day social needs. It was acknowledged that this would not only be a remedy for overcrowding in correctional institutions but also would avoid unnecessary social stigmatization of the suspects and would help to achieve a very high rate of convictions and a quick disposal of justice, thus avoiding legal delays.

The participant from Sri Lanka pointed out that presently even in the countries which apply the legality principle as a rule have already begun to adopt the modes of expediency principle as exceptions, providing a wide discretion to the prosecutor to suspend, to discontinue or to dismiss investigations and prosecutions. Even as far back as 1833 the Penal Code of Sri Lanka decriminalized the offence of causing slight harm (based on the legal principle of "De minimis non curat lex") section 88 of the Penal Code of Sri Lanka. On the other hand, the Code of Criminal Procedure Act of Sri Lanka provides for the Attorney-General to enter "Nolle prosequi" (a decision not to prosecute), to withdraw a prosecution with the permission of court, to conditionally pardon certain offenders in the interest of justice, and to discharge suspects who are in judicial custody of the courts of first instances. Taken all these modes of non-prosecutorial methods presently in Sri Lanka, the exceptions to the legality principle overpower the rule itself.

The variation in the acceptance of all or a few modes of non-prosecutorial methods depends on the criminal policy considerations of each country but however, it is crystal clear that almost all civilized societies have begun to realize the valuable shift towards the adoption of the principle of non-prosecution.

In jurisdictions where the discretion is unlimited, the prosecutor acts as the central figure in shaping the criminal policy and as an interpreter of the community's conscience. It is his responsibility to weigh the interests and arguments speaking for and against the prosecution. This decision making competence is split up in other jurisdictions among different actors such as the legislator, the victim, high political and quasi-judicial officers, etc. Therefore the abuse of discretionary power of the prosecutor should be safeguarded and its immediate effect would fall on to the victim and/or the offender as the case may be, thus resulting in a miscarriage of justice.

The Position of the Victim in the Case Of Non-prosecution

The argument often brought against non-prosecution is that the rights of the victim are controlled, not only depriving him of the moral and psychological revenge provided for by public trial and conviction but also closing up the avenues of any possible compensation. The extent and the contents of the legal provisions safeguarding the victim's interest vary according to the penal philosophy prevailing in various jurisdictions. The countries which emphasize that the prosecution is a public matter involving a limb of the state does not consider the revengeful rights of the victim; while in countries where victim's role in enforcing the penal action is acknowledged, various methods have been developed for meeting the victim's interest

in demanding prosecution. It was argued for the countries following the legality principle strictly, that this question would not arise; and even if it does in a marginal case, the victim is in a position to remedy it by resorting to the supervisory, executive or judicial action.

The partisans of the expediency principle urge that there are several safeguards to the exercise of the non-prosecutorial discretion, which consider the rights of the victim as well. However, the consensus of opinion was that a non-prosecution is not a bar to an individual's right for compensation in a civil court. In addition, the individual also has a protection against any breach of a human right even to claim compensation from the government of his country.

The Position of the Offender In the Case of Non-prosecution

Very superficially the non-prosecution may serve the interest of the offender but instances of it leading to the social stigmatization should be avoided. Again this type of problem may not surface in countries following the legality principle as it is clear that there will be no prosecution, when there is no prima facie evidence against him. But in countries where the prosecutor exercises an autonomous discretion, it may become necessary for the offender to submit himself to a prosecution to clear himself of the public stigmatization. Here too it is important that certain safeguards are adhered to, in the decision of a non-prosecution, keeping in mind the impact of the position of the offender in a decision to investigate and not to prosecute.

Safeguards against the Abuse Of Prosecutorial Discretion

Abuse of prosecutorial discretion arises either when a decision is made to prosecute without sufficient evidence or when an improper decision of non-prosecution is made where sufficient evidence is available.

Japanese participants highlighted two main safeguards against the abuse of above mentioned discretionary power. The first safeguard having an examination by the Inquest of Prosecution which was established as far back as 1948 by the law for the Inquest of Prosecution. The purpose of this Inquest of Prosecution is to provide the impartiality by reflecting people's will concerning the execution of the authority of the public prosecutor. This Inquest consists of 11 members from the general public selected by drawing lots. The offender or the victim can apply to the Inquest of Prosecution against a non-prosecution and seek a declaration that such decision of the public prosecutor is unjust. Even if the Inquest of Prosecution were to decide that the public prosecutor's decision is unjust, the public prosecutor is not bound to accept it. However when such decisions are notified to the chief public prosecutor of the District Public Prosecutor's Office, he may order a more experienced public prosecutor to conduct re-investigation of the case, depending on the contents of such notification. Thus the Inquest of Prosecution is limited only to an advisory effect; although it would have a considerable impact on the public prosecutor, generally resulting in a full re-investigation of the case and careful re-examination of the initial decision.

The other safeguard is the analogical institution of the prosecution through judicial action. This procedure is specially designed against non-prosecution of specific crimes of abuse of authority by a civil servant or of violence and cruelty by law-enforcement officers under Articles 193 to 196 of the Penal Code and under Article 45 of the Subversive Activities Prevention Law of Japan. If the public prosecutor declines to prosecute the suspect of one of these crimes, any person who has lodged a complaint to a public prosecutor or to a judicial police officer may apply to the court to have the case committed for trial (Article 262 C.C.P. in Japan). If the application is granted, then one of the

practicing lawyers is appointed by the court and he is made to exercise the functions of a public prosecutor (Article 268 C.C.P. in Japan).

Apart from these two safeguards against abuse of prosecution, an interested person may appeal to the higher prosecutor's office praying for an alteration of the decision of the prosecutor; such cases are considered on their merit and suitable action is taken.

It was pointed out that even in the countries which adhere to the legality principle where the doctrine of non-prosecution is accepted exceptionally, there are certain safeguards to counter the autonomous action of the public prosecutor or the police as the case may be. These safeguards may be categorised as executive and judicial solutions. Further the aggrieved parties can make representations to the supervisory executives i.e., the chief prosecutor or the Attorney-General/D.P.P., as the case may be, or may even file prosecutions privately. They could also seek judicial remedies by way of writ procedure or on the breaches of fundamental rights.

Function of the Public Prosecutor And Crime Rate

Another point of interest under discussion was the extremely high rate of conviction in Japan. The main reasons for such high conviction rate, as pointed out by the Japanese, participants were as follows:

1. Qualifications of the judge and the public prosecutor are the same.
2. The standard of proof needed for the prosecution and conviction is the same.
3. The public prosecutor will not prosecute the case when evidence is insufficient to obtain a conviction.
4. The public prosecutor investigates the case with the police, which enables him to seize the essence of the case and to predict the defence to be raised at the trial.
5. The public prosecutor has occasion to consult his supervisors before making a decision of prosecution.
6. Most offenders confess their guilt, but the confession must be supported by the corroborative evidence.
7. The written statement of a witness is made admissible in certain circumstances as an exception to the hearsay rule.

Statistics reveal that the conviction rate for the past so many years is above 99 percent. The most profound issue is that only those cases which deserve conviction are prosecuted and the accused very often pleads guilty at the trial and only a very few cases are contested. This relieves the burden of work in courts resulting in very quick disposal of cases. Most of the criminal cases take less than six months to conclude from the time of the commission of the offence. This has to be looked at in contrast to the heavy backlog of cases in other countries which has resulted both in the overcrowding of correctional institutions and legal delays.

Conclusion

Crime is an offence committed against the state and one of the main functions of the government of any state is to protect the life and property of its people. Viewed in this perspective the state is solely responsible for exercise of the prosecutorial discretion through its agent, the public prosecutor. The rights of an individual against another are purely a civil matter. Without prejudice to the rights of the individual if the state through its organs of criminal justice protects its people from violence, one can argue that the discretion given to the prosecutor being adopted in any democratic welfare state would be to the betterment of the administration of criminal justice. Finally it should be mentioned that there was a majority will that the enlargement of the scope of the non-prosecution even in countries which adhere to mandatory prosecution would lead themselves to the advancement of their criminal

justice system.

Session 3: The Independence of the Judiciary and Control of Judicial Discretion

Chairperson: Mr. Niwet Comephong (Thailand)
Rapporteur: Mr. Benigno S. Dacanay (The Philippines)
Advisor: Mr. Norio Nishimura

I. Introduction

This report seeks to capsulize the majority if not the overwhelming views and convictions of the participants in the 81st International Seminar on Crime Prevention and Treatment of Offenders who opted to take as the subject matter of their country reports the independence of the judiciary and control of discretion.

The participants from Indonesia, Japan and Thailand focused, in their individual reports, on the main theme, while others, such as those from Argentine, Bangladesh and the Philippines, barely touched in passing their respective judicial machinery, structure, jurisdictions, and operational and administrative functions.

The preponderant sentiments strongly militate towards having the judicial branch of government truly independent with, of course, some reasonable limitations and restrictions so that human rights, either civil or political, and the majesty of the law will be upheld.

Although the judiciary of many countries are in form and substance independent, there still seems to be some administrative and structural lapses and outside factors like an unmuzzled media visibly or invisibly putting pressure on the people manning the wheels of justice in some countries. An independent judiciary, which is one of the primordial objective of freedom-loving nations, must therefore be strong from within or without.

Based on the contents of the country reports and the insights, views, comments and opinions generated during the plenary sessions, we will endeavour to unravel our understanding and to suggest the best possible panacea in achieving a truly independent judiciary.

II. Independence of the Judiciary Scope and Rationale

The independence of the judiciary plays a fundamental and indispensable role in the judicial system. There are two facts to look at, i.e., the independence of the judicial branch and the independence of the judges. As for the judicial branch, it is independence from other State branches, especially the administrative branch, we are thinking about. And as for the judges, each judge is bound only by law and exercises his authority independently. All jurists and lawyers, as well as the general public in every country, recognize the independence of the judiciary.

Guarantee and Recognition

The independence of the judiciary in most of the participating countries is guaranteed by their respective constitutions. As gleaned from the country reports of the participants from Indonesia, Japan, Thailand, the Philippines and others, the judicial branch of government has the sole prerogative to administer justice and judges are protected and secured in their office, unless guilty of breaches of duty as spelled out in their constitutions.

The Japanese Constitution provides that all judges shall be independent in the exercise of their conscience and shall be bound only by the constitution and the laws. The Supreme Court handles the administrative affairs of the courts; it is vested with rule-making powers which guarantee the autonomy of the courts and specify its independence. In addition, judicial independence is reinforced by limiting the removal of judges and guaranteeing adequate compensation, which shall not be decreased during their

term of office. The Court Organization Law of Japan provides that judges shall not be transferred, etc. against their will. Only the Court of Impeachment within the Diet can take disciplinary action. In the Court of Impeachment, a judge may be dismissed if he or she neglects his/her duties to a remarkable degree, or if there has been misconduct, whether or not it relates to official duties. The Court of Impeachment is a legislative body and is composed of Representatives and Councillors drawn from the Diet.

For the full performance of judicial administration, the General Secretariat of the Supreme Court of Japan was established under an order of the Judicial Assembly of the Supreme Court as a department separate from the Ministry of Justice to deal with matters concerning budget, personnel and other miscellaneous services.

The Constitution in Thailand provides that judges are independent in the trial and adjudication of cases in accordance with the laws of the country.

In the Philippines, judicial independence is likewise substantially guaranteed by the Constitution by providing for security of tenure for justices and judges and nondiminution of salary during their term of office, and removal from office can only be effected against justices of the Supreme Court through impeachment proceedings for culpable violation of the Constitution, treason, bribery and other serious crimes.

The legal concept of immunity from suit for justices and judges may enhance somehow the independence of the judiciary. It is, in essence, exempting from prosecution acts committed by a judge in the performance of his judicial functions in good faith. However, all other infractions committed by a judge in his private capacity are not covered by this immunity. The phrase "acts done in the performance of judicial function" is an essential element and should be carefully construed to obviate confusion. While many countries recognize the concept, the practice varies from country to country. Some countries do not recognize this immunity concept at all and some view it as included in the independence notion. In some countries, like Kenya, the criminal law provides that no judge or magistrate shall be held criminally responsible for any act done during the exercise of his/her judicial capacity unless he/she acts outside his/her jurisdiction.

Practices and Activities Affecting Judicial Independence

The saying goes that "nothing is permanent but change." As time passes by, things change and new practices and activities emerge which tend to affect the independence of the judiciary. What are these and how do they affect judicial independence?

In Thailand, courts are placed under the Ministry of Justice, which is the executive branch of the State. This has caused uneasiness, if not anxiety, to a number of jurists and lawyers. Controversy broke out two decades ago when the Judicial Service Act was revised and judicial independence was thought to be adversely affected by the revision. Demonstrations were launched against the changes and continued until the law was revised back to its earlier provisions. A couple of years later, when a new Constitution was being drafted, a dialogue about judicial independence was in full swing: comments, criticisms, quetionnaires, discussions, as well as research on the subject, were widespread. Most interesting of all were the discussions conducted by the Thai Bar Association on the topic "Should the judiciary be separated out to form an independent institution?" Those who advocate the separation of the courts with their own autonomy based their arguments on the separation of the three sovereign powers in accordance with the democratic doctrine. They are also not so happy with the fact that the Minister of Justice is empowered to set up a board of discipline for inquiry against a judge, and that the promotion and transfer of judges has to be proposed by the Minister of Justice to the Judicial Service Commission. They claim

that this makes it possible for the Minister of Justice to do favours for or take adverse action against judges, thus making judges feel insecured and not independent in administering litigation as provided by the Constitution. Jurists and lawyers are divided on this issue. Some are satisfied with the present system saying that it sufficiently guarantees judicial independence, because the Minister of Justice can only propose the appointment, promotion or transfer of judges. The Judicial Service Commission is supreme, because it may either disapprove the Minister's proposal or *propose* and make decisions of its own.

The situation in Japan is reported as follows:

"The mass media in Japan (chiefly TV and newspapers) have progressed remarkably and are reporting judicial affairs widely, attracting more public attention to the judiciary. This is no problem in itself. The judiciary gives them the information necessary for proper public reports. But it is not rare that reports by the mass media are sometimes overheated. And generally speaking, it is not necessarily easy to make proper and fair reports about actual cases. Bearing this in mind and supposing that the mass media may give overheated and biased reports about individual cases to make the people misunderstand, though we have no such problems at present, these situations impose *visible* pressure on judges (and thus may induce violence against individual judges or attacks on their privacy) or *invisible* pressure on them. And we cannot say that there is no possibility of such situations having an influence on the independence of the judiciary. To avoid such situations, the mass media and the people should have proper communication with the judiciary, and the judges, on the other hand, should give fully-reasoned judgements, paying attention to the trends of the era and thereby gaining the trust of the people."

III. Control of the Judicial Discretion Scope and Rationale

Judicial discretion or prerogative is a necessary adjunct to the exercise of the judicial function by any judge or magistrate in order to ensure fair and speedy justice. On the other hand, excess or abuse of judicial discretion may result in a travesty of justice. This is understandable because man by nature has numerous limitations and frailties.

In the performance of the judicial function, judges have to exercise a lot of discretion, the main examples being in administering trials, in fact-finding, and in imposing sentences or penalties. Judicial discretion is at times improperly exercised due to diversities in locality and the varied background and personalities of judges not to mention their individual upbringing and academic preparation.

To minimize judicial indiscretion, judicial authorities are continuously searching for and have adopted good and practical measures of control. This control should not be too rigid or hard-and-fast in order not to jeopardize the independence of the judge. The problem of what kind of measures should be adopted is a matter of great concern to the criminal justice system of any given country.

Judicial Discretion

As already mentioned, the main examples of judicial discretion are in administering trials, in fact-finding, and in imposing sentences or penalties.

Judges exercise their discretion in various ways in administering trials. They fix the date for public trial, determine the scope, order and method of examination of evidence, and act on the parties' petition for postponement or adjournment of the trial.

In fact-finding, the probative value of the evidence is left entirely to the free discretion of judges. In Japan, this is called "the principle of free evaluation of evidence." There are no written standards for the exercise of

this discretion laid down by law. The only limitation on this discretion is the requirement of corroborative evidence to support any confession made by an accused person.

In sentencing, judges exercise their discretion in choosing the kind of sanction to be imposed, ranging from non-custodial measures to fines and imprisonment. In doing this, judges have a wide latitude of discretion. There are no standards or measures of control laid down by law in many countries. In practice, however, judges would consider the character, age and situation of the offender in the community, the gravity of the offence, the circumstances surrounding and conditions subsequent to the commission of the crime.

Countermeasures against Inappropriate Discretion and Sentencing Disparities

The exercise of discretion by a judge may at times be viewed by other judges, the parties involved or the general public, as inappropriate. This includes disparities in the imposition of penalties. Countermeasures against such inappropriateness and disparities have been a continuing concern of every judicial system. Ten countermeasures so far have been identified in this Seminar. Seven of these have been adopted by the Japanese judicial system and a number of them are shared by other participating countries. Measure 8 in this report is being employed by some countries, but its acceptability is questionable. Measures 9 and 10 are German practices which are shared by some other countries to some extent.

The countermeasures are as follows:

1. The Accumulation of Knowledge and Experience Acquired through Daily Work

Most judges in Japan first undergo a course of judicial apprenticeship for a period of time before being appointed assistant judges, and a further period of the time is required before they are appointed as full-fledged judges. After that they are subject to re-appointment every ten years, to hold judgeship through to retirement age. Such a system enables judges to continue to work for a long time, so that various ways of exercising their discretion appropriately can be passed on from the senior judges to the junior ones.

2. Attendance at Training Programmes and Meetings

The object is to have judges take part in training programmes or meetings of a diverse nature in various institutes or agencies as frequently as possible while in office, so that they may gain the knowledge and experience necessary to exercise their discretion appropriately through the contents of the training and the reciprocal exchanges of opinion.

In the Philippines, the Supreme Court seeks through the Institute of Judicial Administration to update the skills of judges and court personnel by giving them in-service training at the National Academy. It is a truism that a well-informed and enlightened judge will perform and discharge his duties fairly and judiciously. To check possible misuse of judicial discretion and/or prerogative, the Supreme Court(in Circular No. 13, dated July 1, 1987) issued guidelines for all trial courts to observe—for example, punctuality and strict observance of office hours, maximum use of the pre-trial procedure, active management of trials and minimum postponements, an annual conference on pending cases, an inventory of cases, preparation of concise and brief decisions, and visits by Supreme Court personnel to assist trial judges so that an appropriate audit can be effected.

3. The Retirement Age

Older judges sometimes suffer a reduction in the general abilities necessary to carry out their duties properly, especially the ability to deal with new situations. Judicial discretion might be inappropriately exercised for this reason. Part of the raison d'etre of a retirement age is to avoid the superannua-

tion of judges and to exclude such an outcome.

4. The Nationwide Transfer of Judges

The Japanese practice of transferring judges throughout the country is a way of avoiding disparities in the exercise of judicial discretion between localities.

5. Opinions of Parties Concerned

This practice requires judges to hear the opinions of the prosecutor and the accused or his counsel in some situations. For example, the parties will state their opinions concerning the assessment of the penalty against the accused in the final stage of the trial. The opinion stated by the prosecutor on the basis of material acquired through a nation organ (namely, the public prosecutor's office) can be a good reference source for judges who cannot easily get good information to help them assess the penalty, apart from that which they can get from examining the evidence. After hearing the opinions of the parties concerned, the judge makes the assessment of the penalty.

6. The "Three Instances" System

The judicial administrations of most countries adopt the "three instances" system. For example, in Japan, the prosecutor, the accused or his counsel may rectify inappropriate discretion at every stage of the trial. In addition, the judgment of the superior courts can provide good guidelines on how to exercise judicial discretion and thereby future inappropriate discretion may be avoided.

7. Remedy for Change of Trial Date (Japanese Special Provisions)

In Japan, Article 277 of the Code of Criminal Procedure regulates the rectification of inappropriate judicial discretion. It reads; "Where a court has changed the fixed date for public trial in abuse of its authority, persons concerned in the case may request remedy in the judicial administrative control.... "

No other participating countries have a similar provision.

8. Sentencing Guidelines or Standards

In a considerable number of countries, sentencing guidelines or standards have been made available for judges to follow when imposing penalties in order to avoid unwarranted sentencing disparities. However, in introducing and implementing sentencing guidelines, much care should be taken so that it does not bring about a return to an inflexible system in which sentences are fixed entirely regardless of the particular circumstances of the offender before the court.

9. Public Trial as a Control of the Judiciary

In the Federal Republic of Germany, the law stipulates that the trial shall be held in public, though there are some exceptions to this rule, for example, cases involving juvenile defendants. Where these exceptions do not apply, trial in open court makes it possible for the general public, particularly the media, to follow and understand in any given case the workings of the judicial process, which can be an effective control of the judiciary.

While public trial is required by most of the participating countries, it has been argued that it may infringe the privacy of the accused and the witnesses. Those who hold this view also contend that public trial does not, in fact, serve to have much influence over the judiciary. And the question is posed, "Which interest prevails—that of judicial discretion or the privacy of the accused?"

10. Presence of Lay Judges as One Measure of Control of Judicial Discretion

In the Federal Republic of Germany, in the courts of superior instance, the Federal Court of Justice and the higher regional courts, the professional judges decide on their own. Less serious offences, on the other hand, come under the jurisdiction of the local court judge sitting on his own. In all other criminal proceedings, lay judges are active-

ly involved at the trial stage. They are called upon to decide question of fact and law. Since the abolition in 1924 of the classical "jury courts" based on the French model, West German lay judges have exercised the office of judge at the trial stage without restriction and with the same voting rights as the professional judges. The idea behind the participation of lay judges is that the professional judges should not be allowed to slip into a routine. They should be obliged to think about the correction of their perception conclusions and assessment by having to measure and clarify them against the objections raised by the spontaneous feeling for right and wrong of the "man in the street" represented by the lay judges. It is reported that this involvement of lay judges results in a particularly effective control mechanism when the professional judges themselves are divided in their deliberations.

Many participating countries do not have lay judges. And there was one observation at the Seminar that while the practice of using lay judges serves the purpose of controlling the judiciary, it also has so many disadvantages. Whether the lay judge system serves its purpose well or not depends very much on the system of how lay judges are chosen.

IV. Conclusion

Judicial independence is, no doubt, a prerequisite for the courts to dispense efficient, fair and speedy administration of justice. Jurists, legal luminaries and lawyers as well as the general public in most countries recognize this. And it is guaranteed by the Constitutions of most of the participating countries. The legal concept of immunity from suit for judges recognized in some countries also enhances to some degree the independence of the judiciary.

However, there are still some practices and activities tending to affect judicial independence emanating from governmental organization, administrative control of judges and mass media.

In the performance of the judicial function, judges have to exercise a great deal of discretion. Sometimes judicial discretion exercised by a judge may be viewed as inappropriate. To minimize judicial indiscretion, judicial authorities are continuously searching for and have adopted some measures of control. Ten countermeasures so far have been identified, discussed and evaluated in this Seminar. Some are sound but others are still questionable. Good measures should assist judges to exercise discretion appropriately but should not jeopardise the independence of the judge.

Session 4: Prison Overcrowding and Its Countermeasures

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I. Introduction

Prison overcrowding has been a persistent and pressing problem confronting correctional administrators in many parts of the world. In some countries in Asia and the Pacific region, the problem is so grave that it is reaching a critical level yielding criminal justice administrators to derive timely and unfailing solutions. However, solutions to this thorny problems are not easy and could not be found by the strategies adopted by the correctional administrators alone. It is widely acknowledged that all components within the criminal justice administration, i.e. the Police, the Prosecution, the Judiciary, the Correctional and Rehabilitative organs each has a vital part to play in an integrated approach to formulate countermeasures in alleviating pressure exerted to the over-populated, dynamic and under-facilitated penal institutions. Problems arising from prison overcrowding are obvious,

be it administrative or detrimental to humanity and security, the significance of which need no reiteration but an immediate address.

II. General Perspective

Overcrowding in prisons may have different meanings to the developed countries and developing countries. The developed countries use criteria as minimum floor space, cubic content of air ventilation and other basic amenities to measure overcrowding. In the developing countries, they view overcrowding as gross overcrowding, a situation which is glaring and sometimes disgraceful.

In some of the participating countries, the situation of overcrowding in prisons has attained an alarming level and in these countries, prison overcrowding is more a crisis than a problem.

The overcrowding problem in Malaysian prisons is obvious during the last five years. As at 30th November 1988, it recorded a penal population of 21,377 against an actual available accommodation of 10,710. In the most congested prisons, among which Kuala Lumpur, Pulau Pinang, Johor Bahru, and Kuantan were more obvious, there was a prison population almost four times of the intended capacity.

The situation in Nigeria is equally critical. With the current capacity of 28,000 in 129 Nigerian prisons, they are holding over 80,000 inmates.

Overcrowding is being experienced by the prisons in Hong Kong due to a recent increase of convicts on illegal immigration from China. At the end of 1988, it had an overoccupancy rate of approximately 25 percent.

The major problem in the Sri Lanka prisons is said to be attributable to its heavily overcrowded remand population. The average rate of overcrowding in this category has been over 500 percent.

In Western Samoa, despite there is no serious problem on overcrowding because of its small-sized prison population, there is problem yet to be solved on the insufficient facilities to separate adult and young offenders. Its only prison is divided into two sections, naturally one for men and the other for women.

There is also overcrowding problem in the prisons of Bangladesh. With a capacity of 20,000, the prisons are holding about 28,000 inmates.

In Argentine, it is reportly sufficient on sleeping accommodation but there is a lack of supporting facilities for amenities and industrial activities.

Japan, Sudan, Saudi Arabia and Indonesia are among those more fortunate countries as there is no confronting problem of prison overcrowding in these countries.

III. Undesirable Effects Of Overcrowding

Overcrowding in penal establishments means more than just shortage of accommodation for the inmates, it also develops an unhealthy climate affecting penal reformative programmes, creates security problems and contributes to additional pressure on staff and tension between inmates and staff.

Such a situation poses particular difficulties for the correctional administrators in providing safe and humane conditions for the custody and treatment of offenders and it also provides a volatile setting where minor incidents can quickly escalate into major issues. At the same time, it affects staff morale, particularly if prison unrest reflects adversely on them through no fault of their own.

Overcrowding causes numerous adverse effects which have related, chain reactions. Depending whether the situation is merely a problem or a crisis, the administration in general has to shoulder the heavy responsibility, simultaneously it is required to deliver the package objectives of imprisonment.

Increasing prison population and consequent overcrowding are factors creating

difficulties in the observance of the Standard Minimum Rules for the Treatment of Prisoners in many countries. In one of the participating countries, the problem has come to such an extent that there is shortage of drugs in sick-bays, soap, beddings, feeding pans, uniforms and in some cases food and water. The soak-away and septic tanks are brimful and overflowing thereby producing offensive odours in the prison precincts. Outbreak of infectious diseases is common with corresponding death tolls. In such chaos, overcrowding is so distressing that inmates have to sleep and sit in turns. These dehumanising effects, needless to mention, would lead to increased tension between inmates and staff and associated security and disciplinary problems, the end result of which, is riots and prison outbreaks.

Prison overcrowding does not allow for administrative effectiveness especially in the areas of classification and training. Because of congestion the staff strength and other infrastructure cannot cope with the prison population due to steady stream of new admissions, thus diverting staff attention to security thereby leaving the prisoners with little opportunities for training and rehabilitation. Once the prisoners are not properly classified or segregated and left untrained, they become idle and mixed up with the group that they are not supposed to. This is the most dangerous period or stage where pollution can easily take place. Once pollution takes place, prisons become "School of Crimes" because harmful contacts greatly outweigh beneficial contact., According to Sutherland in his theory of differential association in action, crimes are planned and taught in prison and some men attribute their later criminality to the lesson they were taught by their more sophisticated associates in their first penal establishment.

The stigma of such imprisonment breeds more resentment and ostracism by the wider society of the ex-inmates. This situation usually drives the ex-inmates to a "life" of crime which ultimately manifests itself in recidivism. Thus overcrowding creates more recidivists.

IV. Cause of Overcrowding

Various reasons may be cited as causes of overcrowding in prisons and the following are identified as some but they are not exhaustive.

(a) Old and Out-of-Date Institutions

Many countries in the Asia and Pacific region have not constructed any new prison facilities for several years. In Sri Lanka, almost all the closed prisons are over a hundred years old. Built in the latter part of the 19th century when the population of the country was less than three million, the prison system cannot meet the demands of the present day.

In Malaysia, quite a number of prisons are old and were built during the last century. Some are as old as 100 years. Though originally built to hold fewer than 200 to 600 prisoners some of these old prisons, like in Kuala Lumpur (Pudu), Taiping, Penang and Johore Baharu have 2,000 to 4,00 prisoners.

In Mozambique, there are old and overcrowding prisons inherited from colonial times.

All these out-dated penal institutions, as being grossly under-facilitated, are unable to cope with the ever increasing penal population.

(b) Increase of Criminality

With the rapidly changing economic and social conditions and the ever increasing population, crime has increased in most developing countries. Better and widespread policing facilities have increased the rate of crime detection resulting in more offenders sent to prison. However, the number of correctional institutions and the accommodation has not kept pace. In Malaysia, as the crime rate keeps on increasing, the police are fully committed in the arrest and investigation and police lock-ups are unable to accommo-

date temporary remand prisoners. There is little choice but to send these remands to prisons.

(c) Delay in Police Investigation

In some developing countries remanding of suspects is used as a punitive measure by the police. In Nigeria, the police on its part contributes to the overcrowding of the prisons through unnecessary delay in either investigation, prosecution, failing to produce witnesses/evidence or refusal to grant bails to suspects on flimsy reasons such as the surety or bailer must have landed property even if he is known to be residing in the town. There is also external influence and personal prejudice of the police through the investigators. At times, the prosecution and the forensic laboratory also contribute to the overcrowding by delaying action on the cases referred to them for advice or examination.

In Malaysia, the increase in the remand prisoners is due to a shortage of police personnel, particularly investigating officers. Consequently, the police has to arrest first and investigate later.

(d) Delay in Trial

The reasons for overcrowding of remand prisoners are common in many countries. One such common cause is the delay in bringing the offenders to trial or, more commonly known as "laws delays." Laws delays result in many prisoners under trial having to wait in remand custody for long periods. Excessive bail or inadequate use of bail provisions have also contributed to the increase in the remand population. In some of the Asian countries, it is very common to see large number of persons lingering in jail for their inability to furnish the bail ordered on them. There are also many instances where those on remand are either too ignorant or too poor to engage counsel to make applications for bail.

Shortage of manpower in the judiciary and lack of court facilities have been cited as the main reasons causing backlog in the Judicial System in some of the participating countries.

(e) Over-use of Institutional Treatment

Many countries still carry prison sentences for far too many offences. The legal system of these countries over emphasise imprisonment as the most effective means against crime. Courts resort to imprisonment of offenders far too often even in cases which deserve lesser punishment.

Both in Hong Kong and Malaysia, the increasing number of illegal immigrants and the policy of the governments in deterring illegal immigration by extended prison sentence have been attributable to the overcrowding in prison. Towards the end of 1988, statistics showed that there was over 20 percent and 14 percent of illegal immigrants among the penal population in Hong Kong and Malaysia respectively.

(f) Ineffective Use of Alternatives

In some of the countries suffering from prison overcrowding, alternatives to imprisonment have not yet been introduced or adequately developed. In other countries where alternatives to imprisonment exist, judges do not adequately utilise them. Sri Lanka has introduced many alternatives to imprisonment such as probation, suspended sentences, community service order, etc. However, these alternatives have been sparingly used by the courts. For example, in the last decade, Sri Lanka has experienced a downward trend in the numbers placed on probation orders.

Another reason for the increase in the prison population is the large numbers admitted to prison on non-payment of fines.

(g) Low Priority in Policy Making

Construction of modern prisons is an expensive proposition to most developing countries. Emphasis in these countries is on economic and social development and construction of prison would be a very low priority item. In most third world countries,

politicians decide on the priorities. They would go for the construction of schools, hospitals, factories which are more "vote catching" than prisons.

Financial constraints are the chief cause for poor condition of prison buildings and facilities, as priorities in government are always given to other projects and programmes.

V. Countermeasures against Overcrowding

Most participants in the 81st International Seminar expressed concern about the pressing problem on prison overcrowding in some of the participating countries. After deliberate discussions, the following areas were identified and considered warranting reinforcements to counteract the problem.

(a) Improvement and Expansion of Facilities

Countries in which prison facilities are out-of-date and inadequate to cope with the present day demand should endeavour to secure attention from their respective governments to accord higher priorities in improving prison facilities either by renovation or redevelopment. When capacity of the existing facilities are obviously unable to match the ever increasing penal population, new prisons should be built as a final solution.

However, it is the consensus of opinion that in the developing countries, budget of the government can hardly give priority on building new prisons with large capacity. The Sudan prison Service tackled this problem by establishing more open camps in rendering a lesser financial burden to the government but at the same time solved the problem by putting most of the first timers to the open camps for agriculture. Japan experienced overcrowding in prison on two occasions in the past and the problem was resolved by establishing open institutions in Hokkaido, an island which was then rather remote.

Malysian Prison Service is reportedly more fortunate to have been allocated sufficient funds for its five-year plan in the redevelopment of the prison facilities. Inmates with knowledge and expertise in construction industry are utilised in the building of new prisons and remand centres. By so doing, it has not only speeded up the redevelopment programme to avail an additional accommodation for more than 2,500 inmates but also saved money for the government.

(b) Speedy Processing in Criminal Justice Administration

Unconvicted prisoners in prisons aggravate the problem of overcrowding in many countries. In order to reduce the number of remands committed to penal institutions, speedy process in criminal justice administration should be adopted. The following measures would be effective at the pre-trial stage.

Suspension of Prosecution

The aims of suspension of prosecution are: to facilitate the rehabilitation of offenders without recourse to regular retrial; to avoid stigmatization because of conviction and the adverse effects of imprisonment and finally to reduce workload of the courts. Both in Japan and the Republic of Korea, Public Prosecutors are authorised to exercise their discretion to suspend prosecution in the larger interest of the society and that of the offenders.

In the Federal Republic of Germany, discontinuation of prosecution on the ground of insignificance is provided for in section 153 of the German Code of Criminal Procedure in dealing with minor offences. If in the case of a minor offence the guilt of the perpetrator was slight and the consequence of his deed insignificant, then the department of public prosecution could, with the consent of the legal judge, desist from bringing the public charge.

Consequently, the suspension of prosecution may help reduce the penal population.

Expediting Police Investigation

As a major cause for the overcrowding of remand prisoners is the inordinate delays in the prosecuting procedure, measures must be taken to expedite the police investigation and prosecution procedure. Delays in obtaining medical, analyst and expert reports essential for evidence, absence of key witnesses and at times officers assisting the prosecutors requesting for dates on flimsy grounds are very often the causes for delays in the disposal of cases. Experts who have examined this problem have suggested setting mandatory time limits for the completion of investigation and prosecution. In fact, some countries have already set mandatory time limits in their statutes. Time limits could also be set regarding the period that a person could be kept on remand.

Bail and Personal Bond

The liberalising of bail facilities and the increased use of release on personal bond by the courts may help reduce remand population. When ordering bail, judges and magistrates should consider not only the gravity of the offence but also the offenders' ability to furnish the bail. Sri Lanka, in the recent past, introduced certain bail regulations under the Emergency Regulations. Under these regulations, remand prisoners who have been in prison for over one year (other than those coming under certain scheduled offences) were released from prisons upon signing a personal bond. On a study made it was revealed that 97 percent of those released in such manner have appeard in courts on due dates.

Summons

The police or other law enforcement agencies responsible for enforcing the legal code of a country should be encouraged, where possible, to summon offenders instead of arresting and detaining them unnecessarily.

Court Proceeding

In the Philippines and Bangladesh, there are stipulated rulings in their Judicial System binding the period and procedure of court hearings to ensure there is no delay in the court proceedings.

In Kenya, there has been problems on delayed court trials because of inadequate court facilities and shortage of judges. However, this problem is now overcome by improving the court facilities and recruiting more judges.

It is also imperative that the position of the remands in prison be regularly reflected to the Judiciary and the Prosecution so that cases which have been remanded for unduly long period could be attended to by the courts and the prosecutors. Frequent and regular meetings between the Judiciary, Police, Prosecution and Correctional personnel should be held to discuss problems affecting speedy trials and to seek solutions. Regular visits by judges to the prisons is also considered to be one of the means to keep the judges abreast of the situation of the persons on remand.

(c) Improvement of Non-institutional Sanctions

In an effort to reduce and possibly eliminate the problem of overcrowding in prisons in various countries, the courts, where it is provided for by the law, should resort to alternative measures as much as possible after taking into consideration the character, past history, age, health, mental condition of the offender, the trivial nature of the offence; or any extenuating circumstances under which the offence was committed. The court should also pay particular attention to an offender for whom the maximum possible sentence is of a short-term not exceeding six months, with a view to giving an alternative sentence. In the case where the laws of a

country do not provide for alternatives to imprisonment or the alternative are not varied enough or relevant to the society, steps may be taken to enact relevant alternatives so as to provide the courts with means to dispose of certain cases accordingly. The various alternatives to imprisonment now being widely practised throughout the world are: fines; suspended sentence; probation; community service order; restitution and compensation.

Where fines are to be imposed, they may be on the basis of "day" and "mean" fine, that is, the offender may be fined a number of days' pay out of his salary. The day fine should be linked to a "mean" system, that is, notwithstanding the salary of the offender, his ability to pay should also be taken into consideration before sentence is passed. This would greatly reduce the persons committed to prison in default of payment of fine.

It is helpful if public awareness could be cultivated on the effect of the community-based correction and its rehabilitative value to the offenders so that the public could more readily accept the non-institutional sanctions.

(d) Decriminalisation and Diversions

Many countries in the region still carry prison sentences for far too many offences. Legislators should now rethink about their penal codes. In fact, some countries have already modified their penal codes during which process several offences have been depenalised and in many other instances fines have replaced prison sentence. This kind of measure can have a positive effect on the crime rate, thereby reducing the number of offenders sent to prison.

The idea of pre-trial diversion is also innovative to countries whose judicial systems have not instituted such practice. A dispositional practice is considered pre-trial diversion if:

(i) it offers persons charged with criminal offences alternatives to traditional criminal justice or juvenile justice proceedings;

(ii) it permits particular participation by the accused only on a voluntary basis;

(iii) The accused has access to counsel prior to a decision to participate;

(iv) it occurs no sooner that the filing of formal charges and no later than a final adjudication of guilt; and

(v) it results in dismissal of charges, or its equivalent, if the divertee successfully completes the diversion process.

(e) Measures to Increase the Outflow of Prisoners

Parole

Parole is the conditional release of an offender from a penal or correctional institution after he has served a portion of his sentence. It is adopted in many countries as a form of extramural treatment following incarceration. Many countries in the region have introduced the parole system and are keen to develop it as an effective correctional programme to promote the better integration of offenders into society. The use of parole will also help reduce overcrowding in prisons and it will cost less to supervise the prisoner on parole that to incarcerate them.

The concept of parole (conditional discharge) in some of the Western European countries has also shifted lately from the primary objective of rehabilitating the offenders to the reduction of prison population.

Pardon or Special Amnesties

Several countries in the region use the mechanism of granting special amnesties common in countries such as Thailand, Sri Lanka, Bangladesh and Malaysia.

VI. Conclusion

The adverse effect caused by prison overcrowding has been highlighted earlier and causes of the problem and its countermeasures have also been identified in the forego-

ing chapters. We have now undoubtedly come to realize the need for timely solutions to overcome this problem. Whilst the urgent need to enhance the co-ordination of the vital organs within the criminal justice administration to reduce penal population is visualised and realised, it is important now to see how plans are formulated and implemented in an integrated approach by these organs to jointly counteract this problem.

It is foreseable if the problem of overcrowding in penal institutions can be resolved by reducing the inmate population to or below the planned capacity of the institutions, the correctional administrators and their staff can then direct more resources and attend more closely to the classification, care, reformation and rehabilitation of the offenders who have remained incarcerated because of the serious nature of their offences or the threat they pose to the community.

Session 5: Advancement of Non-custodial Measures in the Treatment of Offenders

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Introduction

There is a well known saying as follows: No one punishes the evil doer for the reason that he has done wrong—only the unreasonable fury of a beast acts in that manner. But he who desires to inlict rational punishment does not retaliate for a past wrong which cannot be undone. He has regard to the future and is desirous that the man who is punished may be deterred from doing wrong again. (Pythagoras, Greek Philosopher)

Throughout the years, thinkers, penologists, law makers and those directly involved in the field of corrections have recommended various means to greatly enhance the treatment of offenders. Starting with the traditional institutional treatment, they experimented and later adopted a revolutionary method in the treatment of offenders. They discovered that the method is more humane and manifested a tremendous impact not only upon the offenders, his family, the general public but also upon the criminal justice system. This measure is known as the non-institutional method in the treatment of offenders.

With this as a background, it is desirable that all countries should provide basic principles to promote the use of non-institutional measures. Efforts shall be made to ensure the fullest possible implementation of the principles within the context of the political, economic, social and cultural conditions prevailing in each country, taking into account the aims and objectives of the respective criminal system. Further, the non-custodial measures shall be developed by every country within their respective legal system not only to reduce the use of imprisonment but also as a necessary component in the rationalization of criminal justice policies from the standpoint of human rights, social justice and social defense.

Effective Way of Implementing Non-institutional Measures

Presently, many nations in the world have adopted alternative measures in the treatment of offenders. Among the measures are 1) suspended sentence; 2) community service order; 3) probation; 4) pardon; 5) parole; 6) fines; 7) other methods similar in intendment and effects. These measures are designed to secure the rehabilitation of offenders enabling them to lead their normal lives. Other reasons for the use of these alternative methods are: 1) to avoid overcrowding in prisons; 2) to reduce incarceration time; 3) cost saving; and 4) more humane way in the treatment of offenders.

There are however problems to these measures. Some could be 1) the cynical attitude of the public toward these kinds of treatment as not being commensurate to the wrong done; 2) lack of qualified probation or parole officers as well as civilian volunteers; 3) lack of personnel to supervise offenders performing community service; and 4) possible rejection by labor groups to community based work performed by offenders.

To prevent or at least to minimize rejection of these alternative measures, it is desirable to; 1) to encourage the public to understand the benefits and advantages of these measures and encourage their cooperation; 2) understanding and mutual cooperation among the police, prosecution, courts, correctional institutions, the public, etc.; 3) recruitment and proper training of parole/probation personnel and staff.

The purpose of these alternative measures should be geared towards necessary services to the offender with the goal of reducing the probability of continued criminal behaviour. The general as well as specific needs of offenders must be met with regard to his rehabilitation. Before the application of a particular treatment programme, the offenders must be categorized and every possible tests shall be employed so as to obtain a thorough understanding of the offender's background, personality, aptitude, intelligence, moral values, etc., especially the circumstances leading to the commission of the crime. Criminologists, penologists, psychologists, social workers and others who are experts in behavioural science should be invited to participate in the treatment programmes. Community support in treatment programmes is vital and every endeavor shall be made to utilize the community resources for the purpose of promoting in the offender a stronger sense of social awareness and community reintegration.

Supervision shall be carried out by leading the offender to make him observe the conditions imposed on him and by making him realize that it is also his responsibility to help himself. The best suitable method of supervision shall be adopted taking into consideration the offender's age, background, occupation, mental and physical condition, home environment and associates.

The duration of supervision varies from one country to another. However, the supervision should neither be too short or too long.

To be effective in the treatment of offenders, the persons who supervises them should at least have some practical knowledge/experience in correctional services, social work or other related fields in the treatment of human behaviour. In addition, the supervisor should have a good personal background, aptitude, potentiality or professional competence to handle any kind of clients. Every effort should be exerted to upgrade from time to time the supervisors qualifications.

Effective criminal justice administration cannot be achieved through the efforts of government agencies alone. For this reason, all possible social resources must be mobilized to that end. Public participation is a crucial prerequisite to restore the ties between the offender undergoing community based treatment and his family, the neighbourhood community, etc. and to achieve the ultimate purpose of his re-integration into society. Public participation is indispensible since the citizens themselves are provided with an opportunity to protect the society from recidivism by directly dealing with rehabilitation and resocialization of offenders. In order to encourage public participation, they should be given and provided with all the information regarding the desirability, advantages and importance of non-custodial treatment as alternative to imprisonment. Without public participation, non-institutional method in the treatment of offenders will be a total failure. This is so since the rehabilitation of offenders takes place right in the community.

In order to achieve an effective functioning of alternative treatment measures, it is important that the various agencies involved

in criminal justice administration shall work in close collaboration with each other. Exchanging of views and ideas in contradistinction to fragmentation and alienation should be the ideal set-up.

The Non-custodial Measures

1. Diversion

This is a scheme whereby no formal trial is conducted by the Courts. It falls squarely in the hands of the police, the prosecution and other agencies dealing with criminal cases. The offense involved are petty or minor offenses. The concerned agencies are empowered by law to deal with the said petty cases. The guidelines in its applicability are usually embodied in the laws of the country concerned.

2. Bail

This non-custodial measure takes place before formal court hearing is conducted. In short, the police had investigated the case and the prosecution had ample time to analyze and study the case and was satisfied that the required quantum of evidence is present to justify the filing of a case in court. After the court had acquired jurisdiction of the case, the offender can file a petition for his temporary liberty through bail. Bail is used as a measure for the prevention of unnecessary detention before formal court hearing. It is also a means of solving overcrowding in prisons. There are some problems, though, in this measure. One is that courts do not properly exercise their discretion in granting provisional release through bail. They either impose a very big amount for bail thereby destroying the very essence and meaning of the same. If the poor person has a hard time in putting up an average amount of bail for their provisional liberty, then with more reason that they cannot put up a bail if the amount imposed is exorbitant.

3. Fine

This measure takes place either in or outside of court. Outside of court when the law of a particular country say so. For some minor specified cases, e.g., minor traffic violations, some agencies are tasked to collect specified fines for specified minor offenses. Fine can also be imposed by the courts either as the penalty itself or as an alternative to imprisonment.

4. Suspended Sentence

This scheme takes place after a formal court hearing and judgement of conviction pronounced. This is designed to avoid the adverse effects of short-term incarceration on convicted offenders and helping them to rehabilitate themselves in society. Suspended sentence varies from one country to another since their applicability is provided by their respective laws. The usual and primary consideration for its application is the offender's age and criminal record.

5. Limitation of Liberty

This non-custodial measure takes place after a formal court hearing and the penalty imposed upon the offender is prohibition from going to a certain place or carrying out a particular trade, activity or profession within a specified period.

6. Community Service Order

This alternative measure to imprisonment is a penalty by itself imposed by the court after formal hearing. The offender is under obligation to render community work either in his leisure hours or on days and hours so specified by the court. The minimum and maximum number of days or hours for the performance of community work is so provided in the court's decision. Since this measure is merely an alternative measure to imprisonment, some countries require that in order for it to be imposed, the consent of the offender is needed.

7. Pardon

Pardon is the sole prerogative of a Head of State. It is purely discretionary on the part

of the Head of State to grant the same. In practice though, it is usually given during Christmas' day, New Year's day, Independence day, or any day of national significance. The primary consideration in granting pardon is to temper justice with mercy or what we call compassionate justice.

8. Probation

Probation takes place after a formal court hearing and a judgement of conviction pronounced. The system of probation varies from country to country. Some of the known reasons for its application is when the penalty imposed does not exceed a specified number of years, when it is imposed as an alternative to imprisonment or when the court suspends the execution of sentence. Many other factors are considered in the imposition of probation such as the age, whether he is a first time offender, his social and financial standing and other factors. Probation is imposed in some countries immediatley after sentencing without any prayer to that effect while some countries approves the same only after a petition filed by the offender.

9. Parole

Parole takes place after conviction and the offender having served a portion of his sentence. Parole is one method of controlling excessive sentences and a way of tempering justice with mercy. A parolee, like a probationer, is placed under the supervision of a supervisor. As with probation, parole, when granted, subjects the offender to general as well as specific conditions. The most common condition though is for the parolee not to commit another crime during the period of parole. At the end of the period of parole which is either at the end of the unexpired unserved period of the sentence or after a specified period of time, the imprisonment shall be terminated.

Conclusion

In order to extend the application of non-custodial measure in the treatment of offenders, those measures should be, in keeping with their preventive and rehabilitative aims, extended as real alternatives within the entire range of criminal justice options.

The advancement of resocialization of offenders through these measures, would result in the possibility of further enlarging the active range and utilization of non-custodial measures for offenders and, simultaneously, have a most favourable practical effect upon the problems of overcrowding of prison populations which many countries are presently facing in common.

Therefore, every endeavour should be paid to facilitate the development of these non-custodial measures within the context of the political economic, social and cultural conditions prevailing in each represented country.

PART II

Material Produced during the 82nd International Training Course on Innovative Measures for Effective and Efficient Administration of Institutional Correctional Treatment of Offenders

135671

SECTION 1: EXPERTS' PAPERS

Inmate Grievance Systems in the United States

*by Clair A. Cripe**

Introduction

In the 1960's, prison developments in the United States led to pressures for the establishment of grievance procedures for the resolution of inmate complaints. It can certainly be safely said that the decade of the 60's was the time for opening the doors to prison reform throughout the country.

This reform movement was reflected in a number of different actions. These included increased attention in the news media, and in academic circles; more activity among corrections administrators to achieve reform in prison programs, such as expanded treatment programs for the correction of offenders—ideas which for the most part had been around, and had been taught in the universities, for at least 30 years; serious prison disturbances, including some of the most severe prison riots in the century; and certainly not least, the "court revolution" in looking at inmate complaints.

The "revolution" in the courts, which by most is traceable to litigation brought by so-called Black Muslim inmates, asking for a variety of religious activities in prisons, started in the early 60's, more precisely in 1962. Beginning with decisions in a number of federal courts that the inmates were entitled to judicial review of their complaints, because they were based on claims made under the First Amendment of the U.S. Constitution, the courts rapidly moved from the prior era that has been called the "hands off" period, to one of active court involvement in reviewing a huge array of prisoner complaints. This resulted in the filing of literally thousands of complaints each year, from inmates in virtually every federal jurisdiction in the country.[1]

As might be expected, this very large increase in lawsuits brought in federal courts created a significant problem of judicial administration: the clogging, or backing-up, of court dockets, especially in those districts where large penal or correctional institutions were located. This suddenly large increase in the federal courts' dockets, which was largely unanticipated and thus not planned for, funneled upward into the appellate courts, and even into greatly increased numbers of petitions by inmates being filed in the U.S. Supreme Court.

Involvement by the Chief Justice

The reaction to this large increase in workload in the federal courts was, predictably, mixed. Many judges, having been sitting on the bench during the hands-off period, felt that the complaints should be summarily dismissed; this attitude was re-enforced by conclusions by this group of judges that most complaints were frivolous or merely harassing, and that prison officials should be left to manage affairs inside the prisons without court interference. On the other side were judges, who were in an increasing number through the 1960's and 70's, who believed that there were many abuses and improper conditions inside prisons which had been too long ignored; this group concluded that it was entirely appropriate for the judiciary to

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make certain that prisons were run in a constitutional manner, and that inmates received fair and good treatment. Eventually, this latter group possessed enough votes, or persuasive clout, on the Supreme Court and in the Courts of Appeals, to require closer and closer review of prisoner complaints.

It is not the purpose of this presentation to examine the merits, or the various effects, of this radical shift in the approaches of the federal courts in the United States. That, I have done elsewhere.[2] It is raised here however to give some perspective and understanding to the pressures which led to implementation of prisoner grievance procedures in the U.S.

Because of the huge impact on the court workload, several judges presented the idea of the administrative handling of complaints within the corrections system. The deleterious impact of prisoner filings on the federal judiciary's dockets inevitably came to the attention of the Chief Justice. One of the responsibilities of the Chief Justice of the U.S. Supreme Court is to monitor the effectiveness of all levels of federal courts, and to make recommendations, and obtain necessary resources, for the improvement of the federal court system. In this role, the Chief Justice at that time, Warren E. Burger, became a leading spokesman for the use of administrative remedies in prison settings. His interest in prison matters, and in the grievance system, continued well beyond these early days of encouragement that prison administrators consider the use of grievance mechanisms. That interest continued throughout his tenure of the Chief Justice's office, and in fact continues to this day, even though he is now retired from the Supreme Court.

In a speech in 1972, Chief Justice Burger said:

> In every penal institution we need to open up the means of communication between inmates and the custodians....
>
> With proper grievance procedures in a large industrial operation, the hour-to-hour and day-to-day frictions and tensions of employees can be carried up through channels and either guided to a proper solution or dissipated by exposure.
>
> This in essence is what every penal institution must have—the means of having complaints reach decision-making sources through established channels so that the valid grievances can be remedied and spurious grievances exposed.
>
> If we are really going to have any chance of making inmates useful members of society, the institution is the place to teach the fundamental lesson that life's problems are solved by working within the system—not by riots or the destruction of property.[3]

The Chief Justice continued this theme in other speeches and presentations. Perhaps the most influential was a speech to the American Bar Association in August of 1973, when Chief Justice Burger spoke of the burden of increased prisoner complaints upon the federal courts, and suggested alternatives to the situation of pursuing all complaints in the courts, including a suggestion that informal grievance procedures be established to consider prisoner complaints.

Some of the states already had entered into the early stages of trying informal resolution of inmate complaints. In September of 1973, the Federal Bureau of Prisons inaugurated a four-month pilot project at three of its institutions: the U.S. Penitentiary at Atlanta, Georgia; and the Federal Correctional Institutions at Danbury, Connecticut and at Tallahassee, Florida. The success of this pilot program led to nationwide implementation of this administrative grievance process, in all federal institutions. This is essentially the same program which is used in the federal system to this day.

In an interview in 1977, Chief Justice Burger said:

> There are a great many matters in

courts which ought not to be in the courts at all because the needs of the parties can be satisfied in simpler ways. Much of our procedure has become so complex and the system has become so cumbersome that it is becoming too expensive.

. . . The first step is to get recognition among the American people that a court is not the only place or the best place to resolve disputes. No other countries draw on courts as much as we do. They have a wide range of other methods: arbitration, mediation, fact finding, and for small matters, neighborhood conciliation groups. . . .

. . . we have not focused on looking for other and simpler means, with lower costs. We are prisoners of habit in the sense of existing practices. . . .

Nevertheless, there are examples of shifting out of courts some disputes that could be resolved by the common-sense kind of grievance procedure used by unions and employers.

In recent years, the Federal Bureau of Prisons developed this kind of administrative problem solving within the prison itself, and a large number of such cases were diverted from the courts.[4]

In 1976, in his annual report on "The Condition of the Judiciary," Chief Justice Burger noted further:

> Fully a sixth of the 117,000 cases of the civil docket of federal courts (19,000) are petitions from prisoners, most of which could be handled effectively and fairly within the prison systems. Norman Carlson, Director of the Federal Bureau of Prisons, has developed simple, workable internal procedures to deal with prisoner complaints, and the past year's experience demonstrated their value. Perhaps as a result of these procedures, the rise in petitions from federal prisoners in fiscal 1974 slacked off to 1.2% in fiscal 1975. The flood of such petitions from state institutions continued to rise, however. There were 14,260 such requests from state prisoners in the fiscal year ending June 30, a 6.2% rise in a year. Federal judges should not be dealing with prisoner complaints which, although important to a prisoner, are so minor that any well-run institution should be able to resolve them fairly without resort to federal judges.

The Chief Justice, in his Bar Association speech, had asserted that if the Federal prisons adopted an internal system of addressing complaints administratively, many states would follow the example and put similar procedures into effect. This indeed did happen, although it is not recorded how many of these procedures were introduced because of the federal model.

Model Rules and Standards

There were by this time (the early or mid 1970's) numerous standards or rules which had been adopted or recommended, which called for administrative presentation and resolution of prisoner complaints.

The *United Nations Standard Minimum Rules for the Treatment of Prisoners*, approved in 1955 and 1957 (by two different UN bodies), provides:

> 55. There shall be regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.
>
> 56. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.
>
> (2) It shall be possible to make requests

or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

In the United States, there were several models also adopted. The National Council on Crime and Delinquency, in 1972, published a *Model Act for the Protection of Rights of Prisoners*. Section 5 of that act provides:

> The director of the State Department of Correction (or equivalent official) shall establish a grievance procedure to which all prisoners confined within the system shall have access. Prisoners shall be entitled to report any grievance, . . . and to mail such communication to the head of the department. The grievance procedure established shall provide for an investigation (aside from any investigation made by the institution or department) of all alleged grievances by a person or agency outside of the department, and for a written report of findings to be submitted to the department and the prisoner.

This Model Act, and others such as a Proposed Standard of the American Bar Association's Standards for Criminal Justice, which called for "formal procedures to resolve specific prisoner grievances," are only recommendations for those in the field to follow, as they see fit. However, a standard with more meaning and clout is that of the Commission on Accreditation for Corrections. That Commission is the accreditation body of the largest professional association for corrections in the U.S., the American Correctional Association.

An "Essential" standard of that accreditation body has provided:

> There <should be> a written inmate grievance procedure which is made available to all inmates and which includes at least one level of appeal.
>
> A grievance procedure is an administrative means for the expression and resolution of inmate problems. The institution's grievance mechanism should include: (1) provision for written responses to all grievances, including the reasons for the decision; (2) provision for response within a prescribed, reasonable time limit, with special provisions for responding to emergencies; (3) provision for supervisory review of grievances; (4) provision for participation by staff and inmates in the design and operation of the grievance procedure; (5) provision for access by all inmates, with guarantees against reprisal; (6) applicability over a broad range of issues; and (7) means for resolving questions of jurisdiction.[5]

Also, there are minimum standards for grievance procedures which have been adopted by the Congress in a federal statute, the Civil Rights of Institutionalized Persons Act. Based on the requirements of that Act, the Attorney General of the United States promulgated, in 1981, standards for certification of the adequacy of prisoner grievance procedures adopted by state departments of corrections. I will address the provisions of the Act, and its implementation, in more detail later in this presentation.

Why Have a Grievance System?

Apart from these model standards and rules, and the statements of leaders in the field, what are the reasons for having an ad-

ministrative grievance mechanism within a prison, or in a corrections or penal system? As a matter of public policy, and with consideration of the interests of the parties involved—the prison administrators, the prisoners themselves, and others in the criminal justice process—are there convincing reasons to have a grievance system? There are certainly arguments which can be made as to why there should *not* be grievance programs: for example, such programs take time and money to operate; they take the time of staff to implement properly, time which could arguably be better spent on traditional duties of safety and security; they may be perceived by staff as undercutting, sabotaging their authority and forthright performance of duties; they may be perceived by inmates as providing remedies or protections which cannot in fact be delivered, thus perhaps fostering resentment over exaggerated promises; and they may be seen as weighing down the system with procedural niceties, rather than addressing the central issues of substance. What are the arguments on the other side of the scales, which have been raised in favor of having a grievance mechanism?

There are several points which have been offered, to support the adoption of an administrative complaints procedure. I would summarize them as follows: Grievance procedures (1) assist prison management in identifying problem areas, and addressing them quickly and internally; (2) take care of small problems, again without calling for outside attention; (3) give inmates a sense of fairness and justice in their dealings with authority; (4) increase prospects for inmate rehabilitation; (5) reduce the volume of inmate litigation; (6) reduce violence, by reducing prisoners' frustration and anger over perceived mistreatment or other wrongs; (7) provide a written record, which gives documentation in case the matter does have to be reviewed in court, or in other outside channels of review; and 8) point up areas of concern, which may in fact require adoption of new policy, or revision of existing policy. These are, I would emphasize, goals or reasons which have been asserted as supportive of an administrative grievance process.[6]

These points offered to support grievance mechanisms are, for the most part, extremely difficult to prove or disprove. Number (7), giving documentation as a result of having a written procedure, is provable by the mere fact of requiring documentation by policy, and then making sure it is properly done. Others, such as numbers (5) and (6), arguing for grievance procedures being supportive of rehabilitation, or of reduced violence, are extremely difficult to prove, and I am not aware of studies which in fact prove or disprove them. In the final analysis, adoption of grievance procedures, and of the exact way in which they will operate (because there are several operational modes for consideration), depends on the judgment of the administrators or others in authority. They must assess whether the anticipated benefits are in fact worth the costs of implementation.

From my experience with a grievance system during its operation for more than 15 years in the Federal Bureau of Prisons, I would conclude that an administrative remedy system provides a number of benefits. It requires prison staff to address complaints promptly and informally. In this process, it brings to their attention policies or practices which need to be examined or re-examined, as to their propriety. For many inmates, it gives them a clear means of expressing their dissatisfaction with any elements of their treatment, in a non-violent and socially acceptable way. (As an aside, it also can serve to keep inmates busy, composing grievance submissions, when they might otherwise be involved in less desirable activities!) The procedure creates a record, which can be used in addressing outside inquiries, whether by the courts or by others who may be interested in a particular inmate or a particular practice; this record allows quick reference and a prompter means of providing information

about the matter involved in the inquiry. For some courts, the grievance system is accepted as an administrative mechanism which must be used before the inmate can file a complaint in court—what we call in our legal practice the requirement of exhaustion of administrative remedy. Finally, there is some evidence that this procedure does reduce the number of filings in federal courts, thus relieving a major concern already noted about the burdening of court dockets with voluminous prisoner complaints.

Types of Grievance Systems

For this discussion, I would divide the various approaches which have been suggested or implemented for prisoner grievance systems into two categories: (1) grievance procedures which rely primarily on outside agents; and (2) procedures which are based on an internal mechanism. By "outside agents" I mean individuals or organizations, whether governmental, semi-governmental, or private, that are located outside the corrections system itself; these agents do not in any sense report to, have allegiance to, or come under the supervision of, the corrections authorities. An "internal mechanism" on the other hand is one which is under the control of the corrections department. If this mechanism is placed within the same ministry or executive department where the corrections agency is located, that would also be an internal mechanism, in my evaluation.

Under the first type of procedure, there have been several "outside agent" approaches proposed, and to varying degrees tried, in the United States and in other countries. In the early days of moving into grievance systems in the United States (that is, in the late 1960's and the early 1970's), these external modalities were frequently advocated in the literature. (I would note that, in my opinion, the reason for this was that most of this early advocacy of grievance systems for prisoners was done by academics, when one speaks of particular modalities, and not just the general concept. As I will address more fully later, once the prison managers got into the business of having inmate grievance systems, the choices of what would indeed work narrowed considerably, and comparatively rapidly.) outside agents which were proposed included: an ombudsman procedure; grievance commissions or committees, with authority to review complaints; use of an arbitrator or a mediator; citizens' panels; legal assistance organizations, acting in an administrative not judicial function.

Let me describe what I understand the essential characteristics of these different "outside" programs to be. (There are large bodies of literature on certain of these, such as the ombudsman process for example; experts in each of these areas may take exception to some of my characterization. My purpose here is primarily to define a variety of approaches, in order to permit consideration and assessment of the strengths and weaknesses of each one).

Ombudsman—An ombudsman is a person who is totally independent of the prison bureaucracy. The ombudsman is given authority to receive complaints from aggrieved prisoners; to investigate those complaints, by having access to the prisoners, to witnesses, to staff members, and to records; and to make recommendations for necessary changes or remedy. This last step is of course the critical one, because historically the ombudsman reported to a legislative or other outside body, and had no authority to order any specific action. Those who would give ombudsmen authority to take corrective or remedial action are mixing the concepts, and are proposing an arbitrator or quasi-judicial function, which is quite another procedure.

Grievance Committees—These are organizations which are appointed to look into complaints. They may be primarily responsible to any of the branches of government—executive, legislative, or judicial. They are typically limited in their jurisdiction, having

authority to look into policy issues on a broad scale, or complaints only of a certain nature. However, in theory at least, their authority to investigate and to recommend or order change, may be narrow or broad.

Arbitrators and Mediators—An arbitrator is a specially trained person, who has been given authority to resolve a conflict between two parties. (The difference between this and judicial authority is one of degree, and in my view also one of procedural protections, or niceties if you prefer.) The arbitrator gathers information from both sides, makes thorough inquiry into the complaint, and then decides the factual basis of the matter, and orders remedial action. There may or may not be an appeal process available. A mediator is very much like an arbitrator, in the early stages of activity. The difference lies mainly at the latter stages, where after inquiry into the facts and the basis for the dispute, the mediator attempts to bring the parties to agreement as to any resolution of the dispute, through persuasive efforts.

Citizens Panels—These groups are very similar to grievance committees, and indeed may have some of the attributes of an ombudsman, or of an arbitrator or mediator. Typically, the citizens panel is made up of private citizens who have some interest in public matters, and specifically prisoners' rights, but who have no special or technical experience in prison operations. They are given authority to consider complaints, and thus serve as a "sounding board" for inmates. Ideally, they should be impartial, and show no bias in their approach. Because of their very limited knowledge and expertise, they tend to function only as advisory groups, in a very broad sense, and are not given power to resolve any individual complaints.

Legal Assistance—This type of program involves attorneys, or persons under attorney supervision, to provide direct involvement in the resolution of complaints. Legal assistance programs for prisoners, whether furnished by an officially sanctioned and funded legal aid agency, by a Public Defender's Office, or by a law school program carried out primarily by law students, most often are seen when they are involved in more traditional, formal court proceedings. However, as some have pointed out, it is very possible for these same agencies to serve efficiently as administrative grievance agents. In this capacity, legal assistance staff receive complaints and then take steps to resolve the complaints informally within the system. From experience, they have learned the types of complaints which can be so addressed, and they also have learned (perhaps most importantly) who the officials are who have authority to address them. This kind of process is an effective way for any counsel to serve his client well, by trying initially to use more informal resolution processes. This approach exists, I imagine, in most any area of legal representation by effective counsel. In some cases, it has been recognized by persons on both sides of prison disputes as a good way to solve particularly minor grievances; there may be agreement between those parties as to the procedures which will be followed, resulting in something we can call another type of grievance resolution program.

Internal Mechanisms—On the opposite side, in my organization of the types of grievance mechanisms, there are those programs which I would call internal grievance procedures. These are characterized by review and decision activity within the corrections department itself. In some cases, there may be some involvement of outside parties—such as presentation of an inmate's complaint by a legal assistance staff member, or an agreement by the parties to use the advice of a citizens' panel or even a mediator. But, if the process remains under the dominant control of prison administrators, and outside involvement is minor, and at most advisory, then I would call it an internal mechanism. Apart from this possibility for some slight degree of outside input, the factor which most distinguishes different ap-

proaches for internal mechanisms is the degree of inmate involvement.

Inmate Involvement—At a minimum, of course, there will always have to be inmate input into a grievance system, in that there has to be a way for the inmate (or group of inmates, with similar complaints) to present the grievance. In addition to this, there is a wide variety of inputs which have been proposed, and some of which have been tried, for inmate involvement in the system. These include: requiring that inmates have a voice in the design of the system; allowing inmates to make in-person presentations to the person or persons who review the complaints; providing inmates in the role of initial reviewer of the complaints received, sometimes with authority to return those complaints to the submitter for correction when they are not in proper form; permitting inmates to present the complaints on behalf of other inmates, or to "argue the case" for another inmate; having one or more inmates sit on a panel which reviews complaints; providing an inmate council (committee) which is directly involved in the process, perhaps as initial reviewer of disputes, or even with authority to recommend or require certain types of action; allowing inmates to review the actions taken overall in the system, with authority to comment on the adequacy of the procedure, and to propose needed changes in the grievance procedure itself, or in prison policies. This listing gives some idea of the great range of possibilities there are for inmate involvement in the system. All of these, or some variations of them, have been tried in one corrections agency or another, in the United States.

The Federal Experience in the United States

Let me return now to the grievance system which is used by the Bureau of Prisons in the United States. As noted earlier, this system was implemented in 1973 in response to a number of suggestions that administrative handling of grievances be tried. Not the least of these voices of encouragement was that of the Chief Justice.

Attached as an Appendix (App. 1) is a copy of the policy which governs the operation of the federal grievance system. (This is Program Statement 1330.7 of the Federal Prison System, dated October 12, 1979. The policy issuances of the Federal System are called Program Statements.) This policy is in all important respects the same one which has been in effect for over 15 years, since late 1973.

There are several essential features of the system: It is a three-level review process, based on the record. All submissions by the inmate and responses by prison staff are in writing. There are specific forms for each level of review. The inmate states the complaint on a BP-9 form, which is submitted to the local warden of the institution where the inmate is confined. The warden acknowledges receipt of the complaint, and investigates the complaint. A response is given to the inmate within 15 days (unless it is a matter of emergency nature, such as a medical complaint, in which case response must be given within 48 hours). The response is ordinarily prepared by staff in the department where the complaint arose, and is signed by the warden. If the inmate is not satisfied by the response, he may appeal within 20 days to the Regional Director. (The Bureau of Prisons is divided into five geographical regions, with about ten prisons in each region.) Staff at the regional office conduct a review of the appeal, and must respond within 30 days. A final level of appeal is to the General Counsel, in the headquarters office in Washington, D.C. Response here also is within 30 days.

Inmates may file concerning any matter which is within the jurisdiction of the prison officials. This rule excludes matters such as length of sentence (which is solely within the authority of the sentencing judge) and parole action (which is within the jurisdiction of the Parole Commission, an agency independent

from the Prison Bureau). If the inmate contends that a complaint is so sensitive that he cannot file it locally (such as a complaint about staff brutality or about personal actions of the warden himself), he may file the initial complaint directly with the Regional Director. Some actions (such as requests for copies of records, or claims for money damages because of negligent behavior by staff) are referred into other channels, because there are separate administrative procedures which have been established specifically to deal with those types of claims. Otherwise, an inmate may complain about any issue, including classification or disciplinary action taken against him. I mention this, because complaints concerning classification and disciplinary matters are commonly excluded in other jurisdictions, as complaints which may be reviewed in the grievance system.

The last two pages of the Program Statement (App. 1) list the various subjects which may be filed by inmates who are submitting grievances. This list will give an idea of the broad range of topics which are complained about. It is not included in the policy to limit an inmate's filing of any complaint he may choose. Rather, it is used mainly to facilitate record keeping, and indexing of the complaints procedure. For research, and other management purposes, it is useful to know the types of complaints which are frequently brought, and to keep track of trends from year to year.

Attached (Appendix 2) is a recent year's compilation of grievance filings throughout our prison system. The left-hand column lists all federal prisons, grouped according to the five regions—Northeast, Southeast, North Central, South Central, and West. The categories across the top (1-Trans, through 0-Staff) refer to the 10 categories of complaints, which are listed in the last two pages of the Program Statement (App. 1). Thus, we can tell for example that the first listed institution, Alderson (a women's prison) had 18 complaints about disciplinary actions taken, and a total of 128 grievances filed during the year. There were in total 11,539 grievances filed at the local level during 1987. The chart also shows the disposition of those complaints—those which were granted (15%) and those denied (85%). A grievance is deemed to be granted, for this accounting purpose, if the relief asked for by the inmate has been substantially granted. The other two pages in the charts (Appendix 2) show the appeal actions at the regional and at the Central Office (headquarters) levels. From these charts, we learn that inmates took appeals in 4,805 cases to the regional level of review. At Central Office, there were 2,224 appeals.

I would make a few observations on the numbers shown in the charts. In this year (1987), as in every year, the area of inmate discipline is the single largest category of complaints or appeals. About one-third of all grievances each year are in the area of discipline. If one totals the "granting" of relief done at all three levels, it amounts to about 17% of the inmate grievances filed. That is, about one inmate in six receives the relief asked for. Many other interesting observations can be made, especially if one is aware of the nature of each institution listed, and also aware of the details of the policies and practices being challenged or complained about.

Federal Legislation

In 1980, the U.S. Congress enacted the Civil Rights of Institutionalized Persons Act. Among provisions of this Act is a section dealing with inmate grievances. This part of the Act sets minimum requirements for what was deemed to be a viable grievance system. Those requirements are:

> (A) An advisory role for employees and inmates of any jail, prison, or other correctional institution (at the most decentralized level as is reasonably possible), in the formulation, implementation, and opera-

tion of the system;

(B) Specific maximum time limits for written replies to grievances with reasons therefore at each decision level within the system;

(C) Priority processing of grievances which are of an emergency nature, including matters in which delay would subject the grievant to substantial risk of personal injury or other damages;

(D) Safeguards to avoid reprisals against any grievant or participant in the resolution of a grievance; and

(E) Independent review of the disposition of grievances, including alleged reprisals, by a person or other entity not under the direct supervision or direct control of the institution.

Any state or local jurisdiction may apply to have its grievance system certified, under standards issued by the Attorney General of the United States, implementing the Act's minimum requirements.[7]

If a state's grievance system is certified as being in compliance, the statute now provides a procedural advantage to that state in federal court. If an inmate files a lawsuit in federal court, complaining that his treatment or conditions at his prison violate constitutional requirements (this is the most common kind of prisoner lawsuit, brought under Title 42 U.S. Code, Section 1983), the state may obtain a postponement of the proceeding until the administrative grievance system is used. This requirement for "exhaustion of administrative remedies" had been sought by the states for some time, in their attempts to obtain relief from the large volume of prisoner lawsuits they were facing.

The standards of the statute, and those of the Attorney General, are not binding on any state, however, nor do they apply to the Federal Bureau of Prisons. In fact, only 21 states have applied for the certification, only 7 state certifications have been granted, and it is questionable whether the Bureau of Prisons' program itself would satisfy the certification requirements. Why is this certification process, which could be beneficial in some respects to state and local governments, so much ignored?

The State Experience in the United States

In a survey of state corrections departments in 1987, every state responding except one (Connecticut) reported some type of grievance mechanism in place.[8] Of the 46 systems responding, 15 use what they call an ombudsman (some outside authority) to investigate grievances. Nine have a committee which has some reviewing role, on which inmate representatives sit. Twelve have citizen advisory boards, or some kind of outside advisory committee. Nine allow inmates to represent other inmates at grievance presentations.

What may surprise some is the number of grievances filed. In four states, there were more grievances filed than there were inmates in the system (that is, there was more than a 1-to-1 filing rate). The State of Texas was the champion, reporting that there were 140,000 grievances filed locally in the prior year—a rate of nearly 5 grievances for every inmate confined.

As to outcome, 23% of grievances nationwide were resolved favorably to the inmates. This is a figure without great meaning, unless one digs much deeper into such factors as how "favorable resolutions" are counted, and what types of matters are permitted to be filed in the grievance system.

Preference for Grievance Systems by Prison Administrators

It has already been noted that accreditation standards of the American Correctional Association call for a grievance procedure. The great majority of administrators whom I know in the United States are philosophically in favor of having a grievance mechanism. Why then are the suggestions of the

federal statutes and of so many of the academic writers in this field not adopted by them?

The answer to that question has to be qualified, and it involves a complex set of circumstances. However, the simplest answer, and in my view the overarching view among prison managers is that a grievance system must be an internal one, and that inmate involvement must be limited to the submission of complaints and an opportunity to appeal, and must not include inmates being involved in any substantive aspects of the process. (By substantive input, I mean any direct involvement in filing, reviewing the content of, investigating, assessing the merits of, or having any contribution to the response or remedy provided for complaints—all of this with respect to the contents or substance of *another* inmate's complaint.)

This attitude is not based on a proprietary or narrow view that inmates should not be heard from, or that outside persons cannot contribute ideas of benefit. Many systems have tried the other approaches, such as an ombudsman, an arbitrator, or a mediator approach. Those attempts have been marked by severe limitations as to their usefulness, and as to the range of review which can be accomplished. Other systems have tried, and some still use, procedures with much greater inmate involvement, as in the review of the merits of cases by panels with inmate participation, or the presentation of cases before hearing officers by inmate representatives. There is no unanimity on this point, and different procedures are still being tried. The majority of corrections systems, including the federal one, have looked at the experience in those jurisdictions using outside or inmate involvement, and have decided to go with something closer to the model, where investigations, reviews, and responses are all handled exclusively by corrections staff.

There are many reasons to support this approach. In the United States, at least, there is a very fundamental concern about giving an inmate any voice in or any degree of control over what happens to another inmate. To amplify: the government has the legal, and the professional, responsibility to manage prisons. If mistakes are made, the officials who make those mistakes can be held accountable. It is deemed to be a matter of good managerial judgment that those who have the responsibility, by law, to carry out prison functions should be the ones who have the first chance to correct any errors made in performance of that responsibility. Prison managers must remain in control of the operational and decision-making functions of their institutions, or they are not the managers. It has been learned through unfortunate experience that outside persons, or inside inmates, no matter how good their intentions, cannot be given the authority to control individual aspects of prison management. Inmates especially, even if possessed of good knowledge about the system and with good judgment about how things should be done, are put in an untenable, if not insidious, position if they are placed in a situation where they can obtain special benefits for some inmates, or are called on to take unwelcome action against others. In the simplest terms, an inmate in such a position is a prime target for monetary or other favors (pay-offs, in the jargon) to give a favorable action, or is potentially targeted for threats or other reprisals if action is unfavorable. One can argue that steps can be taken to protect or isolate the inmate against such pressures, but to do so completely and successfully turns the inmate into a government agent, the equivalent of a prison employee, and the whole philosophical argument for inmate involvement is gone.

This is not to say that outside input is totally unwelcome. Corrections officials should not isolate themselves. Public awareness of what is going on inside our institutions is a highly desirable goal, for many reasons, not the least of which is that it is necessary in order to obtain the necessary degree of support and of resources to achieve the mission

of corrections. Advisory committees, academic review of policies and of operations, and the limited use of mediators or of arbitrators may be of great value in the informed and progressive management of prisons.

Conclusion

Grievance mechanisms are not a miracle-tool, nor are they even a sure solution to some of the most troublesome problems facing today's prison managers, such as crowding or prison violence. They can however provide an excellent device for obtaining more limited goals. An effective grievance system can serve to assure inmates, and the public, of our commitment to furnish fair, humane, and decent treatment; it can provide officials with information about trends in inmate complaints, or in troublesome management in certain departments or areas of an institution; it can also save resources for the courts and for ourselves as prison managers, by administratively resolving complaints within our prison system, before they become grounds for judicial review. A well-managed grievance program can channel inmate disputes and complaints into peaceful resolution, preventing these concerns from developing into grounds for violent disruption within the prisons.

Notes

1. The story of this development of religious protections for prisoners is an interesting one. This author has written on this topic, for example in Cripe, "Religious Freedom in Prisons," *Federal Probation*, March 1977.
2. See for example a chapter in the book, *Courts, Corrections, and the Constitution*, John DiIulio Editor, to be published by Oxford University Press later this year.
3. Address by Chief Justice Burger to the National Conference of Christians and Jews, Philadelphia, Pa., November 15, 1972.
4. *U.S. News and World Report*, December 19, 1977, pp. 21-22.
5. standard 2-4343, *Standards for Adult Correctional Institutions, 2nd Edition*, American Correctional Association, 1981.
6. Many authors, in various publications, reviewed the merits of grievances in prison systems. Some examples are Brakel, "Administrative Justice in the Penitentiary: A Report on Inmate Grievance Procedures," *American Bar Foundation Research Journal*, Winter 1982; Hepburn and Laue, "Prisoner Redress: Analysis of an Inmate Grievance Procedure," *Crime and Delinquency*, April 1980; Lesnick, "Grievance procedures in Federal Prisons: Practices and Proposals," *U. Pa. Law Review*, Vol. 123 No. 1, November 1974; O'Leary et al., "Peaceful Resolution of Prison Conflict," National Council on Crime and Delinquency, 1973; Godfarb and Singer, "Redressing Prisoners' Grievances," *G. Wash. Law Review*, Vol. 39, p. 175, 1970.
7. The statute is Public Law No. 960247, Sec. 7, 94 Stat. 349, and is codified as 42 U.S. Code Sec. 1997e. The Attorney General's regulations are published in the Code of Federal Regulations at 28 CFR Part 40 (Sections 40.1-40.22).
8. "Survey—Inmate Grievance Procedures," *Corrections Compendium*, Vol. 11, No. 9, March 1987.

Appendix 1

Federal Prison System

OPI: OGC
Number: 1330.7
Date: October 12, 1979
Subject: Administrative Remedy Procedure for Inmates

Program Statement

1. *[PURPOSE AND SCOPE §542.10. The Bureau of Prisons has established an Administrative Remedy Procedure through which an inmate may seek formal review of a complaint which relates to any aspect of his imprisonment if less formal procedures have not resolved the matter. This procedure applies to all inmates confined in Bureau of Prisons institutions, but does not apply to inmates confined in non-federal facilities.]*

2. DIRECTIVES AFFECTED. P.S. 1330.1 Administrative Remedy of Complaints, dated 10-18-74 is superseded. P.S. 5212.3, Control Unit Programs, dated July 16, 1979 is referenced. Rules cited in this statement are contained in 28 CFR 542.10-16.

3. *[RESPONSIBILITY §542.11.*

a. The Warden, Regional Director, and General Counsel are responsible for the operation of the Administrative Remedy Procedure at the institution, regional and central office levels, respectively, and shall:

1. Establish procedures for receiving, reviewing, investigating and responding to complains or appeals submitted by an inmate;
2. Acknowledge receipt of a complaints or appeal by returning to the inmate a signed receipt;
3. Conduct an investigation into each complaint or appeal;
4. Respond to and sign all complaints or appeals filed at their level. This responsibility may not be delegated further.]
5. The Warden shall appoint one staff member above department head level to coordinate the operation of the Administrative Remedy Procedure. The Regional Director and General Counsel shall be advised of the name of this appointee and any changes.

[b. Inmates have the responsibility to present complaints in good faith and in an honest and straightforward manner.

4. ISSUES IMPROPERLY FILED §542.12. Filings will not be accepted under the Administrative Remedy Procedure for tort claims, Inmate Accident Compensation claims, Freedom of Information or Privacy Act requests, or complaints on behalf of other inmates.]

5. *[INITIAL FILING §542.13.*

a. Informal Resolution. *Inmates shall informally present their complaints to staff, and staff shall attempt to informally resolve any issue before an inmate files a request for Administrative Remedy. The Warden may establish local procedures to ensure that attempts at informal resolution are made.*

b. Filing. *If an inmate is unable to informally resolve his complaint, he may file a formal written complaint, on the appropriate form, within fifteen (15) calendar days of the date on which the basis of the complaint occurred. Where the inmate demonstrates a valid reason*

Bracketed italics—Rules
Regular type—Implementing information

for delay, an extension in filing time shall be allowed. An extension in the time for filing shall be allowed when an inmate indicates and staff verify that a response to the inmate's request for copies of dispositions requested under §8 of this Program Statement (§542.16) has not been received. An inmate may obtain assistance in preparation of his complaint or appeal from other inmates or from institution staff.

c. Sensitive Complaints. *If the inmate believes the complaint is sensitive and that he would be adversely affected if the complaint became known at the institution, he may file the complaint directly with the Regional Director. The inmate must explain, in writing, the reason for not filing the complaint at the institution. If the Regional Director agrees that the complaint is sensitive, he shall accept and respond to the complaint. If the Regional Director does not agree that the complaint is sensitive, he shall advise the inmate in writing of that determination, without a return of the complaint. The inmate may pursue the matter by filing the complaint locally with the Warden.*

d. Control Unit Appeals. *Appeals relative to Control Unit placement may be filed directly with the General Counsel.]* See P.S. 5212.3, Control Unit Programs.

e. Forms.

1. To initiate a complaint after informal resolution has been attempted, inmates shall obtain a Form BP-DIR-9. Ordinarily these forms will be distributed by the correctional counselors.
2. To facilitate indexing, an inmate shall place a single complaint on the form. If the inmate includes more than one complaint on a single form, he shall be advised to utilize additional forms for the separate complaints. However, should the inmate decline to do so, the form should be accepted with multiple complaints.
3. The inmate shall submit the complaint to the appropriate institution staff member who shall promptly submit this form for filing to the staff member designated by the Warden to receive formal complaints. Upon receipt of a complaint, that staff member shall give the complaint a case number as described in §6 of this Program Statement, shall enter the case number at the top of Section B of the form and on the receipt, shall complete the receipt, and return it to the inmate.
4. Complaints not utilizing the proper form, not completed or untimely filed will not be receipted, will not be given a case number, will not be entered into the index described in §8 of this Program Statement, and will be returned to the inmate unanswered (except for sensitive complaints mentioned above).

6. *[REMEDY PROCESSING §542.14]*

a. Numbering System. Each complaint shall, upon acceptance at any location for initial filing, be given a case number which it shall retain through any subsequent appeal levels. That case number shall be composed of the three letter mnemonic code (see Attachment C) followed by a four digit sequential number followed by the last two digits of the year. All locations shall begin the four digit sequential number at 0001 and shall return to that number on January 1st of each year.

b. [Response Time Limits. *A complaint or appeal is considered filed when the receipt is issued. Once filed, response shall be made by the Warden within fifteen (15) calendar days, by the Regional Director within thirty (30) calendar days, and by the General Counsel within thirty (30) calendar days. If the complaint is determined to be of an emergency nature which threatens the inmate's immediate health or welfare, the Warden shall respond within 48 hours of receipt of the complaint. If the period of time for response to a complaint or appeal is insufficient to make an appropriate decision, the time for response may be extended once by the same amount of time as originally allowed for response. Staff shall inform*

the inmate of this extension in writing. If the inmate does not receive a response within the time allotted for reply, including extension, the inmate may consider the absence of a response to be a denial at that level. Staff shall, however, respond to all filed complaints.] Responses shall be in writing and shall be typed in Section B of the form. Responses may be continued on a separate sheet, if necessary.

c. Investigation and Response Preparation. Members of an IDC should not review IDC appeals, and complaints of staff misconduct should not be investigated by the staff member complained about. The first sentence of the response shall be an abstract of the inmate's complaint. This abstract should be complete, but as brief as possible. The remainder of the response should answer completely the complaint, be factual, but should contain no extraneous information. The response shall be written so that it would be releasable to any inmate and to the general public under the Freedom of Information and Privacy Acts. Inmate names shall not be used in the response, and staff or other names shall be used only if absolutely essential.

d. Remedy Form Distribution. Upon completion of the response, the institution shall retain one copy of the complaint and response in a centralized filing location (Warden's Administrative Remedy File) and shall return three copies to the inmate. One copy of a regional appeal and response shall be retained at the Regional Office, one copy shall be filed with the original Administrative Remedy request in the Warden's Administrative Remedy File at the original filing location, and two copies shall be forwarded to the inmate. One copy of a Central Office appeal will be forwarded to the Regional Office, one to the Warden's Administrative Remedy File at the original filing location and one to the inmate. The Central Office will retain one copy. The Warden's Administrative Remedy File shall be organized by case number so that BP-9s, 10s and 11s on the same complaint will be filed together.

7. *[APPEALS §542.15.*

a. Filing. *If an inmate is not satisfied with the Warden's response, that response may be appealed on the appropriate form to the Regional Director within twenty (20) calendar days of the date of the Warden's response. If the inmate is not satisfied with the Regional Director's response, that response may be appealed on the appropriate form to the General Counsel within thirty (30) calendar days from the date of the Regional Director's response. Where a valid reason for delay is stated by an inmate these time limits may be extended. Appeal to the Office of General Counsel is the final administrative appeal in the Bureau of Prisons.]*

b. Appeal Forms. Appeals to the Regional Director shall be made on Form BP-DIR-10 and shall include one copy of the BP-DIR-9 and response. The original case number shall be used on successive appeals. Appeals to the General Counsel shall be made on Form BP-DIR-11 and shall include one copy each of Form BP-DIR-9, Form BP-DIR-10, and their responses. Appeals shall state specifically the reason for appeal. Appeals not utilizing the proper form, not completed or untimely filed will not be receipted, will not be given a case number, will not be entered into the index described in §8 of this Program Statement, and will be returned to the inmate unanswered.

8. *[INDEX AND ACCESS §542.16.]*

a. Index. Upon completion of a response to a complaint, a staff member designated responsible for preparation of the Administrative Remedy Index shall enter the required information on the index form (Attachment A) utilizing the subject codes (Attachment B), disposition codes (Attachment B) and institution mnemonic identifiers (Attachment C). If a complaint is in reference to two or more different subjects, two subject codes shall be placed in the space provided on the index form. For example, a complaint that an IDC action involved improper

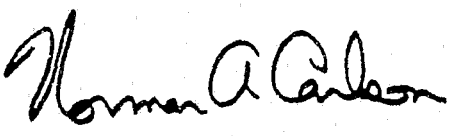
procedures and an overly severe sanction would be coded 5e/5g. No more than two subject codes are allowed for any complaint. A separate index form shall be used for each month. Each space on the form shall be utilized until the end of each month. The abstract of the complaint shall be taken from the first sentence of the response. Abbreviations should be liberally used in transcribing the abstract, so long as they are easily understood, to allow as complete a description of the complaint in the abstract section as possible.

Within thirty days after the end of each month, the index for that month shall be distributed as indicated in Paragraph b of this section. The disposition codes include a code for incomplete dispositions which shall be used for complaints still to be processed at the time of index distribution. Indexes shall be sanitized by deletion of the inmate names and register numbers prior to distribution. No information other than that requested by the index form shall be placed on that form.

b. Index Distribution. Each institution shall forward one copy of their index to the Central Office, one copy to their Regional Office and shall retain one copy. Each Regional Office shall forward one copy of their regional index to each institution in their region, one copy to the Central Office and shall retain one copy. The Central Office shall distribute one copy of their index to each institution and to each Regional Office and shall retain one copy.

c. *[**Disposition Access.** Inmates and members of the public may request access to Administrative Remedy indexes and to responses by case number at the location where they are retained. Copies, with names and other identifiers deleted, may be inspected during regular office hours or may be purchased]* at 10 cents per page. Staff shall forward funds received for purchase of disposition and index copies to the Central Office FOI Section, Office of General Counsel.

9. EFFECTIVE DATE. This Program Statement is effective November 1, 1979.



Norman A. Carlson
Director

Federal Prison System
Administrative Remedy Index

Attachment A
1330. 7
October 12, 1979

Institution _____ Month _____ Year _____

Name & Register No. (Not for Release)	Case Number	Filing Day	Subject Code	Disp. Date	Disp. Code	Inst.*	Abstract

*This colum used for Regional and Central Office logs only.

BP-DIR-112

Administrative Remedy Subject Codes

Attachment B
1330.7
October 12, 1979

Transfer (except medical, disciplinary, or community programs)
1a. Request for transfer
1b. Objection to transfer

Institutional Programs
2a. Central Monitoring designation
2b. Religion (excluding publications)
2c. Education, Vocational Training, (except Seg./Deten.)
2d. Job assignment and work complaints (including FPI)
2e. Extra Good Time, Meritorious Service Award, Performance and Industries Pay
2f. Youth Corrections Act-units, programs, institution designations, etc.
2g. Custody classification
2h. Control Unit placement, release
2i. Control Unit conditions (includes correspondence, visiting, exercise, showers, medical, legal, etc.)
2j. NARA, drug, and alcohol programs (includes placement, removal, program; excluding urine surveillence)
2k. Organizations and special groups
2l. Recreation, hobby program, manuscripts, other leisure time activities
2m. Other

Community Communications (except legal)
3a. Incoming publications
3b. Rejection or confiscation of mail (excluding publications)
3c. Packages
3d. Enclosures (including photographs)
3e. Other mail problems (restricted list, delays, etc.)
3f. Visiting list
3g. Visiting time and conditions (including visit related searches)
3h. Telephone calls
3i. Marriage
3j. News Media

Community Programs
4a. CTC's and Halfway Houses
4b. Social furloughs
4c. Other furloughs
4d. Work/study release
4e. Escorted trips

Disciplinary Matters
5a. Administrative Detention placement, release, conditions (includes protective custody)
5b. Segregation-release
5c. Segregation-conditions (includes correspondence, visiting, exercise, showers, legal, medical, etc.)
5d. UDC appeal
5e. IDC appeal-complaint about procedures (including prisoner participation, opportunity to call witnesses, staff representation)
5f. IDC appeal-complaint about evidence/finding (including adequacy of evidence, disclosure of evidence, disclosure of informants)
5g. IDC appeal-complaint about sanctions
5h. IDC appeal-combined complaint about procedures, evidence and sanctions (for use only when 5e., 5f. and 5g. are all applicable to the IDC appeal)
5i. Good Time restoration
5j. Other discipline (informal resolution, etc.)

Institution Operations
6a. Food (except special diets)
6b. Clothing
6c. Safety, sanitation, and environmental conditions (includes lighting, heating, ventilation, plumbing, etc.)

6d. Housing conditions, overcrowding, assignments (except Drug and Alcohol units)
6e. Personal property (including confiscation or destruction)
6f. Commissary and commissary account
6g. Request for copying
6h. Searches (except visit related searches)
6i. Urine surveillance program (excluding disciplinary appeals)
6j. Other operations

Medical

7a. Access to or delay in receiving medical care
7b. Improper or inadequate medical care
7c. Medical transfer
7d. Dental care
7e. Mental health care
7f. Pregnancy, abortion, child birth and child placement
7g. Medical records
7h. Right to refuse treatment
7i. Medical diets
7j. Other medical

Legal

8a. Jail time
8b. Other sentence computation
8c. Records
8d. Detainers/production on writ
8e. Law Library, typewriters, legal supplies (except seg./deten.)
8f. Legal mail and phone calls (except segregation/detention)
8g. Legal visits (except segregation/detention)
8h. Other legal assistance (except segregation/detention)
8i. Personal legal materials and personal law books (except segregation/detention)
8j. Administrative Remedy Procedure
8k. FOI, Privacy Tort Claims, accident compensation (improperly filed under Administrative Remedy Procedure)

Parole

9a. 18 USC 4205(g) request
9b. Parole and progress reports
9c. Release plans (including gratuity)
9d. Parole scheduling, dockets
9e. Other parole matters

Complaints against Staff or Others

10a. Harassment by staff
10b. Assault by staff
10c. Discrimination
10d. Other complaint against staff
10e. Complaint against non-staff person

Disposition Codes

1. Deny
2. Grant
3. Information/Explanation only
4. Partially Granted
5. Improper Subject Matter (eg. Tort Claims, FOI-Privacy Request)
6. Previously Granted
7. Withdrawn at Inmate's Request
8. Repetitive of Previous Appeal—Deny
9. Other
10. Incomplete

Attachment C
1330.7
October 12, 1979

Mnemonic Codes

Facility Name	Mnemonic Code	Facility Name	Mnemonic Code
Alderson	ALD	Morgantown	MRG
Allenwood	ALW	New York MCC	NYM
Ashland	ASH	Otisville	OTV
Atlanta	ATL	Oxford	OXF
Bastrop	BSP	Petersburg	PET
Boron	BRN	Pleasanton	PLE
Big Spring	BSG	Safford	SAF
Butner	BUT	Sandstone	SST
Camarillo	CAM	San Diego MCC	SDC
Chicago	CCC	Seagoville	SEA
Danbury	DAN	Springfield	SPG
Eglin	EGL	Talladega	TDG
El Reno	ERE	Tallahassee	TAL
Englewood	ENG	Terre Haute	THA
Florence	FLO	Texarkana	TEX
Fort Worth	FTW	Terminal Island	TRM
Lake Placid	LPD		
La Tuna	LAT	*Bureau Regional Offices*	
Lewisburg	LEW		
Lompoc	LOM	Southeast RO	ARO
Leavenworth	LVN	South Central RO	DRO
Lexington	LEX	North Central RO	KRO
Marion	MAR	Northeast RO	PRO
McNeil Island	MNI	Western RO	SRO
Memphis	MEM		
Miami	MIA	*Bureau Central Office*	
Milan MIL			
Montgomery	MON		HDQ

U.S. INMATE GRIEVANCE SYSTEMS

U.S. Department of Justice
Federal Bureau of Prisons

Request For Administrative Remedy

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: _____ _____ _____ _____
LAST NAME, FIRST, MIDDLE INITIAL | REG. NO. | UNIT | INSTITUTION

Part A – REASON FOR APPEAL

_____ _____
DATE | SIGNATURE OF REQUESTOR

Part B – RESPONSE

_____ _____
DATE | WARDEN REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE CASE NUMBER: _____

Part C – RECEIPT

CASE NUMBER: _____

Return to: _____ _____ _____ _____
LAST NAME, FIRST, MIDDLE INITIAL | REG. NO. | UNIT | INSTITUTION

SUBJECT: _____

_____ _____
DATE | RECIPIENT'S SIGNATURE (STAFF MEMBER)

BP-DIR-9
April 1982

U.S. Department of Justice

Federal Bureau of Prisons

Regional Administrative Remedy Appeal

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-DIR-9 including any attachments must be submitted with this appeal.

From: _____ _____ _____ _____
LAST NAME, FIRST, MIDDLE INITIAL | REG. NO. | UNIT | INSTITUTION

Part A – REASON FOR APPEAL

_____ _____
DATE | SIGNATURE OF REQUESTOR

Part B – RESPONSE

_____ _____
DATE | REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE CASE NUMBER: _____

Part C – RECEIPT

CASE NUMBER: _____

Return to: _____ _____ _____ _____
LAST NAME, FIRST, MIDDLE INITIAL | REG. NO. | UNIT | INSTITUTION

SUBJECT: _____

_____ _____
DATE | SIGNATURE, RECIPIENT OF REGIONAL APPEAL

BP-DIR-10
April 1982

U.S. Department of Justice
Federal Bureau of Prisons

Central Office Administrative Remedy Appeal

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-DIR-9 and BP-DIR-10, including any attachments must be submitted with this appeal.

From: _____ _____ _____ _____
LAST NAME, FIRST, MIDDLE INITIAL | REG. NO. | UNIT | INSTITUTION

Part A – REASON FOR APPEAL

_____ _____
DATE | SIGNATURE OF REQUESTOR

Part B – RESPONSE

_____ _____
DATE | GENERAL COUNSEL

ORIGINAL: RETURN TO INMATE CASE NUMBER: _____

Part C – RECEIPT

CASE NUMBER: _____

Return to: _____ _____ _____ _____
LAST NAME, FIRST, MIDDLE INITIAL | REG. NO. | UNIT | INSTITUTION

SUBJECT: _____

_____ _____
DATE | SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL

Appendix 2

ADMINISTRATIVE REMEDY PROCEDURE---INSTITUTION FILINGS (BP-9)--1987

	1 TRANS	2 PROG	3 COMM	4 COMPR	5 DISC	6 OPRNS	7 MED	8 LEGAL	9 PAROL	0 STAFF	TOTAL	GRNT	%GR	DENY	%DN	OTH
ALDERSON	4	22	5	7	18	19	9	8	0	36	128	24	21%	90	79%	14
ALLENWOOD	12	54	1	46	81	13	5	7	4	0	223	17	8%	200	92%	6
DANBURY	9	73	5	24	30	26	4	25	3	14	213	27	15%	150	85%	36
LEWISBURG	32	82	18	18	56	39	19	35	6	30	335	61	20%	237	80%	37
LORETTO	2	24	2	11	30	0	1	2	0	0	72	5	8%	61	92%	6
MORGANTOWN	4	10	1	9	68	2	2	1	0	8	105	13	14%	77	86%	15
NEW YORK	1	7	7	2	10	13	2	9	0	16	67	8	18%	37	82%	22
OTISVILLE	45	8	24	10	1	1	24	0	2	2	117	14	21%	54	79%	49
PETERSBURG	7	46	18	11	18	23	17	8	5	14	167	24	16%	129	84%	14
RAY BROOK	6	39	4	9	80	13	7	17	3	31	209	24	13%	164	87%	21
NER TOTAL	122	365	85	147	392	149	90	112	23	151	1636	217	15%	1199	85%	220
ASHLAND	12	50	21	8	97	42	29	24	1	44	328	29	10%	269	90%	30
ATLANTA	4	18	6	10	39	10	13	20	1	9	130	15	14%	91	86%	24
BUTNER	2	19	16	7	15	6	6	15	1	23	110	8	9%	84	91%	18
EGLIN	3	7	2	5	30	1	2	5	0	2	57	5	9%	48	91%	4
LEXINGTON	12	70	8	16	192	28	51	20	6	0	403	33	13%	214	87%	156
MAXWELL	0	3	1	2	23	1	0	7	0	3	40	5	13%	33	87%	2
MEMPHIS	12	36	24	4	135	29	20	49	0	43	352	16	5%	292	95%	44
MIAMI	0	9	3	2	40	7	3	6	1	15	86	12	15%	70	85%	4
TALLADEGA	10	44	17	7	10	30	23	16	1	44	202	66	41%	94	59%	42
TALLAHASSEE	9	24	3	10	60	13	9	10	3	26	167	18	13%	120	87%	29
SER TOTAL	64	280	101	71	641	167	156	172	14	209	1875	207	14%	1315	86%	353
CHICAGO	6	17	12	9	43	28	13	8	4	8	148	31	30%	72	70%	45
DULUTH	11	22	2	11	47	13	14	8	2	20	150	18	14%	110	86%	22
LEAVENWORTH	34	72	28	1	304	69	33	61	6	79	687	94	14%	557	86%	36
LVN CAMP	2	11	4	16	38	3	4	11	0	4	93	5	6%	79	94%	9
MARION	39	59	65	7	182	136	70	49	7	56	670	53	11%	411	89%	206
MILAN	17	60	20	6	94	40	43	40	2	43	365	48	15%	275	85%	42
OXFORD	10	26	11	3	74	42	13	14	1	20	214	20	10%	174	90%	20
ROCHESTER	17	54	22	11	103	21	20	29	5	32	314	48	16%	246	84%	20
SANDSTONE	16	49	24	18	86	36	26	86	13	22	376	35	11%	287	89%	54
SPRINGFIELD	37	50	14	7	67	63	75	42	9	67	431	68	17%	324	83%	39
TERRE HAUTE	29	147	14	23	283	95	77	71	9	86	834	60	8%	712	92%	62
NCR TOTAL	218	567	216	112	1321	546	388	419	58	437	4282	480	13%	3247	87%	555
BASTROP	5	22	5	11	94	17	17	8	2	41	222	44	21%	166	79%	12
BIG SPRING	0	16	1	6	47	1	3	10	0	1	85	14	20%	56	80%	15
EL RENO	27	66	29	9	177	70	31	62	8	60	539	96	18%	430	82%	13
FORT WORTH	1	6	3	5	67	2	5	2	1	14	106	10	10%	88	90%	8
LA TUNA	21	40	14	9	98	20	20	25	7	23	277	34	16%	180	84%	63
OAKDALE	Not available. Records destroyed in November disturbance.															
SEAGOVILLE	4	28	11	5	84	33	13	10	1	42	231	27	14%	172	86%	32
TEXARKANA	16	44	16	15	37	30	11	32	7	48	276	57	21%	211	79%	8
SCR TOTAL	74	222	79	60	624	173	100	149	26	229	1736	282	18%	1303	82%	151
BORON	0	13	2	5	20	2	2	16	0	19	79	4	7%	56	93%	19
ENGLEWOOD	4	33	6	7	65	26	10	12	4	36	203	29	17%	143	83%	31
LOMPOC	24	74	38	2	243	67	23	36	9	26	542	59	13%	410	87%	73
LOMPOC CAMP	1	6	2	9	55	1	3	7	1	8	93	19	22%	66	78%	8
PHOENIX	11	39	15	10	101	44	9	37	1	23	290	39	15%	213	85%	38
PLEASANTON	5	30	13	33	99	8	12	8	3	30	241	23	11%	184	89%	34
SAFFORD	10	5	1	9	12	4	3	6	0	3	53	8	16%	42	84%	3
SAN DIEGO	1	1	1	1	14	3	8	0	0	8	37	3	12%	22	88%	12
TERMINAL IS	4	11	11	3	84	16	15	8	1	16	169	27	19%	117	81%	25
TUCSON	11	34	11	5	77	58	21	32	1	53	303	51	19%	212	81%	40
WR TOTAL	71	246	100	84	770	229	106	162	20	222	2010	262	15%	1455	85%	283
GRAND TOTAL	549	1680	581	474	3748	1264	840	1014	141	1248	11539	1448	15%	8529	85%	1562

ADMINISTRATIVE REMEDY PROCEDURE---REGIONAL OFFICE APPEALS (BP-10)--1987

	1 TRANS	2 PROG	3 COMM	4 COMPR	5 DISC	6 OPRNS	7 MED	8 LEGAL	9 PAROL	0 STAFF	TOTAL	GRNT	%GR	DENY	%DN	OTH
ALDERSON	1	8	0	2	61	3	4	7	0	2	88	5	6%	79	94%	4
ALLENWOOD	10	31	1	24	31	7	0	5	2	0	111	9	9%	94	91%	8
DANBURY	3	43	0	8	62	9	1	11	1	2	140	11	8%	128	92%	1
LEWISBURG	17	38	6	6	116	16	7	18	8	2	234	16	7%	210	93%	8
LORETTO	1	7	1	7	14	1	0	0	0	1	32	2	6%	29	94%	1
MORGANTOWN	1	1	0	4	8	1	1	0	0	2	18	0	0%	18	100%	0
NEW YORK	0	1	4	0	7	0	0	0	0	1	13	2	17%	10	83%	1
OTISVILLE	4	17	0	4	35	2	6	11	1	4	84	7	9%	73	91%	4
PETERSBURG	4	20	3	3	80	10	6	3	3	2	134	9	7%	120	93%	5
RAY BROOK	3	24	4	2	35	9	3	14	2	8	104	5	5%	96	95%	3
NER TOTAL	44	190	19	60	449	58	28	69	17	24	958	66	7%	857	93%	35
ASHLAND	7	22	7	2	38	13	9	8	1	2	109	4	4%	96	96%	9
ATLANTA	1	10	1	5	15	1	10	13	2	2	60	6	15%	35	85%	19
BUTNER	2	8	1	1	33	1	4	9	1	6	66	1	2%	57	98%	8
EGLIN	1	3	1	4	12	0	2	4	0	2	29	8	32%	17	68%	4
LEXINGTON	3	25	4	8	48	8	24	11	0	14	145	4	4%	99	96%	42
MAXWELL	0	0	0	1	10	1	0	6	0	0	18	1	6%	16	94%	1
MEMPHIS	6	18	17	1	60	14	14	36	1	8	175	12	8%	145	92%	16
MIAMI	0	1	0	0	5	0	0	0	0	0	6	0	0%	6	100%	0
TALLADEGA	1	13	4	2	25	10	5	6	0	3	69	3	5%	55	95%	11
TALLAHASSEE	4	9	1	4	25	4	4	10	0	1	62	3	5%	55	92%	2
SER TOTAL	25	109	36	28	271	52	72	103	5	38	739	44	7%	583	93%	112
CHICAGO	0	8	1	4	9	3	1	6	0	1	33	4	12%	29	88%	0
DULUTH	4	9	3	3	24	3	10	5	0	2	63	5	8%	58	92%	0
LEAVENWORTH	18	41	15	1	125	39	14	28	7	32	320	13	4%	305	96%	2
LVN CAMP	0	5	0	3	6	0	1	5	0	0	20	0	0%	20	100%	0
MARION	25	61	40	6	86	70	31	27	1	16	363	1	0%	361	100%	1
MILAN	9	22	4	2	32	5	15	13	2	9	113	3	3%	110	97%	0
OXFORD	4	13	3	13	41	18	3	8	1	1	105	0	0%	105	100%	0
ROCHESTER	9	21	7	1	35	9	11	15	1	8	117	5	4%	111	96%	1
SANDSTONE	5	17	21	1	39	12	14	50	9	7	175	6	3%	168	97%	1
SPRINGFIELD	13	19	8	2	16	16	31	21	2	18	146	3	2%	142	98%	1
TERRE HAUTE	13	42	6	1	84	43	27	31	2	29	278	5	2%	273	98%	0
NCR TOTAL	100	258	108	37	497	218	158	209	25	123	1733	45	3%	1682	97%	6
BASTROP	4	5	4	4	42	2	6	3	1	12	83	14	17%	68	83%	1
BIG SPRING	0	6	0	0	16	0	2	8	0	2	34	5	15%	29	85%	0
EL RENO	15	29	9	4	92	23	12	30	3	22	239	34	14%	203	86%	2
FORT WORTH	0	1	0	4	20	0	1	0	1	3	30	6	20%	24	80%	0
LA TUNA	12	16	4	2	47	2	4	14	4	10	115	18	16%	96	84%	1
OAKDALE	0	0	0	0	3	0	0	1	0	0	4	2	50%	2	50%	0
SEAGOVILLE	3	10	2	2	31	12	5	9	0	10	84	10	12%	74	88%	0
TEXARKANA	8	23	6	7	27	9	4	14	5	24	127	14	11%	112	89%	1
SCR TOTAL	42	90	25	23	278	48	34	79	14	83	716	103	14%	608	86%	5
BORON	0	2	1	2	2	0	0	10	0	2	19	3	17%	15	83%	1
ENGLEWOOD	0	7	1	5	18	2	0	2	2	4	41	2	5%	37	95%	2
LOMPOC	17	28	15	0	73	30	8	22	2	12	207	11	5%	192	95%	4
LOMPOC CAMP	0	3	0	2	13	0	0	6	0	1	25	2	8%	22	92%	1
PHOENIX	5	8	9	1	42	13	3	10	1	5	97	9	10%	85	90%	3
PLEASANTON	3	12	7	2	28	6	0	6	1	1	66	7	11%	56	89%	3
SAFFORD	4	3	0	8	5	1	1	4	0	0	26	3	12%	23	88%	0
SAN DIEGO	2	0	0	0	0	0	1	0	0	1	4	0	0%	4	100%	0
TERMINAL IS	1	3	0	1	21	4	1	3	0	2	36	4	11%	31	89%	1
TUCSON	6	21	2	3	28	35	9	22	2	10	138	6	4%	131	96%	1
WR TOTAL	38	87	35	24	230	91	23	85	8	38	659	47	7%	596	93%	16
GRAND TOTAL	249	734	223	172	1725	467	315	545	69	306	4805	305	7%	4326	93%	174

ADMINISTRATIVE REMEDY PROCEDURE--CENTRAL OFFICE APPEALS (BP-11)--1987

	1 TRANS	2 PROG	3 COMM	4 COMPR	5 DISC	6 OPRNS	7 MED	8 LEGAL	9 PAROL	0 STAFF	TOTAL	GRNT	%GR	DENY	%DN	OTH
ALDERSON	1	1	0	1	4	1	1	3	0	0	12	0	0%	12	100%	0
ALLENWOOD	1	15	0	6	9	2	1	3	0	0	37	4	11%	33	89%	0
DANBURY	2	12	0	3	22	2	0	5	0	0	46	4	9%	41	91%	1
LEWISBURG	6	24	3	2	42	5	4	11	2	3	102	3	3%	97	97%	2
LORETTO	0	3	0	3	6	0	0	0	0	0	12	1	8%	11	92%	0
MORGANTOWN	1	1	0	3	2	0	0	0	0	1	8	0	0%	8	100%	0
NEW YORK	0	0	2	0	2	0	0	0	0	0	4	0	0%	4	100%	0
OTISVILLE	3	12	0	2	18	4	3	4	0	2	48	4	8%	44	92%	0
PETERSBURG	1	7	1	1	20	4	2	5	1	0	42	1	3%	39	98%	2
RAY BROOK	2	8	0	2	22	3	3	5	0	2	47	3	6%	44	94%	0
NER TOTAL	17	83	6	23	147	21	14	36	3	8	358	20	6%	333	94%	5
ASHLAND	3	7	3	1	20	12	5	4	0	2	57	2	4%	55	96%	0
ATLANTA	0	5	1	4	4	2	4	6	0	3	29	0	0%	28	100%	1
BUTNER	0	3	1	0	16	1	0	6	1	4	32	1	3%	31	97%	0
EGLIN	2	1	0	0	2	0	1	3	0	0	9	0	0%	9	100%	0
LEXINGTON	2	2	0	2	7	3	7	6	1	1	31	3	10%	27	90%	1
MAXWELL	0	0	0	0	0	1	0	2	0	0	3	0	0%	3	100%	0
MEMPHIS	1	8	9	1	26	8	9	27	1	7	97	1	1%	96	99%	0
MIAMI	0	0	0	0	0	0	0	0	0	0	0	0	0%	0	0%	0
TALLADEGA	1	5	1	0	9	4	0	1	0	0	21	1	5%	20	95%	0
TALLAHASSEE	2	3	0	2	7	3	1	4	0	0	22	2	9%	20	91%	0
SER TOTAL	11	34	15	10	91	34	27	59	3	17	301	10	3%	289	97%	2
CHICAGO	0	1	1	0	5	1	0	1	0	0	9	0	0%	9	100%	0
DULUTH	1	5	0	2	12	2	5	6	0	2	35	1	3%	34	97%	0
LEAVENWORTH	5	14	5	0	96	19	3	17	3	11	173	1	1%	170	99%	2
LVN CAMP	0	2	0	2	5	0	0	4	0	0	13	0	0%	13	100%	0
MARION	16	26	24	2	89	45	8	17	2	13	242	4	2%	237	98%	1
MILAN	4	7	1	0	27	2	2	9	0	1	53	2	4%	51	96%	0
OXFORD	1	5	2	6	27	8	0	8	0	0	57	4	7%	53	93%	0
ROCHESTER	5	6	5	1	26	3	7	8	0	5	66	0	0%	66	100%	0
SANDSTONE	1	13	9	1	19	8	6	40	4	1	102	1	1%	101	99%	0
SPRINGFIELD	3	2	2	1	13	5	11	11	1	6	55	1	2%	54	98%	0
TERRE HAUTE	5	25	2	0	56	22	9	24	1	15	159	0	0%	159	100%	0
NCR TOTAL	41	106	51	15	375	115	51	145	11	54	964	14	1%	947	99%	3
BASTROP	0	0	1	0	20	0	2	4	0	2	29	0	0%	29	100%	0
BIG SPRING	1	2	0	0	8	0	0	4	0	1	16	0	0%	15	100%	1
EL RENO	7	7	1	2	54	11	7	20	1	2	112	1	1%	110	99%	1
FORT WORTH	0	0	0	0	7	0	0	0	0	0	7	1	14%	6	86%	0
LA TUNA	7	6	2	1	21	2	0	5	1	1	46	1	2%	45	98%	0
OAKDALE	0	0	0	0	1	0	0	1	0	0	2	0	0%	2	100%	0
SEAGOVILLE	2	3	2	0	18	4	1	5	0	0	35	0	0%	35	100%	0
TEXARKANA	5	14	0	2	23	3	0	10	3	1	61	1	2%	59	98%	1
SCR TOTAL	22	32	6	5	152	20	10	49	5	7	308	4	1%	301	99%	3
BORON	0	1	0	1	1	0	0	7	0	0	10	0	0%	10	100%	0
ENGLEWOOD	0	4	0	2	3	2	0	2	1	0	14	1	7%	13	93%	0
LOMPOC	6	16	1	0	37	4	3	13	1	0	81	5	6%	76	94%	0
LOMPOC CAMP	0	2	1	0	3	1	1	3	0	0	11	1	9%	10	91%	0
PHOENIX	1	3	9	0	12	9	2	6	0	1	43	2	5%	41	95%	0
PLEASANTON	2	4	0	0	11	2	1	1	0	0	21	2	10%	18	90%	1
SAFFORD	1	0	0	2	5	0	1	2	0	0	11	0	0%	11	100%	0
SAN DIEGO	1	0	0	0	0	0	1	0	0	0	2	0	0%	2	100%	0
TERMINAL IS	1	1	0	0	9	0	0	1	1	1	14	1	7%	13	93%	0
TUCSON	4	13	3	2	22	20	5	15	0	2	86	2	2%	83	98%	1
WR TOTAL	16	44	14	7	103	38	14	50	3	4	293	14	5%	277	95%	2
GRAND TOTAL	107	299	92	60	868	228	116	339	25	90	2224	62	3%	2147	97%	15

U.S. INMATE GRIEVANCE SYSTEMS

PERCENT CHANGE IN BP--9 FILINGS 1983--1987

	# 1983	# 1984	%CHG 83-84	# 1985	%CHG 84-85	# 1986	%CHG 85-86	# 1987	%CHG 86-87
ALDERSON	148	179	21%	187	4%	166	-11%	128	-23%
ALLENWOOD	269	170	-37%	187	10%	190	2%	223	17%
DANBURY	238	342	44%	246	-28%	218	-11%	213	-2%
LEWISBURG	866	594	-31%	643	8%	743	16%	335	-55%
LORETTO	n/a	n/a	n/a	21	n/a	50	138%	72	44%
MORGANTOWN	165	179	8%	177	-1%	138	-22%	105	-24%
NEW YORK	61	43	-30%	94	119%	91	-3%	67	-26%
OTISVILLE	401	284	-29%	283	0%	157	-45%	117	-25%
PETERSBURG	161	127	-21%	201	58%	213	6%	167	-22%
RAY BROOK	277	227	-18%	196	-14%	260	33%	209	-20%
NER TOTAL	2586	2145	-17%	2235	4%	2226	0%	1636	-27%
ASHLAND	461	483	5%	363	-25%	296	-18%	328	11%
ATLANTA	99	176	78%	153	-13%	148	-3%	130	-12%
BUTNER	195	168	-14%	74	-56%	114	54%	110	-4%
EGLIN	103	83	-19%	61	-27%	48	-21%	57	19%
LEXINGTON	583	477	-18%	331	-31%	354	7%	403	14%
MAXWELL	74	99	34%	39	-61%	24	-38%	40	67%
MEMPHIS	561	598	7%	412	-31%	437	6%	352	-19%
MIAMI	104	112	8%	95	-15%	116	22%	86	-26%
TALLADEGA	379	691	82%	579	-16%	507	-12%	202	-60%
TALLAHASSEE	284	310	9%	206	-34%	208	1%	167	-20%
SER TOTAL	2843	3197	12%	2313	-28%	2252	-3%	1875	-17%
CHICAGO	86	167	94%	437	162%	134	-69%	148	10%
DULUTH	n/a	74	n/a	110	49%	160	45%	150	-6%
LEAVENWORTH	1038	813	-22%	738	-9%	672	-9%	687	2%
LVN CAMP	n/a	n/a	n/a	n/a	n/a	171	n/a	93	-46%
MARION	678	1811	167%	1040	-43%	769	-26%	670	-13%
MILAN	527	659	25%	344	-48%	250	-27%	365	46%
OXFORD	290	333	15%	327	-2%	212	-35%	214	1%
ROCHESTER	n/a	n/a	n/a	54	n/a	216	300%	314	45%
SANDSTONE	350	508	45%	807	59%	710	-12%	376	-47%
SPRINGFIELD	686	434	-37%	456	5%	568	25%	431	-24%
TERRE HAUTE	702	817	16%	826	1%	880	7%	834	-5%
NCR TOTAL	4357	5616	29%	5139	-8%	4742	-8%	4282	-10%
BASTROP	250	232	-7%	281	21%	205	-27%	222	8%
BIG SPRING	99	67	-32%	68	1%	98	44%	85	-13%
EL RENO	453	431	-5%	621	44%	637	3%	539	-15%
FORT WORTH	151	196	30%	307	57%	214	-30%	106	-50%
LA TUNA	350	314	-10%	186	-41%	251	35%	277	10%
OAKDALE	n/a	n/a	n/a	n/a	n/a	36	n/a	n/a	n/a
SEAGOVILLE	296	219	-26%	197	-10%	232	18%	231	0%
TEXARKANA	273	335	23%	241	-28%	231	-4%	276	19%
SCR TOTAL	1872	1794	-4%	1901	6%	1904	0%	1736	-9%
BORON	81	108	33%	67	-38%	62	-7%	79	27%
ENGLEWOOD	151	156	3%	120	-23%	145	21%	203	40%
LOMPOC	928	879	-5%	524	-40%	422	-19%	542	28%
LOMPOC CAMP	n/a	n/a	n/a	n/a	n/a	103	n/a	93	-10%
PHOENIX	n/a	n/a	n/a	53	n/a	319	502%	290	-9%
PLEASANTON	278	255	-8%	262	3%	272	4%	241	-11%
SAFFORD	135	59	-56%	89	51%	51	-43%	53	4%
SAN DIEGO	64	43	-33%	36	-16%	33	-8%	37	12%
TERMINAL IS	394	394	0%	334	-15%	345	3%	169	-51%
TUCSON	140	115	-18%	155	35%	242	56%	303	25%
WR TOTAL	2171	2009	-7%	1640	-18%	1994	22%	2010	1%
GRAND TOTAL	13829	14761	7%	13228	-10%	13118	-1%	11539	-12%

Recent Managerial and Organisational Innovations

*by Gordon H. Lakes**

Introduction

The purpose of this paper is to describe five important changes which have taken place since the Prison Service of England and Wales was re-organised following the publication, in 1979, of the report of an Inter-departmental Committee of Inquiry into the United Kingdom Prison Services—the May Report. I shall also refer to the industrial relations climate in which those changes took place.

There have, of course, been many important initiatives since 1980. There have been developments in staff training and personnel management; in the use of information technology and in the management of the prison building programme. Progress has been made in the development of the social work role of the prison officer and with the greater involvement of volunteers and community-based organisations. A strategy has been developed for the management of the long-term prison system; a clear race relations policy and a supportive training programme has been introduced and there have been changes in the arrangements for parole, home leave and remission. These and many other changes have been introduced despite the logistical and industrial relations problems which have been a marked feature of the last decade.

From the many initiatives and policy developments of recent years I have chosen five which I consider to be particularly relevant to the theme of the 82nd International Training Courses. I shall describe the system of managerial accountability which now operates throughout the Prison Service and beyond; a developing method of monitoring regime activities in establishments; the devolution of financial responsibility; changes in the management structure in establishments and in the conditions of service and working arrangements for staff and, finally, changes in the sentencing and custodial treatment of young offenders.

The System of Accountable Management

The May Committee received information and advice from a wide variety of sources including trade unions and representatives of professional organisations; former Ministers and civil servants; Members of Parliament; Regional Directors; Governors and academic criminologists. Almost everyone agreed that there was a need to do something about the organisation of the Prison Service of England and Wales and in particular the top of what one body described in their evidence as "this confounded Department"; but there was a considerable difference of opinion about precisely what it was that should be done.

The committee reached the view that what was required was "an identifiable prisons administration with clear integrated managerial responsibility and as fully a professional operational direction as circumstances allow." They were critical of the fact that only the most rudimentary information was available on the operating costs of the Service and were particularly surprised and concerned to discover that it was not possible to establish

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exactly how much each prison cost to run. They recommended that accounting procedures should be improved so that better and more detailed financial information could be made available to all managers; emphasised the importance of financial controls as a means of enhancing managerial efficiency; and suggested that there would be advantage in making governors directly accountable for the money expended on the running of their establishments.

These and other recommendations aimed at improving managerial performance, with particular reference to accountability and efficiency in the use of resources, were taken into account when the new organisational structure was devised. They also stimulated a number of other initiatives and projects designed to give practical effect to some of the principles contained in the committee's report.

The theme of accountable management and improved financial control was reinforced when, in 1982, the government made a major policy statement on the management of resources in the public service. The Financial Management Initiative (FMI), with its emphasis on efficiency, effectiveness and economy in the use of resources, gave further impetus to the development of accountable management structures and procedures throughout the public sector. So far as the Prison Service was concerned there was a need to develop a managerial framework which would ensure that there was a functional link between the strategy for meeting the aims and objectives of the Service as a whole, the stated objectives of individual establishments and what actually happened in those establishments.

Developmental work came to fruition in 1984 with the introduction of a framework of accountability for the management of establishments. It confirmed the role of the Governor as the key manager in the Prison Service because he is responsible for the actual delivery of the Department's policies and for the quality of the service that is provided. It also took account of the fact that, while the Governor can reasonably be held personally accountable for the operation of his establishment, he is not solely responsible for carrying out the tasks and meeting the objectives of the Prison Service. Every Governor operates within an organisational structure in which others have managerial responsibility for determining policy, directing operational procedures and, crucially, allocating resources. Responsibility and the related accountability spans the Prisons Board, Regional Offices and establishments.

This organisational reality was reflected in the newly defined framework of managerial accountability, the main ingredients of which were a statement of the task of the Prison Service as a whole, and an inter-related statement describing the range of functional elements of individual establishments. Together they provided the context within which the tasks of each establishment could be more precisely defined, the establishment's performance monitored, and the Governor held accountable through the Regional Director to the Deputy Director General and the Director General.

The task of the Prison Service was defined by the Prisons Board in the following terms:

The task of the Prison Service is to use with maximum efficiency the resources of staff, money, building and plant made available to it by Parliament in order to fulfil in accordance with the relevant provisions of the law, the following functions:

(i) to keep in custody untried or unsentenced prisoners, and present them to court for trial or sentence;
(ii) to keep in custody, with such degree of security as is appropriate, having regard to the nature of the individual prisoner and his offence, sentenced prisoners for the duration of their sentence or for such shorter time as the Secretary of State may determine in cases where he has discretion;
(iii) to provide for prisoners as full a life as

is consistent with the facts of custody, in particular making available the physical necessities of life; care for physical and mental health; advice and help with personal problems; work, education, training, physical exercise and recreation; and opportunity to practise their religion; and

(iv) to enable prisoners to retain links with the community and where possible assist them to prepare for their return to it.

Over the years a number of attempts had been made to define the role and functions of establishments but they had been introduced in a piecemeal fashion, some were of dubious origin and relevance and those that had official endorsement were not universally applied or monitored. This was clearly a very unsatisfactory situation and a working group of regional and headquarters representatives was set up to consider the formulation of a statement of functions which was definitive, authoritative, congruent with the defined task of the Prison Service and capable of universal application.

The outcome, which was endorsed by the Prisons Board, was:

Statement of Functions of Prison Service Establishments

Custody of Unsentenced Prisoners

1. To receive and keep in custody prisoners awaiting trial or sentence, civil prisoners and any other persons lawfully committed to their custody.

2. To release such prisoners from custody on the directions of the court or other lawful authority or when the conditions of bail have been met.

The Court Commitment

3. To ensure that prisoners are produced at court as required.

4. To provide the requisite reports and documentation.

5. To provide staff required at the Crown Court and Court of Appeal (Criminal Division) and keep prisoners there in custody.

Custody of Sentenced Prisoners

6. To receive sentenced prisoners and keep them in custody.

7. To calculate and implement release dates.

8. To assess prisoners for the purpose of determining or recommending (a) an appropriate level of security and (b) an appropriate allocation.

9. To keep each prisoner's security category and allocation under regular review. In the case of life sentence prisoners, to maintain regular formal Review Board procedures.

10. To give effect to the provisions relating to parole and release on life licence.

Security, Safety and Control

11. To maintain a level of security appropriate to the prisoners who are or may be held at the establishment.

12. To maintain good order in the interests of the operation of the prison, and take such steps as are necessary for the safety of its staff and inmates.

Services and Facilities for Prisoners

13. To provide in accordance with the statutory provisions and Departmental instructions: (a) accommodation, (b) meals, (c) facilities for personal hygiene and sanitation, (d) clothing, (e) opportunities for exercise and (f) access to privileges.

14. To provide a service for the diagnosis, treatment and prevention of physical and mental disorders and the promotion of health.

15. To provide help and advice with personal problems.

16. To enable prisoners to practise their religion.

17. To provide, with a view to occupying prisoners as fully as possible throughout the whole week, a balanced and integrated regime, which may include work, education,

physical education, access to libraries and individual and collective leisure activities.

18. To enable prisoners to spend the maximum possible time out of their cells.

Community Links and Preparation for Release

19. To enable prisoners to maintain contact with the outside world, and in particular to communicate with their families, friends and legal representatives.

20. To operate the home leave scheme.

21. To assist prisoners to prepare for their release, which may include (a) providing such opportunities as are practicable for them to go out into the community on temporary release, (b) providing pre-release courses, and (c) putting prisoners in touch with the probation service and other external agencies.

22. To make arrangements as required for prisoners' after-care.

It will be apparent that not every one of the individual functional elements will apply to every establishment; but the function of every establishment can be defined by using a combination of the relevant elements. It is for the Regional Directors and the Governors concerned to select those which provide a comprehensive statement of the functions of each individual establishment.

The terms and tone of both these statements is essentially pragmatic; they were intended to be management tools and to that end aspirational language was avoided. The aim was to define the task and functions in such a way as to enable objective judgements to be made about the quality of performance without becoming enmeshed in a general debate about such matters as the philosophy of punishment, the purposes of imprisonment and, more directly, the problem of assessing the effective delivery of rehabilitative ambitions which may otherwise be expressed in imprecise, aspirational language. These, of course, are vitally important matters of principle which under-pin both statements but they have been translated into terms which allow for objective analysis and assessment. It is an aspect of the managerial accountability structure which attracted some criticism from those who would have preferred a more inspirational approach to the definition of the responsibilities of the Prison Service in general and of the functions of establishments in particular. After a good deal of discussion and deliberation it was decided, at the end of last year, that the time had come for the Prison Service to be provided with a clear statement of purpose; it is as follows:

"Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and to help them lead law-abiding and useful lives in custody and after release."

The statement was sent to every member of the service in a letter from the Director General.(see Annex A)

The three statements provide the framework within which managerial accountability is exercised. Each year the Regional Directors, in consultation with their Governors, review and re-formulate the statement of functions of each establishment. It is the responsibility of the Regional Director to take account of both the Prisons Board's policies and the local circumstances, including the financial and other resources available to the establishment. He decides the level of performance to be achieved with the resources available and it is for the Governor to use those resources as efficiently as he can to carry out the defined functions of his establishment, to deliver the planned levels of service or activity (which are quantified to provide baseline figures), and to meet agreed targets.

The statement of functions, together with the agreed and quantified objectives and targets, constitute what is in effect a contract between the Governor and his Regional

Director, regulating the way in which the establishment is to be run. When the statement has been agreed it is published for the information of all members of the staff and copied to the Board of Visitors. An important feature of this "contract" is that it cannot be modified by any third party, including headquarters staff, without prior consultation with the other two. Of equal significance is the fact that the "contract" is not automatically nullified by a change of Regional Director or Governor—in fact it forms an important part of the brief given to each new Governor on taking up his appointment. This provides a degree of continuity in the conduct of local affairs which did not previously exist because of the very natural tendency for each new Governor to want to impose his own policies and priorities; a process which did not find much favour with the staff who had to implement the various changes introduced by successive Governors.

The Regimes Management Unit (RMU) provides assistance to line management in the planning of regimes and it maintains links with the Directorate of Services to ensure that the available services are used to best effect across the Service as a whole. The specialists in headquarters have a responsibility for the maintenance of professional standards of regime services in establishments, but may not make adjustments to the agreed quantity of service without consultation with the Governor, the Regional Director and the RMU. Equally, any proposal by the Regional Director or the Governor to modify the agreed level of specialist support or regime service must be discussed with the appropriate specialist section and the RMU before implementation.

The agreed statement of functions and the associated contract provides a bench mark against which both the Governor and the Regional Director can measure the establishment's performance. The Governor, through his annual report, accounts for the discharge of his establishment's functions through the Regional Director to the Deputy Director General and the Director General. The Regional Director uses operational assessment procedures throughout the year to check the functioning of the establishment and to assess the progress being made to meet the agreed targets. The Regional Director is accountable to the Deputy Director General (to whom he reports monthly) for the proper functioning of his establishments and the Deputy Director General, who undertakes a full programme of personal visits to establishments, reports regularly to the Director General and monthly to the Prisons Board.

To summarise—the integrated management and accountability structure which I have outlined provides for each Governor to run his establishment in accordance with agreed terms of reference, which are reviewed annually in discussion with his immediate line manager (the Regional Director) who is a member of the Prisons Board and able to take full account of current national policies. Once agreed the terms of reference cannot be modified without consultation. The chain of accountability is through the Regional Director to the Deputy Director General and the Director General. The Regional Director uses operational assessment procedures to audit the Governor's performance and the Governor accounts for it in his annual report. Taken together these arrangements are designed to provide a framework of accountability for the effective and efficient management of establishments.

A similar accountability mechanism operates for all departments of the Home Office through a procedure known as the Annual Performance Review (APR), through which Prison Service Directorates, Division and Regional Offices define their functions, give an account of their performance in relation to the objectives and targets set the previous year, and set new objectives for the coming year.

The APR and contract setting procedures form part of an integrated planning system which applies to the whole of the Home

Office and which has been designed to secure a better integration of resource and policy planning by bringing together the financial and strategic planning processes. Each main department of the Home Office is required to produce a single planning document towards the end of each financial year which reviews the progress made during the year just ending, reports plans for the coming year and, in outline, plans for the following three years.

This is the context within which the contract setting procedure in the Prison Service now takes place. In considering the level of service to be provided and the improvements to be achieved in each establishment, account has to be taken of the financial and manpower resources which are to be made available, the service-wide priorities for the coming year and any new initiatives which may be launched during the contractual period. The setting of priorities, which is such an important element in the planning process at local and regional levels, derives from the Prison Department planning document which is submitted annually to Minister. The complete process constitutes an integrated planning, management and accountability structure for the whole of the Prison Service which is congruent with the procedures to be followed throughout the Home Office.

Regime Monitoring

An essential element in any system of managerial accountability is a mechanism for monitoring and assessing performance. Boards of Visitors, the Inspectorate and senior managers have always made, and continue to make, an important contribution to this process. The operational assessment procedure is a vitally important part of this process. At local level the Governor routinely monitors and assesses the performance of his subordinate managers and staff through personal supervisory visits and inspections, the conduct of investigations, participation in consultative meetings and other local management procedures. He also receives a variety of reports from staff, prisoners and visitors which help him to assess the overall level of performance of his establishment.

It soon became clear that these processes were not sufficiently sharply focussed to enable an accurate assessment to be made of the relationship between the agreed baselines and the actual performance. There was a tendency, familiar to all of us, for some aspects of the daily operation of an establishment to come to the attention of senior management only when breakdown had occurred or was imminent. This was a clear indication that there was a need for an objective and structured management information system to enable timely and informed decisions to be made.

After field trials in two of the regions a system of monitoring was developed which enables information to be provided to Governors on a weekly basis indicating whether, and to what extent, some of the establishment's key functions are being delivered.

Each Governor arranges for the various section of his establishment to record the daily details of regime services, activities or routines. Those accountable for the delivery of services and activities will have agreed the appropriate levels included in the contract between the Governor and the Regional Director. Selected operational details such as the number reporting sick, the number of visits etc, are also recorded. The information is collated weekly on a monitoring form (see Annex B) which enables the Governor, as part of his routine management activity, to review the data and plan accordingly.

The level of monitoring is the minimum necessary to present the Governor with essential management information and it is based on data which is, or should be, readily available within the establishment. The process does not provide a measure of all the regime activities, or even all aspects of the selected activities, but it does give a clear indication of the performance of critical components of the regime and thus prompts

informed questions of those responsible for their delivery. In this way the system serves the needs of local management and fosters personal accountability at all levels of the establishment.

The monitoring system is now fully supported by computers. The data is fed from the separate reporting points into the establishment's computer which generates a facsimile of the weekly monitoring form for the Governor and other institutional managers. It is also capable of providing a range of different tabulations and graphs, some of which enable comparisons to be made over time. The computer system also transmits the data to regional offices where it is used to assist with the regional oversight of establishments.

Initially there was some scepticism about this process and some doubted that the results would justify the time and effort needed to set up the necessary local procedures. With these reservations in mind the system was designed to be simple, reliable, as factual as possible and, above all, helpful to local management. As a result the system has been well received and it is now regarded by most Governors and other local managers as a valuable aid to the effective management of activities in establishments.

Financial Devolution and Control

The accountable management structure introduced in 1984 was a logical consequence of a series of managerial studies and initiatives in the wake of the May Committee's Report and it gave effect to the principles of the government's Financial Management Initiative. At about the same time as the management structure was being devised and refined, a more explicitly financial control system was being developed along the lines suggested in the May Report. The object was to create a system of financial control through which governors could be held directly accountable for the resources they managed with the expectation that this would secure better value for money.

This was to be achieved by the provision of an annual budget to each regional office which would then be responsible for allocating a budget to each establishment in the region and for exercising managerial supervision and control over the levels of expenditure. Pilot budgeting schemes were run at a number of establishments and at the same time all establishments were required to operate a strict cash limit on prison officers' overtime working. From April 1986 financial authority was delegated to Regional Directors, and through them to Governors, for all pay-related expenditure and for the general and administrative expenditure involved in running their establishments.

One effect of this process was to make governors and their staff very much more conscious of the financial implications of management decisions and local procedures. An attempt in 1976 to reduce expenditure by controlling overtime working through the budgetary control of hours, had been thwarted by industrial action by prison officers but, as soon became clear, the imposition of cash limits was a much more effective control mechanism. Very quickly all grades of staff who had never before given serious thought to the matter became acutely aware of the cost of routine activities such as the escorting of prisoners. Accountability for financial expenditure is now firmly established as part of the normal management process summarised in diagrammatic form at Annex C.

Industrial Relations

An unintended, but not entirely unexpected, consequence of this initiative was to increase the level of industrial relations tension in many establishments and between the Prison Department and the National Executive of the POA.

The introduction of strict financial controls coincided with an unprecedented surge in the prison population which, in 1985, rose to a peak of 48,100 and an annual average of

46,600: more than 2,000 above the resource planning assumptions. The effect was to greatly increase the demands on the staff in establishments and, because of the need to divert staff to deal with the increase in court and escort duties, the regimes in some of the overcrowded establishments suffered accordingly.

For many years the Prison Service had relied on overtime working to close the gap between the number of staff available and the staff required to man the establishments. Most of the staff welcomed the opportunity this provided to supplement a relatively low basic wage but dependance on high levels of overtime led to personal problems for many members of staff and their families, overexertion and inefficiency at work and poor staff/management relationships. Staff reliance on overtime earnings also led to the manipulation of attendance systems, work allocations and manning levels to such an extent that increases in the levels of staff in establishments did not usually result in a reduction in the level of overtime working.

It was not only the informal mechanisms which operated to maintain the same levels of take-home pay; in many cases local management used the additional staff to improve the regime or to undertake particular projects such as staff training which had not previously been possible. In a few cases local managers avoided conflict with local trade union officials by letting such matters take their own course. There were many, at all levels in the Prison Service, who took the view that to impose rigid financial constraints at a time when the prison population was rising and the demands on staff were increasing was both unreasonable and unwise. On the other hand, at a time when public expenditure was severely limited and tightly controlled, the Prison Service fared better (in terms of financial resources) than almost every other part of the public sector.

At the time of the May inquiry the average level of overtime working was 12 hours per week and there were two systems of attendance in operation—both were complex, difficult to understand and, to varying degrees, dependent upon overtime working for their proper functioning. In their evidence to the May Committee, the Prison Officers Association (POA) said: "The existence of two systems in the same service is unsatisfactory and divisive both in terms of staff morale and the treatment of inmates. For these reasons it is the policy of the Association that there should be a single attendance system, flexible enough to be adapted to differing penal regimes.... " The May Committee agreed.

Shortly after the publication of the May Report the contractual arrangement whereby prison officers could be required to work up to 10 hours overtime per week at the behest of management, was substituted by a voluntary overtime agreement. This did not, nor was it expected to, reduce the level of overtime working (which by 1985 had risen to an average of 16 hours per week) but it gave prison officers the right to regulate their overtime working and to decide not to work any overtime at all if they so wished. Because staffing complements had been agreed on the (not unreasonable) assumption that staff would continue to work overtime, and because the systems of attendance were overtime dependant, it followed that if sufficient officers chose not to work extra hours it would not be possible to maintain the prevailing level of activity in establishments. Procedures were therefore devised and agreed with the POA, to ensure that staff attendance did not fall below minimum safe levels. This change in the contractual relationship greatly strengthened the bargaining power of the prison officers and it was used selectively and very effectively in a number of local disputes. Most believed that prison officers would not use this power to the point of hazarding the security and control of establishments. Eventually however, that is precisely what they did.

In 1986, in the course of an industrial dispute about the related issues of cash limits,

efficiency targets and management's right to determine staffing levels, the POA imposed a total overtime ban and unilaterally withdrew from all national agreements. This contributed significantly to an increase in the level of unrest in establishments where inmates had already been made fearful that financial constraints would lead to regime restrictions and more time spent locked in their cells. The result was the de-stabilisation of a large number of establishments. There were outbreaks of disorder, of varying degrees of intensity, in at least 46 establishments: one prison, which was extensively damaged by fire and rioting, had to be evacuated and was out of commission for several months. Others were seriously damaged but remained operational. During the course of the disturbances 45 inmates escaped and over 800 places were lost as a result of fire and other damage caused by rioting prisoners. Fortunately no lives were lost and there were few injuries to either staff or inmates. It could so easily have been otherwise.

Although this was the most serious, it was by no means the only occasion on which industrial action had been taken by the POA. Over the last decade there have been numerous occasions when local and limited action has imposed serious constraints on managements' ability to manage, particularly in relation to the use of accommodation. Large numbers of prisoners have been denied entry to prison and have had to be accommodated in police cells as a direct result of industrial action by the POA.

A Fresh Start

One of the ways in which management sought to improve the industrial relations climate was to consider how the working conditions, pay and general conditions of service of prison officers might be improved. Management consultants were hired to work with prison service personnel to conduct a study of systems of attendance, complementing and pay: to recommend improvements and to devise an implementation plan. The study began in October 1985 and a report was submitted to the Prisons Board in April 1986, though by then the main elements were known to, but not initially welcomed by, some members of the National Executive Committee of the POA.

The team echoed many of the criticisms made by the May Committee and identified a number of other short-comings. They concluded that the service required responsive and flexible systems for organising work, manning and staff attendance; improved management systems and the removal of overtime dependency through new pay systems designed to encourage efficient working practices. A comprehensive package of detailed proposals for change was developed and within three months was announced to the service under the generic title "A Fresh Start." A comprehensive programme of consultation with the Prison Service unions was started immediately.

The general aim of the Fresh Start proposals was to introduce new working arrangements that:

i. matched the work requirements of the establishment and were responsive to changing pressures and demands;
ii. enabled managers to manage more effectively;
iii. promoted a sense of unity, purpose and responsibility;
iv. provided the basis for the enhanced delivery of regimes;
v. increased job satisfaction through a reduction in the hours of attendance and provided more continuity in the allocation of work;
vi. provided greater predictability of attendance, clearer lines of accountability and a clearer definition of roles and responsibility.

The focus of change was on group working with terms of staff working to personal

systems of attendance and having shared responsibility for meeting group objectives; with the work grouped into areas of responsibility and carried out by teams of officers accountable to individual group managers. Governors, assisted by regional teams were required to review their local management structures to facilitate the introduction of the new systems of working. The key issues which had to be considered throughout the process were the integration of security, inmate care and control; the fullest possible delegation of responsibility for work; the fostering of staff/inmate relationships and the active encouragement of the concept and practise of group working.

The reviews were carried out in the context of the agreed functions, priorities and targets. The task of each Governor was to identify what work had to be done to deliver the functions of the establishment; combine work related activities into functional blocks; determine work groupings and consider the need for intermediate levels of management between the Governor and the group managers. Governors were advised that there should be as few intermediate levels as possible and that there should be clear functional lines from the bottom to the top of the organisation.(see Annex D)

Other structural changes proposed in the Fresh Start package were the unification of the governor and prison officer grades, a reduction in the number of Prison Service grades from ten to eight, new recruitment arrangements and a review of management training.

Perhaps the most important element of the Fresh Start initiative was the requirement that the overtime dominated pay system, with its many different allowances, should be replaced by a simplified salary structure with much improved basic and pensionable pay. The proposal was for a 39-hour working week with an option to work an additional 9 hours for which a special fixed allowance would be paid. The additional contracted hours would be reduced, without loss of pay, over a five-year period at the end of which all officers would be working only 39 hours per week.

After months of negotiation and consultation during which some of the original proposals were modified and refined, the Fresh Start package was accepted by a large majority (about 80%) of the prison officers after a secret ballot in May 1987. The rolling programme of change to the new systems of working started in July 1987 and by April 1988 110 establishments had made the transition. By this time a saving of over 13% in the use of staff hours had been achieved. In one or two establishments there were operational and industrial relations difficulties which delayed the change-over to the new system of working, but well before the end of the year all had made the change.

Arrangements were made for an early evaluation of the way the changes were being implemented, with particular emphasis on the extent to which there was a clear sense of purpose, on the progress that had been made to set up clear lines of accountability and on the changes that had been made to the way staff were deployed to work. In view of the speed with which such far reaching changes had been introduced it was not surprising to find that the rate and extent of progress varied widely. It was clear that not everyone had realised the full implications of the new approach and, in particular, had not understood that the programme of change was a long-term process rather than a single event.

What was required was a fundamental change in attitude and a radical departure from the traditional approach to the organisation and management of work in establishments. Such changes take time to achieve and sustained commitment is needed if the potential benefits are to be delivered. Following the evaluation, which was based on a detailed study of a representative sample of ten establishments, additional management training was provided and support teams were set up to assist Governors and their

management teams to tackle some of the more difficult problems associated with the process of changing well established but outmoded attitudes and methods of working.

This demanding and complex process of change started at a time when physical and manpower resources were under great pressure from the rising prison population and many establishments had to cope with increased levels of overcrowding. In a number of establishments the level of overtime working had far exceeded the nine contracted hours which was the new limit for each officer. Although some efficiency savings were made on the introduction of the new management and working systems, they were not always sufficient to make good the shortfall in hours and in some places the previous level of regime activities could not be maintained. However, there were some compensating improvements and, whilst there are still many resource problems to be solved, some regimes are being gradually restored and developed as everyone becomes more accustomed to the new working arrangements and staff are deployed more effectively.

The Fresh Start initiative marked a radical departure from long established methods of working in establishments and introduced a package of measures to deal with many of the problems which had their origins in the days of the Prison Commission. The main constituent elements of the Fresh Start package were: a new organisation, management and accountability structure for establishments; a new approach to the organisation of work and the deployment of staff; the unification of governor and prison officer grades; the abolition of overtime working; the introduction of an improved salary structure and a number of other improvements in the general conditions of service.

With relatively few exceptions management and staff have welcomed the changes. Staff who formerly worked very long hours now enjoy more free time without financial penalty and, although there is still a long way to go, there are signs of an increase in job satisfaction, an improvement in staff/inmate relationships and a much reduced level of industrial relations tension. It will be some years before all the benefits to management, staff and inmates are delivered but a great deal has been achieved in a relatively short time and in very difficult circumstances. Few would now want to return to the conditions of service and working arrangements which caused so many problems for so many years.

The most recent evaluation of the Fresh Start measures has shown that there is still a lot to be done and has confirmed how important it is that the work of an establishment is clearly defined and fully understood by every member of the staff. The statement of functions, the targets for improvements and the associated contract between the Governor and the Regional Director is at the heart of that process. Work has already begun to make it more relevant to all who work in the establishment and to help the governor to match the work of the establishment to the available resources.

So far I have been concerned to describe changes in organisational structure and management techniques and procedures. The purpose of those changes has been to improve the efficiency and effectiveness of the Prison Service. It is, perhaps, timely to ask the question—"To what end?"

The statement of purpose, the definition of the task of the Prison Service and of the functions of establishments, which I described earlier, together serve to provide an answer to that question and to place the inmate at the focal point of managerial attention. It is important to maintain that focus and not be beguiled into behaving as if the development and refinement of management systems is a sufficient end in itself. There are those for whom that may be a perfectly respectable and appropriate objective but I suggest that prison managers and administrators need to maintain a wider professional perspective. The title of this training course reminds us that what is important is

the way we treat offenders in custody. With that in mind I now want to end with a short account of recent changes which have a direct bearing on the treatment of offenders under the age of 21.

The Sentencing and Custodial Treatment of Young Offenders

Before 1982 Young Offenders (those under the age of 21) could be sentenced to one of three forms of custodial treatment: a term of borstal training, an indeterminate sentence of between six months and two years; a term, normally not exceeding six months, in a junior or a senior Detention Centre according to age; or, subject to a number of statutory restrictions, a term of imprisonment.

The Criminal Justice Act 1982 abolished borstal training and imprisonment for offenders under the age of 21 and substituted a sentence of Youth Custody. Under these arrangements a juvenile offender (one aged 14 to 16 years) could be sentenced to a term of detention in a junior detention centre for a period of four months or less; an offender aged from 17 to 20 years could be sent to a senior detention centre for the same period; and young offenders aged from 15 to 20 years could be sentenced to a term in a youth custody centre for any period in excess of four months.

The Criminal Justice Act 1988 substituted a single or "unified" custodial sentence of detention in a Young Offender Institution for the previous youth custody and detention centre sentences. Young male (but not necessarily female) offenders continue to be separated according to age and sentence length, but this is now an administrative rather than a sentencing decision. The courts impose the length of sentence considered appropriate and the Prison Service decides where that sentence will be served, taking account of age, sentence length and the need for a particular regime. This has the obvious advantage that better use can be made of available accommodation and it also provides an opportunity to develop regimes appropriate to the needs of different offenders.

Separate accommodation is provided in discrete units or in separate establishments for the three groups of offenders; juveniles (aged 14 to 16 years) with sentences of up to 12 months, young adults (aged 17 to 21 years) serving sentences of four months or less and young adults who have been sentenced to longer than four months. These categories are not rigidly applied and accommodation can be used to meet the special needs of particular inmates e.g. a very immature 17-year-old can be placed with juveniles if that seems appropriate to his needs. All juveniles and those young adults sentenced to four months or less are sent direct from court to the young offender institution and no longer held with adults in local prisons. Young adults sentenced to over four months first go to an allocation centre in a local prison for observation and assessment before being sent to a suitable young offender institution. If there are not enough young adults committed direct from court to fill the short sentence institutions they are topped up by the transfer of those who have been sentenced to more than four months but by them have little time left to serve.

Rule 3 of The Young Offender Institution Rules 1988 defines the aims and general principles of young offender institutions in the following terms:

> 3-(1) The aim of a young offender institution shall be to help offenders to prepare for their return to the outside community.
>
> (2) The aim mentioned in paragraph (1) above shall be achieved, in particular, by— (a) providing a programme of activities, including education, training and work designed to assist offenders to acquire or develop personal responsibility, self-discipline, physical fitness, interests and skills and to obtain suitable employment after release;

(b) fostering links between the offender and the outside community;
(c) co-operating with the services responsible for the offender's supervision after release.

Because juveniles serve a maximum of six months (with full remission) they have a similar regime to those young adults serving short sentences. This is based on the previous detention centre regime and provides a brisk induction period, modular education or training tailored to a short stay and a programme, which starts immediately, to prepare the inmates for release. Inmates under school leaving age must receive a minimum of 15 hours education a week and in practice all juveniles are given the opportunity to participate in the same education programme. The regimes for those with longer sentences are based on the borstal and youth custody training regimes with an emphasis on the personal development of the offender and an integrated approach to throughcare, taking account of the time to be spent in custody and the need to prepare for both release and the post-release supervisory period.

At the start of his sentence the inmate is assigned to a personal or group officer who will be his first point of contact and who will play an important part in the preparation of his sentence plan. Personal officers are given opportunities to talk to the inmates assigned to them about their offence and its consequences, they help them to adjust to custody, assess their reactions to it and identify any welfare problems. The personal officer is responsible for ensuring that the supervising officer in the home area is kept informed of the inmate's sentence plan and his progress throughout the sentence.

The main objectives of throughcare are to ensure that the offender maintains links with his family and with the community from which he comes; that the period of custody is not an isolated experience but one related to his previous behaviour and his future resettlement; and that there should be effective co-operation between the staff of the institution and the supervising services or anyone else who is concerned with his resettlement. The supervising service is primarily responsible for maintaining links between the offender and the outside community and is responsible, in co-operation with the staff in the institution, for liaison with any medical, educational or welfare services which have a continuing interest in the offender.

All young offenders released from custody are subject to supervision unless by the time of their release they have reached the age of 22 years. The period of probation or social services supervision runs until the date on which the sentence would have expired if no remission had been granted, subject to a minimum of three and a maximum of 12 months, and always subject to expiry on reaching the age of 22 years. Breach of supervision is a criminal offence punishable by a custodial sentence of up to 30 days or a fine of £400.

The new custodial arrangements for young offenders became effective on 1 October 1988. Initial implementation posed no serious problems, though some tactical management and procedural changes were necessary to accommodate the new young offender system. The regimes, while not yet fully developed, are based on the facilities which were in existence under the previous legislative structure. There is still a lot of developmental work to be done before the aspirations of the aims and principles described in the statutory rules are fully realised. The resource and organisational implications of regime developments will be dealt with in the context of the contract setting procedure and the actual performance will be monitored by Regional Directors. The management machinery is now in place to enable informed decisions to be taken in relation to the allocation and use of resources for major initiatives of this kind.

Conclusion

The publication of the May Report started a cycle of change which began with the re-organisation of the headquarters and regional structure, continued with the introduction of the integrated system of accountable management, and was completed with the introduction of the Fresh Start innovations. The cycle has been completed but the process of change has not yet ended, nor can it ever end. Organisational structures and management procedures need constantly to be re-evaluated and refined to ensure that they are relevant and are working effectively and efficiently to achieve the goals of the organisation.

It is now almost ten years since the organisation of headquarters and regions was last reviewed. Since then there have been many changes in establishments, in accountability structures, in information technology and in the size and complexity of the prison system. A new review of the organisational structure of headquarters and regions has recently been launched and so the search continues for improved efficiency and effectiveness in the custodial treatment of offenders.

Home Office

HM PRISON SERVICE

Annex A

NUMBER 4 14 NOVEMBER 1988

BRIEFING

MESSAGE FROM THE DIRECTOR GENERAL

To all members of the Prison Service

Dear Colleague

During my time as Director General the Prison Service has not had a simple and motivating statement of purpose. Now that the Fresh Start changes are in place the Prisons Board thinks the time is right to make such a statement, so that all members of the Service have a common understanding of and commitment to its purpose.

The statement is being given to everyone in the Service through this letter and, for the future, as they join. It will be prominently displayed throughout the Service. It will be placed in our recruitment brochures and annual reports.

Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts.

Our duty is to look after them with humanity and to help them lead law-abiding and useful lives in custody and after release.

I hope this speaks for itself. But I want to draw out some points.

We are and are proud to be a Crown Service.

We serve our fellow citizens. That makes us accountable to them for what we do and how we do it: for the way we treat prisoners and how we use the resources which Parliament provides.

The most severe step a court can take is to deprive people of their liberty. Our part in the criminal justice system is to give effect to the court's decision: the Service exists to keep people in lawful custody.

By its very nature locking people up under the criminal law places two duties on us all:

- to see that they are not subjected to arbitrary force or discriminated against on racial or any other grounds, are treated with respect, are properly fed, and have their physical and other requirements properly met.
- to do all we can to help them lead law-abiding and useful lives. That applies not just for the future, after release, but also while a person is in prison. The duty of care is discharged and custody secured most surely when the life of a prison is regular – when prisoners are fully, actively and constructively occupied.

Each one of us, wherever we work, has a part to play in making sure the Service matches up to the challenge which this purpose sets us.

Yours sincerely

C J Train

C J TRAIN CB

Produced for the Home Office by the Central Office of Information. 1988 HOME 10900NE.

HM _____ Week commencing _____ Week number _____

GOVERNOR'S WEEKLY MONITORING

Average Daily Population _____ Highest unlocking figure _____ Number of new inmates _____

1. Inmate Occupation	Inmate Hours Actual/Planned	Inmates Involved Actual/Planned	Operating Hours Actual/Planned	Comments
Daytime Education				
VT Courses				
CIT Courses				
Works				
PSIF Workshops				
Fann				
Gardens				
Kitchen				
Other Domestic Work				
Induction				
Other (Specify)				
All Other Occupation				

3. Routines Completed
—Note dates & effects of any disruption

- ☐ Canteen
- ☐ Exercise
- ☐ Association
- ☐ Bathing
- ☐ Kit change
- ☐ Inmate mail
- ☐ Library
- ☐ Visits

4. Other Indicators

Weekly totals

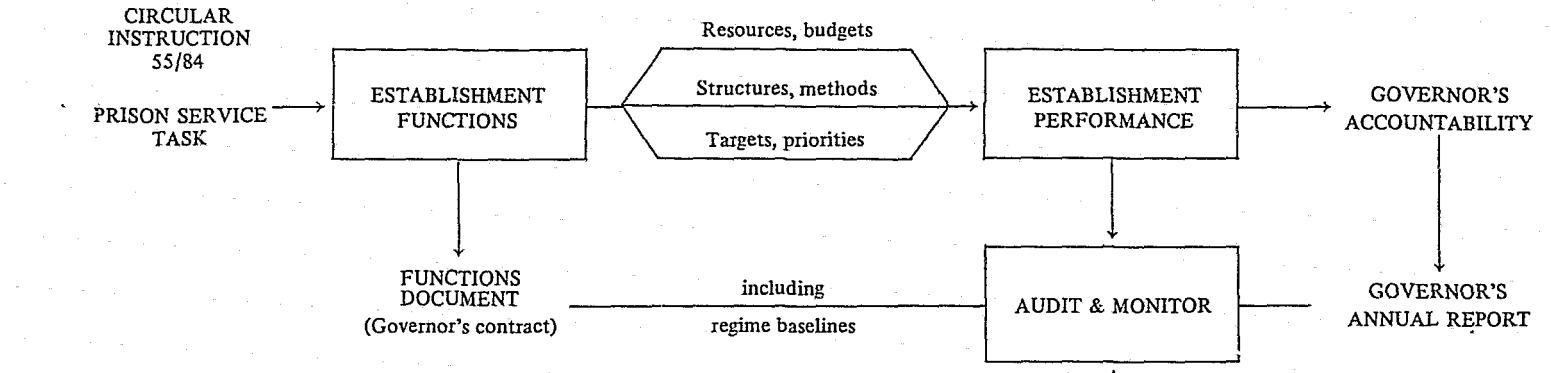
Libary use _____
Official visits _____
Domestic visits _____
First report sick _____ Incl ____ Special sick
Petitions completed _____
Fs256 completed _____ Incl ____ BoV
Other [a] _____ ____
Other [b] _____ ____
Number not allocated to occupations (Section 1)
Daily average _____

2. Other Activities	Inmate Hours Actual/Planned	Comments
Physical Education		
Evening Education		
Chaplaincy Activities		

5. Operational Comments
—Breaches in security, incidents, problems with catering, etc

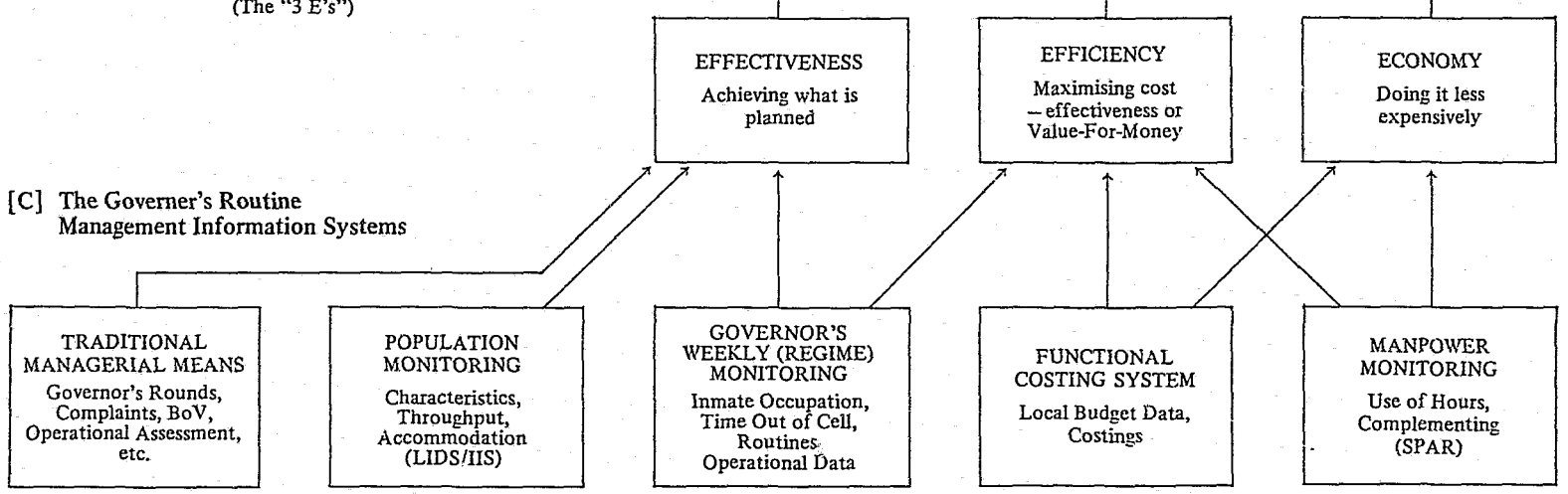
6. Hours Out of Cell – Daily average (when sampled)
Weekday ☐ Weekend ☐ Location _____

[A] Governor's Accountability



[B] Performance Measures

(The "3 E's")



[C] The Governer's Routine Management Information Systems

Rick Evans, Midland Regional Office, August 1987

Annex D_1

Illustration of Charting – A Large Establishment

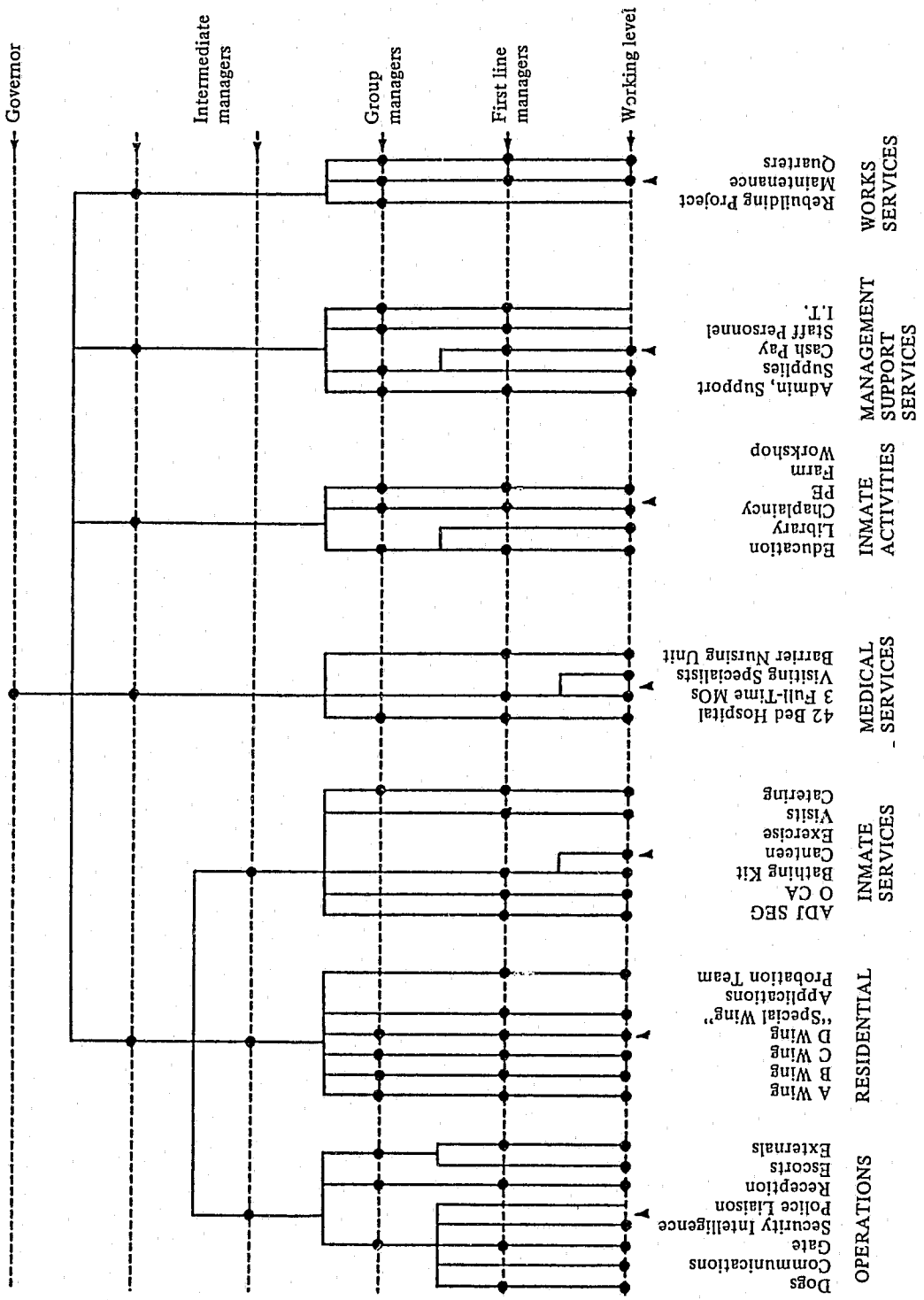


Illustration of Charting — A Small Establishment

Annex D_2

Some Thoughts on Correction within Penal Institutions

*by Chan Wa-shek**

Introduction

For the varying periods that the prison has been used as an agent for the reform of offenders in different countries a great deal of concern has been expressed about its efficacy. This is particularly so in the United States of America, where most of such English Language literature has originated. Ever since the 1960s and 1970s, when a number of academics published critiques on the failure of penal institutions to correct[1], the prison has come under a series of attacks. Whilst the more extreme call for its total abolition[2], others have advocated the "just deserts" model to replace the "rehabilitation" ideal[3].

In Europe too, correctional services of many countries have also faced a crisis of purpose and direction. In the United Kingdom, the question of control and dispersal as well as the physical state of many of their prisons have come under severe criticism and are said to seriously undermine the rehabilitation objective. The French, likewise, began to address the practicality and utility of a purely rehabilitative regime and, by the early 1960s, directed much more attention to making correctional institutions more secure. This latter emphasis was heightened even more following a series of prison riots in the 1970s. Even in countries such as Sweden, Denmark and Holland, where the effort at penal reform is generally looked up to by other countries, the results have not been regarded as satisfactory, notwithstanding the fact that tremendous improvements and innovations have been achieved in decriminalization and prison conditions. In the face of increasing serious crime, they are grappling with questions such as what type of conduct should be criminalized and what kinds of sanctions would be effective for those who are criminalized.

The Just Desert Model vs the Rehabilitative Ideal

The idea that offenders should be made or helped to reform is itself not new. Bridewell Place in London was converted into a partly reform-oriented prison in 1555, and in 1576 Queen Elizabeth I required by law the establishment of houses of correction in every English county. In 1596, the Dutch operated the first institution for male offenders, and the first institution for female offenders followed soon after. The St. Michael House of Correction for boys commenced operation in Rome in 1704. The image, albeit somewhat ambiguous, that offenders were people who were susceptible to change and who could choose between good and evil began to develop during that period, and the rehabilitative ideal received substantive support from the 1880s to the early 1960s.

In a nutshell, the rehabilitative ideal sees offenders as patients requiring treatment for their aberrance. Sentencing involves the understanding of the underlying disorders on the part of the offender which are believed to precipitate his criminal act, and the introduction of a therapeutic process through which the offender can be treated.

When put into practice this ideal generally caused jurisdictions to move away from imposing a determinate sentence. Instead, offenders found themselves being given indeterminate sentences, sometimes with a minimum and a maximum and in some juris-

* Commissioner of Correctional Services, Hong Kong

dictions a maximum only. Others who were deemed not to require confinement were placed on probation or given other forms of punishment that allowed them to remain in the community.

The offenders who received an indeterminate sentence were left in the hands of correctional experts, and programmes were devised through which it was believed these offenders could be rehabilitated. The time they were released was often not decided by the court but by these experts in an administrative procedure. There was frequently a period of aftercare or supervision following release.

Critics of the rehabilitative ideal began to raise a number of points to challenge its efficacy in the 1970s. For example, in 1975, Lipton, Martinson and Wilks published their findings of a six-month search of reports in English from 1945 to 1967 which related to attempts at rehabilitation and which were methodologically acceptable. They concluded that: "With few and isolated exceptions, the rehabilitative efforts that have been reported so far had no appreciable effect on recidivism."[4] Many other social scientists have also expressed their disenchantment with rehabilitation.[5] These coupled with a period of strikes, riots, escapes and other disturbing occurrences in prison in a number of Western countries led the public to demand prison reform, and the authorities to take steps to attempt to improve security, control and order within penal institutions. The "just deserts" or "justice" model is the natural consequence of such sentiments and activities.

The justice model reaffirms the aims of punishment, calling for penal institutions to be made more secure for the protection of the public and safer for the inmates. Proponents seriously question the wisdom of the indeterminate sentences, and call for determinate sentences with imprisonment only for necessary cases. As two writers have put it, they distinguish the difference between vengeance and desert, the latter seen as a "rich and important concept, grounded in ideas of fairness."[6] No sanction greater than that "deserved" by the crime for which the offender is being sentenced should be imposed.

This model does not suggest the abolition of attempts at treatment such as education, vocational training, councelling and release on licence. Instead proponents call for a more honest admission or a recognition of the limits these measures can achieve, as well as a more sincere and professional effort in the implementation of such programmes.

How Asia May Respond to the Shift

There is no doubt that exposure to things Western are ever on the increase for us in the East. The development of information technology is partly responsible for this. The other reasons include an increasing number of professionals studying in Western countries, and academics from the West travelling to the East spreading their thoughts and writings. Such exposure is not necessarily bad or detrimental to our communities, provided that we remain level headed, and critically examine whatever is thrust upon us.

In the field of corrections, whilst we all may encounter problems with overcrowding or staff shortage or finance some of the time, on the whole we in the East have maintained penal institutions with much better discipline and control onto which we can add measures which help and encourage offenders to reform. It is therefore important that we should not be overwhelmed by the rhetoric of the rehabilitation vs justice debate, but that we learn from it to choose a constructive course of action that may further enhance the efficiency of our efforts in correction. In order to achieve this I suggest we proceed to examine some of the main conditions which promote rehabilitation, and those which inhibit it.

Conditions Which Promote Rehabilitation

(1) Discipline in Penal Institutions

Simon Dinitz gave a vivid and disturbing description of violence in American prisons.[7] He traced the series of riots from World War I to the 1970s which periodically seemed to coincide with, or were consequential to, reform of prison conditions, the introduction of counselling, the prominence of the rehabilitative movement and the increase of judicial interference in prison treatment. There has increasingly been an obvious hostility towards authority and control, in spite of the strides towards better recognition of the rights of prisoners, the increase in therapeutic activities and proliferation of treatment professionals within the walls. It appears that the move to ease the pains of imprisonment and to ameliorate the undesirable consequences of incarceration that social scientists such as Gresham Sykes described (the deprivation of liberty, of goods and services, of autonomy, of security and of heterosexual relationships, etc.[8]) have started a movement to be not only more humane, but also more permissive in the treatment of prisoners, to the extent that judicial and other interference in prisons have been exploited by the inmates to seize control and turn the table on the keepers. Prisoners' labour unions are formed, and internal management and negotiation bodies are set up on the advice of some enlightened social scientists and reformers. These are quickly utilized by some prisoners to usurp power and turn penal institutions into hunting grounds for the same kinds of predatory activities which they were engaged in before their imprisonment.

When prisoner power reigns and prisoner groups challenge authority, attempts to rehabilitate do not become effective even if a genuine effort is put into them. A lawless situation in prison reinforces the norms and values in the criminal world, and qualities such as toughness and aggression become traits to emulate. Only in a penal system where discipline is firmly and fairly maintained, where infractions are quickly and sharply dealt with through legitimate venues, and where inmates can pursue their daily legitimate activities free from the threat of harassment and violence can we begin to talk about helping them to reform.

There should therefore be clear rules and regulations to guide prisoners on their conduct during imprisonment, statutory procedures to govern the authority when dealing with breach of discipline, explicit provisions for punishment when the case is proven and, finally, an appeal procedure to guard against arbitrary decisions in the disciplinary process. Staff must be trained to use only the legally prescribed measures in enforcing discipline, and management must set an example by not departing from such statutory authority when dealing with infractions. For punishment to have maximum effect, the whole process must take place as soon after the incriminating act as possible, and in order that justice is seen to be done, independent bodies must be allowed access to all records and documents relating to a case. I cannot over-emphasize the importance of firm and fair discipline as a basis for rehabilitation.

(2) A Practical Routine

Most correctional systems devise a routine to regulate activities in a particular institution and I do not believe I need to elaborate on this subject, other than to point out that a sensible and practical routine allows administrators, staff and prisoners an orderly and well distributed schedule within which activities which may contribute towards reform can be planned. A routine is, of course, also necessary for manpower and time utilization planning.

(3) Sufficiently Refined and Accurate Classification

Many correctional administrations in the world have their own system of classification

to separately manage different groups of offenders according to sex, age, and, most commonly, the threat they pose to the community and the degree of security they require. Some may differentiate between first offenders and recidivists, but not all classify them according to psychological or personality types or the kind of treatment or activities which may benefit them the most.

If we put an emphasis on rehabilitation, then we must go further than security categories and identify, through fact-finding, interviews and investigations, exactly what kind of person an individual prisoner is, his or her background and all relevant history and information so that a plan can be worked out for his or her rehabilitation. The classification process must also be sufficiently flexible so that adjustments can be made from time to time. The classification scheme itself must also be subjected to periodic tests to assess its accuracy and coverage. Here, there are ample opportunities for specialists such as clinical and educational psychologists, psychiatrists, education officers, social workers and counsellors to do their part. However, the observation of the custodial staff who probably spend most time with and are very close to the offender in the institution environment must be included, for it is often of great value towards the understanding of the latter.

(4) A Commitment by Both the Management and the Staff to Rehabilitate

Ross and McKay point out:

> "...more regrettable, perhaps, is the characteristic acceptance by correctional staff of new techniques *in name only.* Whereas psychology has often been characterized by radicalism, corrections too frequently suffers from euphemism. Offenders are often remarkably (albeit negatively) affected by their entry into the criminal justice system. So are treatment programmes."[9]

For a rehabilitation programme to even have the right start, it is imperative that both the management and the staff at all ranks and in all their own specialties must be committed to see its implementation. This is often easier said than done. For one thing, senior officers in management positions may feel more comfortable in their status quo, and ideals of treatment may pose, for them, the threat of liberalizing penal measures and a relaxation of control and security. The techniques themselves are in many instances alien (as well as foreign) to them unless they themselves already have exposure as students of Western social science. Finally, being administrators they must consider the cost effectiveness of such a course of action, and justify the use of manpower and resources towards the introduction of such a measure. Unfortunately, the state of the art in the social and even the medical sciences do not allow for certainty of results. This means that management must have the conviction to give this a try and be prepared to justify the use of resources.

If it is difficult for management to be convinced to make a commitment towards rehabilitative measures, it is even more difficult for staff, particularly the lower ranks. Generally, the basic grade officer does not have the amount of exposure to the social sciences to give him a rehabilitative standpoint. His training in essential custodial duties makes him very conscious of his own responsibilities in security and control, and the pressure of the system for him to be vigilant in the maintenance of order and the prevention of escape enforces his custodial outlook. Very often too, his day-to-day contacts with inmates, particularly the unpleasant episodes, tend to reinforce his stereotyping and distrust of the latter. Yet rehabilitational programmes often bring with them the requirement of trust, of allowing inmates more initiative and autonomy, of relaxations in constraints and control. All of these are inconsistent with the officer's custodial mind and experience, nor do they provide an as-

surance that inmates under his charge will not succeed in escaping or breaking rules. Furthermore, the appearance of professionals on the pretext of treatment presents the officer with a new possibility, that his role and authority may be eroded, and whatever little room for decision making he has in the routinized schedule of prison life may be further reduced.

Charles McKendrick very lucidly described the problem of understanding and acceptance:

> "With each approach to the problem of correctional treatment, the job of the custodian becomes more complex. Each new service that enters the field requires the development of new attitudes, new thoughts, and often new duties for the custodian staff. It was a far simpler task to provide security when one resident chaplain and one physician were the only non-uniformed employees than it is today with the addition of teachers, physicians, psychiatrists, psychologists, representatives of various religious denominations, Veterans, Alcoholics Anonymous representatives, all a part of the paraphernalia of reform. The liberalization of recreation, correspondence, and visiting privileges has complicated the picture."[10]

David Fogel is more blunt as he continues after McKendrick:

> "The guards were increasingly bewildered. Nobody had prepared them to speak to, much less to relate to, college educated professionals who often spoke a mysterious jargon. The guards withdrew to their familiar tasks. If the disparity of purpose involved in securing 'the offender against escape at the same time that he is trained for responsibility and freedom' was not apparent to others, it was apparent to the guards."[11]

It is therefore perhaps a more pressing task to educate the staff, and make them feel secure and comfortable in a rehabilitative environment before launching a treatment programme for the inmates.

(5) An Industrious Pace and Atmosphere

Idleness in a penal institution precipitates violence, conflict and unlawful activities, all of which reinforce a criminal way of life and are therefore detrimental to rehabilitation. No treatment therapy can be effective if inmates are left to languish in demeaning inactivity. It is therefore important that there exists in the institution an industry which fully and gainfully employs inmates, and that the majority of their spare time is also taken up by other constructive activities such as education and organized sports and recreation.

(6) Adequate Resources

Naturally rehabilitative programmes require the services of professionals who cost money to employ. There may also be accompanying expenses such as evaluative studies, instruments and administrative costs. Whilst additional resources are required, it does not mean that correctional administrators should not start modest programmes even when resources are not fully available. Here are the opportunities to use one's initiative, and innovations such as tapping the community's and the local universities' resources on a voluntary basis are likely possibilities.

The main conditions listed above which may help the rehabilitation objective are of course not exhaustive. This short list and discussion should, however, be sufficient to serve as a reminder that there are certain states of affair which we must strive to achieve if we want to make a successful start towards rehabilitative treatment. On the other hand, there are certain conditions which may inhibit this objective and some of these I will discuss briefly now.

Some Conditions Which Inhibit Rehabilitation

(1) Overcrowding

Quite apart from being inhumane and detrimental to the physical and mental health of the prisoners, overcrowding in prisons breeds friction, aggression and violence which often culminate in disturbances. It also makes existing facilities and services inadequate. In a UNAFEI discussion about solutions for overcrowding in prisons, the discussion group reported:

> "Overcrowding is one of the most difficult problems in prison administration. It develops an unhealthy climate affecting penal reformative programmes, creates security problems and contributes to additional pressures on staff. Such a situation usually leads to unrest and general dissatisfaction amongst prisoners...."[12]

Robert B. McKay also pointed out that:

> "...When jails and prisons are overcrowded, even the most benign administrators have difficulty with sanitation, feeding, recreation, schedules, work arrangements, and health services.... The quite natural tendency is to decrease programmes and increase confinement. In an already volatile atmosphere, the entirely predictable result of overcrowding is to magnify all the problems of prison administration...."[13]

Frequently the maintenance of discipline and control becomes much more difficult in overcrowded condition, and the individual care and concern which are so necessary in a treatment milieu tend to be lost when there are masses of problematic people to attend to. Overcrowding is therefore detrimental to rehabilitation.

However, there are innovative ways to reduce the gravity of the problem. The Malaysian Prisons Department's 1980 project to build Manang Open Prison with inmate labour is a case in point.[14] This project was awarded the Guiness Award in 1985 for its exemplary effort. There are also various forms of deprisonization substituting a custodial sentence with probation, fine, attendance, community services, electronic monitoring, etc. (see also the UNAFEI Report on Solutions for Overcrowding in Prisons).[15]

Where resource and security permit, treatment programmes should not be suspended on account of overcrowding. In fact, it is perhaps even more useful for the stability of a penal institution that an overcrowded population should receive education, be fully employed, and given counselling on how to live in harmony despite the physical discomforts, and turn the experience into a constructive one.

(2) The Prominence of Gangs

In a number of countries there are criminal gangs and members of these gangs are frequently in prison, at times in considerable numbers. Criminal gangs tend to have their own values, attitude and subculture which may run contrary to those in the larger society. Gang members do not cease to be what they were upon entering the prison, and whenever they can they tend to group together and assert their power in the prison community. They may go further and organise to subvert or openly challenge the authority of the prison administration. Where treatment programmes are concerned the unwholesome influence of the gang subculture may act to neutralise whatever effect therapeutic activities may have on participating individuals.

In order to curtail gang activities in prisons, it will be useful to have an intelligence system to more accurately keep tab on the size and magnitude of the problem as well as to find out the illicit activities of leaders and members. Where space allows it will be useful to separate active leaders from follow-

ers, and active members from other inmates who are not members of any gang. Recently the Fight Crime Committee in Hong Kong launched a scheme which allows gang members to renounce their membership. The scheme is extended to offenders in custody and the response so far has been good. This is a positive approach in addition to the firm sanctions already in hand.

(3) Wrong Attitude/Expectations

Any failure to look deeper into the real meaning of treatment will cause one to miss the very important point that crime is the end result of the life experience of the individual committing it. The parents, siblings, friends, teachers, workmates, spouse, the education system, the political system and the economic order, etc., as well as the situational factors immediately before the commission of the act may have played a part in producing or inhibiting it. The crux of treatment is to see which one of these factors can be decreased or enhanced and how, or seen from another angle, how an offender may be better insulated against factors favourable to the commission of a certain type of offence, and be helped to be more receptive to factors which inhibit the offending act. Offenders are not sick people who differ from the "normal" person, and there is no treatment which can be a panacea to all the different types of offences committed by the different types of offenders. Furthermore, as I have pointed out earlier, the best in the fields of medicine and the social sciences do not give us certainty in the people changing business.

It is important that administrators and staff alike recognise, and be explicit about, the objective(s) of a specific programme and its limitations, so that when they implement it they know exactly what they are aiming at, and that when they need to show results or to justify it they can be convincingly articulate.

Summary

In this treatise I have outlined the debate in the West on the direction towards which correction should head in the years to come. I have suggested how the East should respond to it. I further outlined some of the main conditions which may favour or inhibit rehabilitative programmes in correctional institutions.

At this point a good evaluative researcher will notice that I have not advocated rigorous methodology in implementing treatment programmes, i.e. that there should at least be a quasi-experimental design with a theoretical basis, matched and randomly assigned experimental and control groups who are representative of the population at which the treatment is aimed, the whole treatment process recorded and randomly observed by evaluator(s), and the result statistically analysed. I would certainly like to see all these done which make for scientific truth, but I also appreciate that it would most often be impossible for administrators to justify such a plan to the finance and even the policy people. Besides, there is also an ethical problem as to who should and should not receive treatment. I am therefore content that for the time being we in the East should perhaps concentrate more on initiating treatment innovations, and be satisfied that, all other things being equal, those who have received such treatment fare better, in a number of articulately described aspects, than those who have not.

Notes

1. See, for example, Francis A. Allen: "Criminal Justice, Legal values and the Rehabilitative Ideal," 50, Journal of Criminal Law, Criminology and Police Science, 226, 1959; James O. Robison and Gerald Smith "The Effectiveness of Correctional Programmes" 17, Crime and Delinquency, 67, 1971. Robert Martinson "What Works?—Questions and Answers About Prison Reform," The Public Interest, Spring 1974 pp. 22-54; J.P. Conrad "We Should Never

Have Promised a Hospital," Federal Probation 1975, 39, pp. 3-9, B. Lipton, R. Martinson and J. Wilks "The Effectiveness of Correctional Treatment," New York, Praeger 1975. Judith Wilks and Robert Martinson "Is the Treatment of Offenders Really Necessary?" Federal Probation, 1978, March, pp. 3-8.

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The Promise and Pitfalls of Classification for Correctional Systems

*by Theodore N. Ferdinand**

Classification as a method of sorting clients among a variety of security or treatment settings is a tried and true procedure in criminal justice with a long history. It is also a method whose time has come. Its full value not only as a tool for assigning clients to an appropriate setting but also as a broad-gauge management tool for assessing program efficacy is only now being recognized by correctional administrators all over the world. The methodology for extending its use far beyond its original boundaries is at hand, and correctional leaders are adapting it to their broader needs as rapidly as possible. This paper explores this methodology and describes some of the advances that have attended its application in the United States and elsewhere.

The roots of classification can be found in two routine methods that evolved in the postwar period. As correctional systems began to include a variety of facilities graded from open, minimum-security to closed maximum-security centers, methods were needed for allocating a steady stream of incoming inmates to one or the other of the various security graded centers. Thus, correctional systems were forced to develop policies and procedures for classifying inmates according to their threat to the community should they escape, as well as their threat to the correctional community should they not. Classification according to sentence, age, gender, offense, and psychological balance soon became part of the inmate's intake routine. The early classification methods were crude, but the idea of allocating inmates or clients among a variety of very different centers was well established among correctional directors by 1960.

At about the same time, several serious attempts were mounted in the United States to develop programs that were effective in rehabilitating juvenile offenders in custodial settings (see Street, Vinter and Perrow, 1968). These programs were based upon careful assessments of the treatment needs of different kinds of delinquents (see Warren, 1971) and required the skillful classification of juveniles in terms of their personalities so that each could be assigned reliably to his or her rightful program.

Herbert Quay (1971, 1979) was very active in devising not only typologies of delinquents and adult offenders but also methods for assessing the personality patterns of specific clients. But Marguerite Warren and her coworkers provided the most sophisticated classification scheme for juveniles, while also developing methods for determining their personality patterns and assigning them to their relevant treatment program. She defined (see Warren, 1976: 193-198) three broad levels of interpersonal maturity: I2, I3, and I4, which together identify several very distinctive personality patterns.

The first level, I2, refers to individuals who have great difficulty in forming lasting social bonds with others and in moderating their impulses according to conventional norms. Instead, they are guided primarily by personal desires and whims and respond best to programs that provide firm behavioral guidelines and are supervised by focused, masterful staff members who shape the children more by example and presence than by sympathetic understanding. This level includes just two types: the asocial aggressive

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and the asocial passive. Though both approach the world in essentially the same way—egoistically and exploitatively, the asocial aggressive confronts the world belligerently, while the asocial passive tends to withdraw in the face of trouble.

The second level, I3, includes three types who have less trouble in forming close relationships, especially with peers, but who cannot relate to others in terms of socially acceptable standards of conduct. They take careful note of power differentials in their environment and are guided by such differentials, but within these limits they are often able to form lasting friendships with peers. They include the immature conformist, the cultural conformist, and the manipulator. They all need help in learning appropriate conduct standards, but unlike the rest, the older manipulator has trouble in relating to power figures and tends to do best in custodial settings with distant, firm adults who hold juveniles strictly to clearcut guidelines. The others do better in community based programs with sympathetic staff members.

The third level, I4, consists of four types who have formed (1) an antisocial identity, as with the cultural identifier, or (2) a confused, conflicted identity such that inappropriate impulses of an explosive, destructive sort are common, as with the acting-out neurotic, or the socio-emotional reaction, or (3) an ambivalent, diffuse, poorly defined identity as with the anxious neurotic.

These several types need help in gaining control of themselves, and it often takes the form of identifying the social psychological sources of their troubles in conversations with tolerant, warm, and supportive adults (as with the anxious neurotic or the socio-emotional reactor), or of developing a better self-concept and greater self-control (as with the acting-out neurotic), or a realignment of his values (as with the cultural identifier). These latter two types generally respond best to self-confident, direct, masculine staff members, while the other I4 types—the anxious neurotic and the socio-emotional reactor—do better with staff members with more feminine qualities. Much the same is true of the immature conformist and the cultural conformist as well. with these relationships in mind, Warren and her team devised a distinctive treatment plan for each type and implemented the California Community Treatment Program in 1961. Herbert Quay (1971) did much the same on the East Coast with his Differential Behavioral Classification System, and the hope grew much stronger that classification could be a useful, scientific tool for sorting inmates among a variety of treatment alternatives.

These early studies used sophisticated statistical methods and computers in developing their classification schemes and incidentally, perfected a key step in the development of classification systems—the definition of a typology against which inmates could be evaluated. Warren used a complex process combining theoretical and statistical analysis to identify her types, and Quay used factor analysis for his.

They also identified the problems involved in matching individuals to master types and in assigning them to an appropriate program or center. To identify the inmate's personality type, Warren designed a complicated interview and testing protocol for inmates, and Quay used a simple paper and pencil test for the same purpose. The more complicated the typology, the more cumbersome the assessment instrument, and it became evident that a balance must be struck between the two. A complex instrument requiring highly skilled interviewing and sensitive interpretation could not be used broadly in a correctional environment.

These early attempts at classification for treatment purposes established that effective classification depends upon four distinct processes. First, it must identify clearly and reliably the different kinds of inmates any given system must deal with; second, it must determine accurately the character of the programs available to inmates in the system; third, it must assess each incoming inmate

and provide an assignment appropriate to his or her needs; and fourth, it must reassess each inmate at regular intervals to determine how satisfactorily he or she is progressing in the initial assignment. Reliable methods for accomplishing each of these tasks had been developed by the late 1970s, and in the 1980s, correctional managers began to realize the benefits of classification as a management tool.

Classification Methods

Methods for determining the kinds of inmates that come into a system were developed early on, as we have seen, and the kinds of traits that predict reasonably well to risk of future offense, to institutional adjustment, or to effective treatment in the community were well known by the 1970s (see Palmer, 1975; Brennan, 1978b). They include such factors as age at first adjudication, seriousness of first offense, number of prior incarcerations, drug or alcohol abuse, emotional instability, number of previous escape attempts, number of prison infractions, for example. Methods for assessing these factors from probational, institutional, or prosecutorial records were developed, and today a reliable assessment of an inmate's custodial needs is relatively simple to provide. Methods for assessing an inmate's psychological focus or emotional stability are also readily available via the Minnesota Multiphasic Psychological Inventory (MMPI) or the California Personality Inventory (CPI). Assessing an inmate's psychological or custodial needs present little problem to most classification officers today.

The assessment of correctional programs, on the other hand, is still rather primitive in that most are categorized simply in terms of their architectural security. The style of correctional officers, whether formal and reserved, or relaxed and responsive, and the actual focus of the institution as opposed to its formal focus, whether rehabilitative or custodial, is still largely ignored for classification purposes. We know a great deal about the inmate when it comes time to classify him, but our knowledge of the programs and correctional facilities to which he must be assigned is still very shallow. This fact points to a serious weakness in the methodology of classification.

The range of inmate types that come into any correctional system has already been systematically explored. Gresham Sykes (1958: 87-105) was one of the first to describe different types of inmate roles: Rats, Merchants, Wolves, Toughs, Real Men, and Gorillas, and Irwin and Cressey (1962) distinguished between thieves who were true to their code in prison and convicts who were more interested in making the best of a very difficult situation. Peterson *et al.* (1981, 172-189) described six inmate types in terms of their motives and life-styles in the community, and Megargee (1979) developed a typology of ten inmate types based upon their responses to the MMPI.

The validation of these typologies is still underway. Megargee's study of inmate types has been tested on inmate populations by a variety of researchers (see Edinger, 1979; Edinger *et al.*, 1982; Meyer and Megargee, 1977), and Quay's (1984) Adult Internal Management System (AIMS) has also received much attention (Levinson, 1988).

Using factor analysis Quay identified five general types that occur regularly among inmates: I. An overly aggressive type, hostile to authority, prone to disciplinary infractions, and predatory; II. A non-confrontational type, manipulative, untrustworthy, prone to disciplinary infractions, hostile to authority, and predatory; III. A reliable, cooperative type, non-criminal in outlook, concerned for others, that avoids fights, and is not prone to disciplinary infractions; IV. A dependent, unreliable, passive type, scapegoated, victimized, and not prone to infractions; and V. An anxious, afraid type who seeks protection, is explosive under stress, victimized, and somewhat prone to infractions.

Ratings of 1,113 inmates in the maximum

security Central Correctional Institution in Columbia, South Carolina were made independently by two experienced classification officers. These inmates were classified as heavies (Types I and II), moderates (Type III), or lights (Types IV or V), and the three groups were provided with educational programs, useful work, counseling and custodial care according to their needs. All three groups were kept separate, and when assessed after 18 months, the results indicated significant changes in their adjustment within the institution.

By the end of the experiment, the serious incident rate overall had been cut in half with the heavies accounting for 95 percent of the serious incidents, though they were only 61.4 percent of the inmate population. The moderates had 5 percent of the incidents though they were 14.8 percent of the total, and the lights (22.3 percent of the whole) had no incidents. Other evaluations of Quay's AIMS scheme have produced similar positive results (Levinson, 1986), and the same is true of Megargee's typology of 10 adult inmate types. The identification of distinctive, valid inmate types is relatively straight forward, and several such typologies are now available.

The method for defining these typologies generally uses a large pool of inmates as a standard for those that follow, a large pool of items by which to measure their key characteristics, and one or another of the multivariate statistical methods for distilling out the clusters or types that predict to a criterion variable, i.e., the behavior in question, whether it be post-institutional offense, institutional adjustment, or a positive response to treatment programs (see Brennan, 1987b). The statistical techniques most commonly used include regression analysis, factor analysis, and decision trees.

Statistical Techniques: Regression analysis examines a list of characteristics upon which inmates have been rated and selects the item most highly correlated with the criterion variable, e.g., institutional adjustment. It removes that item and its influence on the criterion variable and repeats the whole process again on the remaining items. It selects the next most powerful item and removes it and its influence on the criterion variable in the same fashion as before. It continues in this way until the influence of all the remaining items has become unimportant. Since the items that predict the criterion variable are often closely interrelated, the influential items usually number fewer than 11 or 12, so that only a relatively small group of items is needed to account for most of the variability of the criterion variable. The rest are essentially neutral.

Unfortunately, regression analysis offers little stable information regarding the interrelationships among the items predicting to the criterion variable, though these interrelationships can be estimated by considering the correlational matrix of the original pool of items. The influence of any one of the items, however, depends not only on its own strength, but also upon its relationship with the other items. If the order in which the items are removed from the list is changed, the relationship of each item with the criterion variable as well as all the others will be substantially changed. Thus, it is difficult to tell without further analysis exactly how the several influential items relate to one another. The clustering of these items, i.e., their interdependence, can only be estimated by considering the weight of each item in predicting the criterion variable.

Further, regression analysis only provides one cluster of key characteristics for each criterion variable. This cluster is the strongest set of characteristics, and to the extent that more than one set of characteristics predict to a given variable, the lesser clusters will be regarded as noise and ignored.

A more useful way of defining clusters is via factor analysis. It scans the pool of items upon which the standard population has been measured, it selects those items that are closely interrelated with the rest including

the criterion variable, and it computes their weighting on the common theme or factor underlying their clustering. It removes this factor (and its influence on the several items as well), and repeats the whole process again. Ultimately, all the factors are extracted and all the clusters of interaction among the items are specified.

Each item is assigned weights depending upon its contribution to each of the underlying factors, and each factor is defined in terms of the items that load most heavily on it. Thus, each criterion variable could be represented on several distinct clusters or factors. The factors are usually constructed so as to leave them independent of one another. Most items load on more than one factor, and the weighting of each item on any given factor indicates how important that item is to the factor. The weightings of all the items on each factor provide a description of that factor and permit the researcher to identify its meaning. In this way, all the factors are precisely determined, and together they give a much clearer and more complete picture of the types in relationship with the criteria variables than with regression analysis.

The problem with factor analysis lies in the fact that the first factor is the most general, embracing the largest portion of inmates and the largest number of items. Up to one-third of the population may be included in this first cluster, and it may be defined in terms of 8 or more items. The last two or three factors, however, usually involve smaller numbers (less than 10 percent of the population) and fewer than five items. The last factors may also be hard to define.

They usually describe rare types in the population, i.e., types that can only make their presence felt when all the more general factors have been removed. They may represent, for example, sophisticated inmate leaders who are intensely anti-social, or they may be pro-social inmates with very good prospects for rehabilitation. They may also represent nothing more than accidental clusterings. They are sometimes impossible to interpret, but they may also depict a type that is well worth pinning down.

Decision trees represent a third method of identifying clusters or types in an inmate population. As before all the inmates' characteristics that distinguish one type from another are noted, and each characteristic is examined in terms of its ability to distinguish two groups: those who are high on a criterion variable, and those who are low. The characteristic that provides the sharpest separation of these two groups is selected, and two sub-groups (the highs and the lows) are formed. The whole process is repeated on each of the two sub-groups. The characteristics that most clearly separate them in two sub-groups are selected, and each subgroup is divided again into two more subgroups. This process is repeated until no more characteristics can separate the subgroups into distinctive sub-groups.

An example of this process is presented above. The criterion variable in this case is the recidivism rate (RR), and we are interested in finding the characteristics that predict to the RR. In this case, the strongest predictor is the number of prior court appearances, followed by age, and then, by total number of charges.

Five sub-groups of offenders can be identified: those with 12 or more court appearances and no older than 27 years; those with 12 or more court appearances and 28 or more years old; those with fewer than 12 court appearances and 26 or more years old; those with fewer than 12 court appearances, less than 26 years old, and with fewer than 7 charges; and those with fewer than 12 court appearances, less than 26 years old, and with 7 or more charges. All five of these terminal groups are defined in terms of several characteristics that sharply differentiate them from one another and therefore, readily conceptualized, and the last groups defined are more specific than the first such group. The decision tree method provides for very precise types, and they are very clear-

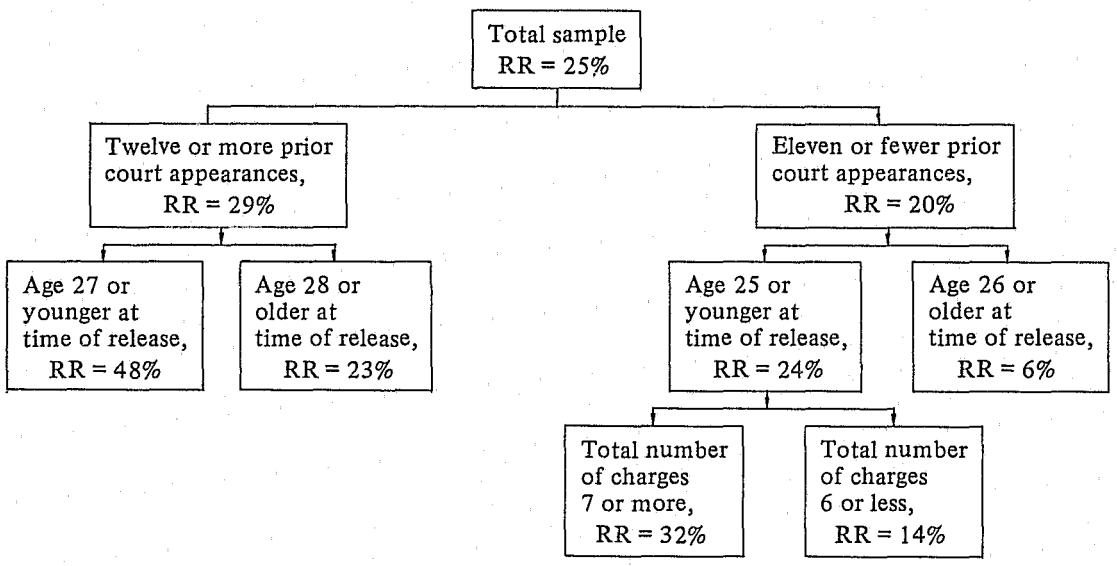

Fig. 1: Decision tree for risk classification of offender recidivism in first year of release. (Source: LeClair 1977) RR = recidivism rate in first year of release.

ly drawn. The only problem is that relative to factor analysis, they are rather thinly drawn. The detail with which they are described is definitely limited.

If all three methods were used on the same set of data, they would yield approximately the same patterns. Factor analysis provides the clearest portraits and the most comprehensive typologies. Decision tree analysis provides adequate definition of types, but it offers much less detail in its descriptions of the several types, and it is less comprehensive in describing a wide range of types. It does provide very clear guidelines in assigning individuals to existing groups, and for this reason, classification officers would probably prefer decision tree analysis. Criminologists, who are more interested in discovering and defining new types, would probably prefer factor analysis. Since regression analysis is weak in defining both individual clusters and the range of clusters that exists, it is unsuitable for most classification purposes.

Once a master typology of inmates has been constructed, the next steps are straightforward. New inmates are classified according to their kinship with one or another of the master types and given an assignment according to the treatment, security, or custodial rating of that type. As we have seen (pp. 7-8), research has shown that such assignments yield distinct advantages. When inmates who are usually predators in a prison population are segregated from the rest, disciplinary infractions among the rest decline to very low levels, and those infractions that do occur appear where and when they are expected. Furthermore, when clients are assigned to treatment programs that are especially tailored to their needs, they tend to benefit more from these programs than those who are assigned to such programs without classification (Warren, 1976: 193-199). Not only does classification enhance the effectiveness of custodial programs, it also contributes to a more wholesome experience for the inmates.

Classification also provides a running measure of the characteristics of inmates entering the system and in so doing provides an estimate of the future needs of the sys-

tem. If classification reveals that more predators are coming into the system, for example, prison administrators can plan in timely fashion for an expansion of maximum security facilities. In forecasting future problems for the correctional system, moreover, it provides the kind of quantified information that can be easily verified and therefore, is credible to budget officials.

Reclassification and Accountability

These several benefits of classification, however, pale to insignificance when compared to the advantages that reclassification yields. After an inmate has participated in the prison programs for several months, an interim assessment of his adjustment is important to correct any initial mistakes and to adapt his assignments to his emerging behavior in program. Reclassification is oriented more to his institutional behavior than is classification and therefore, depends more heavily on information provided by prison staff.

Reclassification is important, because it highlights systematic errors in the initial classification, and by pinpointing these errors it permits a progressive improvement in the original instrument. It also allows the staff to chart systematically changes made by inmates since their arrival and to adjust their assignments accordingly. As the inmates in an institution are periodically reclassified, specific groups of inmates can be compared with one another to see which changed most. If information on program participation is also available, it is possible to say *why* these inmates changed most. In much the same manner, groups of inmates in similar programs but with different kinds of supervision can also be compared. Thus, data gathered during reclassification offers an opportunity to assess not simply individual inmates adjusting to an institutional environment, but also groups adjusting to many different kinds of programs including custodial programs. Reclassification provides a versatile tool for auditing correctional institutions in a variety of ways.

As inmate reclassification becomes systemwide, and as several different correctional centers are linked together in a computer network with correctional headquarters, an assessment can be easily made of almost any segment of the correctional system. Moreover, such assessments do not require an unusual data collection effort.

Software is now available in the form of Management Information Systems whereby databases routinely available in most correctional centers, such as those describing an inmate's participation in program or disciplinary infractions, or data from a standard psychological test like the MMPI, can be entered into an inmate's file and organized with other data to yield a summary description of his status at the moment. Neither the data nor the questions to be asked are limited in any significant way, except that they must be amenable to quantitative analysis.

These systems were developed originally to help firms gain control over inventories of goods and universities to manage their ever-changing student bodies, but it is a simple matter to adapt them to the needs of correctional systems. Their utility for correctional systems is apparent.

They have been used to allocate inmates efficiently according to their needs and the capacities of the several facilities in the system. Thus, they permit a more effective utilization of the space and programs in the system.

They have also been used to document the need for both staff and facilities to budgetary agencies. As the flow of new inmates shifts in numbers and quality, it dictates adjustments in program, and probably also changes in staff and facilities. Such trends in the flow of inmates can be easily detected from data routinely gathered during classification and reclassification. Thus, precise projections as to the numbers and kinds of inmates that are likely to come into the system in the near future can be made easily, and based upon

these projections, it is a simple matter to estimate the need for staff, program, and buildings. These kinds of precise estimates based on reliable data are exactly what budgetary officers love to see when they are organizing a budget for the coming year.

We have already commented on the ability of a valid classification system to reduce the level of violence in a system by matching the inmates more precisely to facilities that anticipate their needs. When inmates are segregated in terms of their tendency to victimize or to be victimized by other inmates, for example, disturbances tend to be confined to those sections of the system best able to control them, to facilities housing the victimizers. Glaser (1987: 277-278) reports that in California, when a new classification system was installed in 1980 at the maximum security Folsom Prison, only 37 percent were found to need a maximum security assignment, and fully 19 percent deserved a minimum security facility. After 15 months of operation, the new system discovered that 67 percent deserved a maximum security and only 3 percent a minimum security assignment. These latter inmates were assigned to Folsom Prison specifically to fill low security positions in the institution. After four years, the inmate population in California had soared by two-thirds, reaching 39,105. But the escape rate per year per 1,000 declined by 36 percent, violent deaths among the inmates decreased, and violent disorders were largely limited to maximum security institutions.

Flaws in Classification

Despite the versatility of classification systems, critics point out a number of flaws. They raise serious questions about its fairness—is it fair to assign inmates in terms of their risk of *future* offense (Tonry, 1987: 367-413)? Does it interfere too much in their privacy to program and evaluate their experience in the correctional system so minutely?

Other suggest that it is just one more tool that must be adapted to the needs and exigencies of the correctional system. As a tool, it must be fitted to the system, and not the other way around. When used intelligently, it can serve a useful purpose, but by no means is it a master solution for all or even most of our correctional problems.

Finally, some indicate that it can only serve the purposes of corrections when applied in the right way (Clear and Gallagher, 1985). Since it is very easy to apply it incorrectly, its promise could turn out to be a most troublesome characteristic.

Classification and Fairness? In the United States, classification can be criticized on the ground that it violates the Constitutional rights of prisoners. The Fourteenth Amendment, for example, guarantees prison inmates equal protection under the law, and it has been interpreted to mean that neither race, political preference, ethnicity, nor religion should be used in deciding their fate within the prison system.

But several measures of institutional adjustment or future offense, such as age at first offense, number of prior confinements, substance abuse, or seriousness of this offense tend to segregate minorities from non-minorities. Minorities tend to receive higher security ratings than non-minorities as well as longer sentences to custodial institutions.

The United States Supreme Court has examined this issue in the context of capital offenses, and it has ruled that where race is not a criterion for the disposition, even though racial imbalances in sentencing may result, it is no violation of the Fourteenth Amendment (McCleskey v. Kemp, 1987). Dispositions must not be made on the basis of race, nor should they be made on the basis of mandatory sentences without the possibility of reversal by professional authority (Woodson v. North Carolina, 1976). The implications of a classification decision must be reviewed by competent authority so that its human meaning can be fully digested and its

fairness tested. The questions of ethnicity, political viewpoint, or religion have not been examined specifically in this context, though the significance of the Constitution for these criteria is also clear. As with race, they may not enter into classification decisions.

Classification as a means of grouping inmates in terms of their characteristics within the prison system is acceptable to the Constitution so long as (1) it is not done in terms of race and (2) it permits a competent authority to override classification decisions when they are unfair or unreasonable.

Nevertheless, in the United States, key correctional officials are selected by the Governor, and therefore, are accountable ultimately to a state-wide electorate. Unpopular decisions within the correctional system can and do become topics in political debates. Thus, a classification system that produces sharp differences among the dispositions of minority and non-minority inmates would probably come under sharp attack, and most elected officials would rather avoid such conflicts.

The question arises, therefore, to what extent could a classification system function effectively, if all racially linked criteria were removed from the assessment instrument? Petersilia and Turner (1987: 70-71) have looked at this issue and report that the prediction of probation success was improved by 5 percent. The advantage of using racially relevant qualities in classification is small but significant.

Where the practical advantage is slight, and the political disadvantage considerable, most state correctional directors would probably decide against using any criteria that might hint at unequal justice. The cost to the classification system is a slight increase in imprecision and errors in assignment.

Constitutional questions regarding the due process and cruel and unusual validity of classification have also been raised (Tonry, 1987). The Fifth and Fourteenth Amendments guarantee that decisions regarding life, liberty, or property in the justice system shall be made in terms of due process, i.e., in terms of just standards that are applied fairly and competently to the case at hand. Although the issue has never been raised in the courts regarding classification, it is probably without merit.

Classification is designed to bring greater regularity and procedural validity to decisions that otherwise would be made on the basis of intuition. Classification systems, would only be vulnerable to due process complaints, if procedures including those providing for responsible override were violated. To avoid such complaints, it is only necessary to insure that the process is competently administered.

The cruel and unusual issue is somewhat more troublesome. When assignments are made in terms of prediction formulae, and where some inmates present very troubled patterns, it is conceivable that classification formulae could produce a cruel assignment, e.g., an extraordinary period of time in extreme security, for at least a few of the inmates. If responsible authority does not review and override such assignments, any classification system will from time to time yield cruel and unusual recommendations. The solution, of course, is to make sure that review procedures are carefully followed by responsible classification officers so that unusual cases are closely monitored and unwarranted assignments avoided.

Complaints might also be raised against extreme intrusions into the inmate's thought processes and living space that classification entails. Classification provides for much closer programming of an inmate's experience within the correctional system and reclassification monitors very closely his personal reactions and overall adjustment to this experience. Does it also rob him of an opportunity for self-expression or personal growth?

This argument is much more relevant to a free society that assumes the full commitment of its citizens to the social and political process. Unfortunately, prisons fall far short of this ideal and are much more depen-

dent upon coercive mechanisms. In particular, the expectation is that the prisoner will *not* follow the social and political rules of the institution voluntarily, and close supervision is necessary to thwart inmate subversion attempts. Since the privacy of inmates is already rather closely controlled, classification systems increase this control only incrementally. They do not themselves raise a serious question of invading the inmates' privacy simply because an invasion of privacy is the essential mission of prisons.

Is Classification Just One More Tool? Classification provides many benefits, as we have already seen, but as a tool it depends upon the intelligence and balance of human beings for its effectiveness.

Several problems that require balance and intelligence come immediately to mind. Classification is designed to segregate different types of inmates according to their program needs. Whereas formerly classification was provided for only the simplest kinds of distinctions, between juveniles and adults, or between males and females, for example, classification today enables distinctions and segregation among different personality types, among different vocational and avocational types, and among different levels of criminal commitment. The logic of classification prompts a search for meaningful distinctions within inmate populations as well as programs for ever more finely defined sub-groups within the prison population.

The tendency therefore is for classification officers and their superiors to argue for greater specialization among staff and facilities to serve the needs of more finely defined inmate sub-groups. At some point, however, this process of division and subdivision must become unproductive. At some point, the types become too highly focused and their programs too narrow to warrant serious attention. Prison managers must determine when this point has been reached. As with everything else, the human touch is required for classification systems to achieve maximum effectiveness. Similarly, classification systems cannot resolve fundamental divisions within the correctional system. Where an institution is nominally a treatment center but in reality its primary mission is custody, the classification system will provide assignments according to the nominal view of the institution, Assignments will be made according to its treatment programs, but the staff at the institution may in fact use these treatment programs for other purposes.

Insofar as the classification categories are inaccurate, the effectiveness of classification is diminished and its benefits diluted. Only those who are working intimately with classification and the inmate sub-groups would know that the classification system was providing inappropriate assignments, thougl. some hint as to its invalidity would be given by an unusually high level of reassignments produced at reclassification. Although classification cannot save a system from its own weaknesses, to some extent it can signal the existence of such defects. It is a tool that depends heavily upon the wisdom of its human masters.

The Misapplication of Classification: With such a complex tool, the possibility of a misstep is always present. Unfortunately, the simplest approach to implementing a new classification system—borrowing it from a correctional system that has already implemented it successfully—produces a whole series of errors.

Wright, Clear, and Dickson (1984) have examined the way in which the Wisconsin risk-assessment instrument was applied to probationers in New York City, and they found generally that the categories developed in Wisconsin did not describe probationers well in New York City. As a result, risk predictions in New York City based on the Wisconsin instrument contained many errors.

In addition, the Wisconsin risk-assessment instrument was based upon items that were overlapping and many could have been elim-

inated with no loss in predictive power. Finally, the weights that were given the several items *reduced* their predictive power, probably because they capitalized on peculiarities in the original validation population in Wisconsin. The attempt to transplant the Wisconsin risk-assessment instrument to New York City was a failure.

Unfortunately, the temptation is very strong to borrow the methods that have already proven successful in a neighboring state. Such a temptation, however, must be resisted because it leads to horrendous errors. Consider the following hypothetical example.

Suppose the classification scheme developed in Wisconsin and used successfully within the Wisconsin correctional system were borrowed by the Illinois Department of Corrections and applied to the Illinois inmate population. What would happen?

Since the Wisconsin correctional system differs substantially from the Illinois system, the allocation of inmates in Illinois should be handled very differently. The Wisconsin system holds about 7,000 inmates with 1,400 (20%) in maximum security, 2,100 (30%) in medium security, and 3,500 (50%) in minimum security. The Illinois system, on the other hand, is top-heavy with about one-third of its 21,000 beds in maximum security institutions. Medium security institutions make up another 5,000 beds (24%), with minimum security contributing the remainder, 9,000 beds (43%).

It is a simple matter to adjust cutoffs so that precisely the right number of inmates is assigned to each level. Thus, cutoffs for the Illinois scheme must be adjusted to that state's needs, though it is not always clear how this can be accomplished without considerable experience with the system. The easiest course in the beginning would be to simply use cutoff levels established by Wisconsin officials for their system. Nevertheless, this policy would assign too few inmates to maximum security and too many to medium and minimum security level institutions. One of the advantages of classification systems is that they permit a maximal utilization of available space, but by simply borrowing Wisconsin's cutoff levels, Illinois would run into a problem of imbalance in assignments such that a large number of overrides would become necessary.

A more subtle problem arises, however, when Wisconsin's typology of inmate types is adopted by Illinois with no adjustment to the peculiarities of Illinois' inmate population. Wisconsin is a largely rural state with Milwaukee approaching a population of one million and Madison, the state capital, with about 200,000 inhabitants. All the other cities have fewer than 100,000 inhabitants.

Milwaukee has a substantial volume of crime, a sizable drug problem, a developing street gang problem, and its share of professional criminals. The crime problem in the rest of the state, however, stems basically from personal disorganization and maliciousness.

In Illinois Chicago is a major center for both Italian based organized crime and drug trafficking organized by warring street gangs. A substantial amount of the state's crime problem can be traced to these two sources. In addition the drug problem is widespread with predictable effects upon juveniles and young adults. The minority population makes up about 30 percent of the whole with about half living in poverty and contributing to the crime problem. Finally, personal disorganization and maliciousness, as in Wisconsin, account for a substantial amount of crime.

Compared with Wisconsin a much larger portion of Illinois inmates are violent, experienced in crime and criminal justice, and committed to a career of crime. The prisons have serious problems with gangs and with racial conflict. Several types that are rare or even non-existent in Wisconsin appear regularly in Illinois. For example, experienced inmate leaders who wield considerable authority over their fellows in prison are not uncommon. Sophisticated inmates who know

how to manipulate prison staff and rules are also common in Illinois.

If Illinois officials were to adopt the categories used by Wisconsin authorities, it is likely that several important types would be missed altogether—e.g., the type that understands the purposes of classification and knows how to bend it to his own ends, or the sophisticated inmate leader who has a corps of lieutenants awaiting his arrival and eager to do his bidding, whatever it may be. Moreover, it is likely that a much larger number of substance abusers and drug traffickers with little desire or hope of changing their destiny would appear in Illinois' incoming inmate group. Errors from the lack of fit between Wisconsin's typology and Illinois' inmate types would be numerous, and the override problem would be substantial.

Were Illinois to adopt Wisconsin's classification system lock, stock, and barrel, it would substantially underclassify its inmates so that too few would be sent to maximum security facilities, and it would misclassify many inmates so that a substantial number would either be classified incorrectly, or placed in an unclassifiable category requiring individual attention. Classification in this case would not produce an efficient use of beds, and many override decisions by classification officers would be needed. Little would be gained by taking the easiest course.

The most effective course would be to adapt both Wisconsin's typology and cutoff levels to Illinois conditions. Wisconsin's typology might be used as a prototype, but Illinois officials should take pains to identify inmate types peculiar to Illinois. They should also adjust the cutoffs to the idiosyncrasies of the Illinois correctional system. These precautions would certainly delay the installation of its own classification system, but it would not delay its successful implementation.

Finally, an interesting problem that correctional psychologists have largely ignored and social psychologists have only just begun to grapple with (see Goffman, 1961; Garfinkle, 1967) is the synergistic encounter of individual and social setting such that both are fundamentally changed. Erik H. Erikson (1958, 1969) wrote about the impact of social and political turmoil upon the personalities of Luther and Gandhi and their subsequent emergence as world symbols. Other world leaders have responded similarly to national crises and led their people through tribulation to important triumphs, e.g., Winston Churchill and Charles DeGaulle. Examples abound of individuals who found in a crisis the spark they needed to fulfill themselves and reach further than otherwise would have been possible.

If such synergistic combinations occur among national leaders in times of crisis, there is every reason to believe that similar kinds of melding of individual and setting occur in that most difficult of environments—the prison. Staff and inmates alike encounter severe moral and psychological pressures, and many are corrupted or otherwise undermined. But many also find in confronting these pressures new powers that previously were unknown. Like Luther and Gandhi their reactions reflect not simply their personal attitudes and character but also the expectations and understandings of their environment. Their attitudes, feelings, and motives resonate with the needs of the environment such that they can step into the breach, understand its deficiencies, and provide through their efforts a solution of sorts.

The problem is more than the inmate finding a niche where he can use his abilities effectively. Each inmate by the time he arrives in prison has acquired a set of personal habits, motives, and attitudes reflecting his interactions with friends and intimates in a variety of settings, e.g., in his family, among his peers, or his work groups, for example.

These habits, motives, and attitudes, which are specific to his groups and reflect their history, in turn become the subject of self-regarding feelings and needs such that an identity crystalizes to guide him in his dealing with others. This identity or social

character, therefore, is a blend of the customs and unspoken understandings of his groups together with his personality and his feelings of self-worth. His identity is based upon not only his personal needs but also the social patterns of his groups.

Much the same happens to long-term inmates so that their identities reflect in addition to their personal needs their social experiences in the prison. The social order in prison is maintained to a large extent by these veterans through their identification with the values holding their inmate groups together.

The problem confronting new inmates, then, is to find a compatible group of veterans with attitudes and feelings as well as social customs and understandings not unlike his own. These customs and unspoken attitudes are well known to veteran inmates, but new inmates must be particularly alert to them lest they violate inadvertently certain of the more sacred ones.

To classify new inmates accurately, therefore, it is necessary to determine not only their identities upon arrival but also the customs and understandings of the prison environment to which they must adapt. Since their adjustment in prison depends upon their finding a compatible social niche, i.e., bringing their social identity into alignment with the rules and subtle understandings governing their immediate groups, their classification must also make some estimate as to how well they will blend in with inmate groups in the prison.

Unfortunately, this issue is far from settled, and estimates of how different types of inmates will adjust to existing social settings are at best educated guesses. Much more research is required before we can classify inmates precisely in terms of their program needs. Mistakes can be corrected at reclassification, of course, and to a certain extent the patterning of these mistakes will suggest not simply better ways of measuring inmates but also patterns of interaction between social identities and social setting. But until we develop a better understanding of this process of integrating inmates with prison structure both formal and informal, our classification process will not approach its full potential.

Conclusion

Clearly, classification and reclassification hold great promise for a new day of accountability in corrections. They also offer answers to a number of very interesting questions regarding the nature of offenders and the processes of prisons. It all depends upon the effectiveness and speed with which correctional directors can provide the necessary computer hardware, and classification officers can develop the software and databases and can implement classification and reclassification schema. A major managerial effort is needed, but once the system is in place, it will still require a high level of human relations skill to implement it effectively (Toch, 1981).

Custodial staff who already have their informal classification schema will ask, why should we abandon our old, familiar classification system for a new and untried system? And the inmates will see dark plots behind the effort to install a new system. Correctional managers must certainly use their best human relations skills to overcome the resistance of both staff and inmates, while also encouraging classification staff in their efforts to build an effective system.

Nevertheless, despite their best efforts many classification systems will fail. The successful ones, however, will be sufficient to encourage more to try, and eventually, we will learn how to do it well so that even those correctional systems with weak technical and managerial resources will be able to field respectable classification systems. By then correctional systems will be more orderly, effective, and predictable enterprises. Let us hope that by then demand for their services will be much diminished.

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Islamic Criminal Justice System—Legislation and Application

*by Hassan El-Sa'aty**

Introduction

1. The ethical doctrine in Islam is closely connected with the law, which is derived from the Qur'an and the Hadeeth (sayings and doings) of the Prophet. The four schools of jurisprudence (fiqh) do not make a special distinction between rules regarding moral conduct and those appertaining to civil and criminal law. The moral teaching of Islam is an integral part of a practical code designed to instruct the Muslim in the way he should follow to win the approval of God.

2. The Islamic conception of justice is based on fair dealing and equity. God bids men judge with justice. He Himself is the most just of judges. Just balances will be set up on the Day of Judgement so that no soul will be wronged in any way. On this day the unjust will have to pay for their injustice.

3. The Kingdom of Saudi Arabia is the first Muslim country to apply Islamic legislation in all aspects of everyday life, inter. alia., crime prevention. The result of this experience has been prevailing security in the towns, villages and deserts of the Kingdom. This security and social and economic stability in Saudi Arabia have been commended by the great majority of other Muslim States which do not fully apply Muslim Law, i.e., the Shari'a.

Characteristics of Islamic Legislation

4. Islamic legislation is characterised by the diversity of its sources and thereby it is easy to deduce solutions and legal judgements. In addition to the Holy Qur'an, the following are the other sources: Prophetic teachings "Sunnah" supplementing the Qur'an, consensus of jurists' opinions "Ijma" and Analogy "Kias." For fourteen centuries, generation after generation, the learned scholars of jurisprudence have devoted themselves to the study of Islamic legislation and have accumulated a big fund of Islamic knowledge. As long as people complied with Islamic legislation, it has not failed them in their daily affairs.

5. According to Islamic legislation, meteing out punishments for crimes is one of God's prerogatives in order to protect humanity from evil and attain peace and security for them. These crimes are:

a) crimes punishable by fixed punishments "hudoud": adultery, defamation, alcohol-drinking, theft, highway robbery, apostasy from Islam and attempted coup d'etat.
b) crimes punishable by retaliation and blood-money: premeditated murder, semi-premeditated murder, murder by error, premeditated offence against human life short of murder and offence by error against human life short of murder.
c) crimes other than those mentioned in a. and b. punishable by "ta'zir," i.e. discretionary punishment.

The "ta'zir" crimes are not all specifically quoted in the Holy Qur'an or in the Prophets "Sunnah." However, they are punishable because they represent acts of disobedience to God's commandments and lead to wrongdoing. Although they are not specified, Islamic legislative sources have mentioned some of them, such as usuary, treason, and cursing. In the interest of the community, the competent authority may pardon

the culprit from "ta'zir" punishments provided this act does not prejudice the individual victim's rights. The victim may forgive the culprit as far as his own rights are concerned without prejudicing the public rights exercised by the competent authority of the country. "Ta'zir" punishments are exhortation, censure, payment of fine, or confiscation of property. The convicted person may be confined, flogged, or, in rare cases such as spying against one's country, be condemned to death.

Definition of Crime

6. Crime, according to Muslim jurists, is committing an act which is punishable or the abandonment of an act which should have been carried out. In this general definition of crime, according to Islamic jurisprudence, disobedience, sin and other acts of wrongdoing, such as envy and hatred of somebody who does not deserve it, are considered crimes punishable by God in this world and in the hereafter. The more precise definition of crime is committing a legally prohibited act punishable by fixed punishments: "hudoud" or *discretionary* punishments: "ta'zir." In Islamic jurisprudence, crimes are classified according to their relative punishments into "Hudoud" crimes which have fixed punishments, "Kisas" crimes which have retaliatory punishments, and "Ta'zir" crimes which have discretionary individualized punishments. Islamic law is meticulously keen on the preservation and protection of the five indispensable main rights: religion, life, mind, offspring and property, and it does not hesitate to inflict severe punishment on anyone who dares to violate them.

Objectives of Punishment in Islam

7. Reference should be made to the objectives of punishment in Islamic law. These are:

a) To serve as a deterring and discouraging factor against crime to the criminal and others. Hence the public execution of chastisement. In Islamic law, all punishments for crimes committed should be executed in public and before a large crowd. In reference to this point, the Qur'an says: "The execution of punishment inflicted upon the convicted should be witnessed by a host of believers."
b) To punish the criminal for the crime he has committed. This is clearly prescribed in "hudoud" and retaliatory punishments.
c) To rehabilitate the criminal; this is self-evident, particularly in the cases of highway robbery. It may also be evident in refusing to accept the defamer's witness unless he has completely changed his conduct.

Although chastisement may be painful, it serves as a cure. When the person realizes that he will be chastised before a large crowd, he will be deterred from committing even the slightest offence.

The Crime of Apostasy

8. As apostasy has, recently, been widely discussed in British and European learned as well as lay circles, a few words on apostasy as a heinous crime in Islam would not be out of place. According to comparative academic studies, the offence of apostasy and defection from Islam is inconsistent with the freedom of belief as stipulated in the Qur'an: "Let there be no compulsion in religion." On this point, I would like to add some explanatory observations.

9. Apostasy from Islam is considered a criminal act in order to safeguard the interests of the society, for the integrity of belief is man's prerogative. Therefore any offence against man's integrity of belief is an offence against his honour. Rebellion against one's belief (Islam) represents a grave threat to the whole social structure by the fact that the individual loses his faith in the basic heritage and his allegiance to the ideals that the reli-

gion preaches. The individual's allegiance to his nation's faith is his commitment to the interests and principles of the nation to which he belongs, and it is a token of his compliance with the views of the majority and his willingness to defend them. Should a person defect from his belief, it means his desertion of his people and all the grave consequences that result from such a defection. There is no difference between a person who defects from Islam and the person who joins the enemy whether on ideological or practical planes. In order to safeguard the entity of the nation, its interests and sacred beliefs, the Prophet has ordained that an apostate be condemned to death unless he denounces his apostasy and declares his atonement and behaves accordingly in words and deeds.

10. Apostasy from Islam is inconsistent with the natural rights of citizenship and the legal status of the apostate, since the apostate is neither a non-Muslim to be treated accordingly, nor a Muslim because he has defected from Islam. Therefore an apostate is an outlaw and his crime is not different from high treason punishable by death.

11. Islamic Shari'a has explicitly stipulated that an apostate has no legal entity within his nation, and therefore he has to be condemned to death. The Prophet narrated (in the Hadeeth): "No Muslim who testifies that there is no God but Allah and Mohammad is His Apostle can be condemned to death except in three cases—and one of them is an apostate who defects from his religion and community." So the Prophet equalized an apostate from religion with a defector from one's own people.

12. Apostasy, in the eyes of custom and society, is a crime even on the political level. Apostasy in its political connotations means a person who changes political parties. Such a man loses his identity and is known as a turncoat. Apostasy from Islam creates the same serious situation like a man giving up his nationality in favour of another country. If a group of people decided to do such an act in a given country, it would surely create a problem for the authorities.

Diversity of "Shari'a"

13. It is worthy of note that the Qur'anic and Sunnah texts give more importance to "hudoud" crimes than other sources of Islamic legislation which give greater consideration to discretionary crimes. The diversity of sources of Islamic Shari'a is not without a purpose or devoid of wisdom. The widened scope of "ta'zir" sources is primarily meant to connect discretionary crimes with the ever increasing growth of society. The judge or the head of the state who decrees a certain act as a crime must, as Muslim jurists assert, consider the living conditions and social circumstances of the community before exercising his discretionary powers. When a certain crime is widespread, the magistrate must choose the severest punishment; but when this particular crime decreases in the course of time, punishment should become lighter. The sources of Islamic Shari'a keep on developing and growing to the extent that they encompass all discretionary crimes and the concept of criminal responsibility.

Criminal Responsibility

14. Criminal responsibility in Islamic law is based upon two principles:

a) Punishment is an social necessity imposed to protect society and safeguard man's interests. Necessity is estimated according to its importance for the protection of society.
b) Punishment is inflicted on a person who is sane and able to discern and exercise his own free will. This does not mean that appropriate measures should not be taken to protect society against crimes committed by criminally non-responsible offenders. In such cases, according to Islamic law, the person in charge of the interests of a legally non-

responsible offender has to bear the responsibility for his offence. Such a measure would inevitably lead to the protection of community interests.

15. It is one of the basic rules of Islamic law that no one bears the responsibility of another's offence. Thus criminal responsibility is a personal responsibility and is established once an offence is committed and the offender is sane and able to exercise his own free will.

Lenience in Islamic Law (Shari'a)

16. It is worthy of note that Islamic law lays emphasis on the fact that not all offences would be considered with the same criterion. Furthermore, Islamic Penal Law urged on crime prevention before its commission, and this could be achieved only through moral education and upbringing. Only through betterment of ethical values of an individual can he comprehend the conception of good and refrain from evil and thus comply with the teachings of Islam.

17. Needless to say, tender and gentle words are quite effective in guiding stray souls. The Prophet said that while tenderness invests anything with beauty, cruelty makes it defective and ugly. The Shari'a therefore stressed the combatting of crime and deviance with tenderness in order to divert the offender from his evil course. The Prophet urged his Companions not to reproach the criminal, lest he should withdraw from the believers and should lapse into more sins.

18. In Islam, there is no one who is incurably ill. Even the worst criminal can be rehabilitated. He can repent and achieve absolution. Islamic law did not only leave the door open for repentance, it also strove to cure the criminal's morale. To consolidate moral values, the Shari'a advocates the following:

a) Formulation of a cultivated public opinion. Hence the Shari'a called upon Muslims to do a good turn and abstain from evil, and the Shari'a holds the morally sound responsible for the immoral person if the latter does not try to turn over a new leaf. If the Muslims exchanged amongst themselves good counsel, mischief will be eliminated and they will behave humanely towards each other.

b) Prudence and decency should be cultivated. Stirring up and activating prudence in the heart of a criminal is considered a potent cure, for it will discourage him to commit further offences. The Prophet said: "If you lack prudence, you will be brazen enough to commit any offence."

c) Discourage people to spread scandal. The Prophet is reported to have said: "O ye people! If anyone has committed a dirty immoral act and kept it hidden within himself, God will not disclose him. But if he publicized it, a punishment would be inflicted upon him." Old men of wisdom said: "If you fall into a moral scandal, hide it from the people." This is a clear hint that hiding an immoral act will divest it of its impact and will help people to abstain from it. Revealing a crime in Islam implies two offences: committing the crime and announcing it. The Prophet said: "If a sin is not disclosed, it will harm but the offender; but if disclosed, it would invoke God's wrath."

19. Social defence, in the sense of rehabilitating and curing the offender by eradicating crime, has origins in Islamic Shari'a. In summary they are:

1st. Crime prevention before its commission through the following measures:

a) Guiding people to have faith in religion to protect them from deviance.

b) Cultivating the love of doing good in the people.

c) Doing a good turn and abstaining from

evil.

d) Social and cultural guidance.

e) Encouraging the love of co-operation and exchange of counsel.

2nd. Crimes must not be disclosed so that moral scandals are not widely spread and the offender does not continue with his crimes.

3rd. "Hudoud" punishments to be inflicted on the offenders but dubious cases should be averted. Likewise, "ta'zir" punishments to be decreed on the offender provided that his circumstances are taken into consideration.

4th. Repentance to be allowed to the offender without restrictions.

5th. The offender must not be ostracized and should not be reproached for his crime.

6th. People should be encouraged to pardon offenders.

7th. Care should be given to the Shari'a injunctions, for promoting mutual aid and co-operation in financial and moral affairs with a view to guaranteeing a prosperous life to everyone.

20. The close consideration of the criminal's circumstances, known in contemporary criminological terminology as the "individualization of punishment," falls within the scope of the criminal policy of Islamic law. It calls upon the judge to consider the circumstances of the criminal to find out the real motives that drove him to commit the crime. Thereupon the decisive measures are taken by the judge. Punishment is decreed and inflicted in proportion to the amount of harm done and in relation to the criminal's conditions. The criminal's harsh punishment may be substituted by a lighter one. He may receive medical treatment or moral edification. Islamic Shari'a does not object to any procedure leading to the disclosure of the criminal's circumstances either through medical examination or social investigations.

Evidence in Islamic Law

21. In Saudi Arabia, jurists do not consider the lapse of time except concerning "hudoud" crime witnesses. Any testimony not given within a prescribed time is considered null and void. If a witness gave his testimony long after a case had been tried in the law court, his testimony would not be valid. Since in this case the witness's testimony would favour the defendant's case, therefore the testimony (given long after the trial in the court) would be disregarded.

22. Evidence, whether rational or palpable, is defined as an evident indication of the commission of an offence by a certain person. It is called "evidence" because it tends to reveal the hidden criminal intention of the offender. This evidence could be either testimony, or a confession by the offender, or a solemn oath taken by the plaintiff, or a testimony given by the plaintiff himself, such as "lia'an," when the husband launches a charge against his chaste wife. At times, the evidence is established by close scrutiny of conjectures and circumstances connected with the crime in order to lay the guilt on the defendant. A testimony is defined as being a report of what the witness has seen or heard. The word "witness" can be used both as a verb or a noun.

23. The word for "oath" in Arabic is "Yamin," which literally means "right," opposite of left, because one offender used to clap his right hand with that of the plaintiff. Circumstantial evidence is connected with, and indicative of, the crime for which punishment is claimed. Where circumstantial evidence exists, it is a proof of the commission of a crime. A spouse is indicative of, and associated with, the person to whom she is wedded. Such is circumstantial evidence which is closely associated with the crime for which punishment is claimed.

The Implementation of "Shari'a" Penalties in the Kingdom of Saudi Arabia

24. In the Kingdom of Saudi Arabia, "kisas" punishment is inflicted with a sword or a rifle, because it puts a very quick end to the life of the culprit. There are three prerequisites for "kisas" punishments:

a) Capital punishment should not be inflicted upon minors or insane culprits.
b) Kisas does not permit the taking of another life other than that in question. For example, if a woman is pregnant or became pregnant after the sentence was passed, the execution is deferred until she delivers the baby and weans him from the breast.

25. Lawsuits are usually referred to the Shari'a judges. Apart from the Lower Courts that deal with minor civil cases, criminal cases go the higher courts. Judges of such courts usually make a thorough investigation of the case. When the judges feel that the only possible sentence is the kisas, the case is then taken up to the Court of Cassation for further investigation. When the decision is the kisas, the case is referred to the Supreme Court where a panel of judges launch a large-scale investigation into the case and the proposed sentence. If they confirm the kisas the whole case is submitted to His Majesty the King to give his endorsement. Then the final Royal decision and the endorsement of the case are taken to the executive departments for the execution of the Royal decision. All this shows how detailed and accurate the procedures are in order to secure justice.

26. The kisas is executed by someone related to the victim provided he is able to carry out the execution efficiently. Otherwise, an efficient executioner is delegated by the relatives of the victim. The execution takes place in the presence of an official of the Authority (or his Deputy) and under his supervision. The kisas is executed in accordance with the Shari'a. When the sentence is endorsed by the King, the murderer is informed to enable him to see to worldly and religious affairs. The murderer's kin are also notified in order to attend the execution of the kisas.

27. The murderer is led to the plaza opposite to the Governor's palace where the kisas is executed in the presence of the Governor of the district or the province where the kisas takes place. After announcing the murderer's name, the victim's name and the whole case, the murderer is beheaded with a sword. As the relatives of the victim are not usually efficient at executing capital punishment, a swordsman is appointed by the State to carry out the kisas.

28. Nevertheless, the Government of Saudi Arabia, in pursuance of the Shari'a, does its utmost before the execution of the kisas, to convince the relatives of the victim to agree to commute the kisas in to blood-money "diya." In fact, in some cases members of the Saudi Royal Family and other citizens have interceded with the family of the victim to agree to commute the kisas into diya in order to prevent bloodshed. In some cases these efforts have succeeded, while in other cases they failed and so the kisas was duly carried out in accordance with the injunctions of the Shari'a.

29. In pursuance of achieving the scope of the Shari'a in providing justice, order and equality in the Muslim society, the amputation of parts of the body (i.e. partial kisas) has been legalized instead of capital punishment. The amputation of limbs such as hand, foot, eye, ear, nose, eye-lid, lip or finger is executed according to the following prerequisites:

a) Making sure that justice takes its course.
b) Analogy of the parts to be cut off: the right hand of the offender for the right hand of the victim and so on.
c) Equality in parts, i.e. it is not legal to cut

off a healthy part of the body for a diseased part of the victim's body.

The Wisdom of Diya (Blood-Money) as Punishment

30. Diya is a merciful alternative stipulated by Islamic Shari'a. Originally "diya" was a recompense of one hundred camels. Some Shari'a scholars believe the diya is a payment of either one thousand gold dinars, twelve thousand silver durhams, or recompense of two hundred cows or two thousand sheep.

31. The scholars of the Shari'a in the Kingdom of Saudi Arabia prefer the "diya" to be paid in camels. However, if there are not enough camels, then the equivalent amount of one hundred camels in gold or silver. Therefore, due to the fact that there are not enough camels available in the Kingdom, the Saudi Government, in consultation with the Shari'a scholars, has established a fixed amount of money. The value of a camel in gold or silver varies from time to time. During the reign of the late King Abdul Aziz, the founder of the Kingdom in 1932, the "diya" was the equivalent of eight hundred Riyals in French silver, then it became three thousand Saudi silver Riyals. Afterwards, it rose to sixteen thousand and to twenty-four thousand Saudi silver Riyals. Unofficial sources report that the diya has now risen to forty thousand Saudi silver Riyals.

32. In the Kingdom of Saudi Arabia, the Petition Bureau is a very important institution in Islamic legislation. This Bureau is administered under the direction of a Grand Learned Sheikh. It was set up to cope with the rapid development of the Saudi Society which necessitated new courts and departments to deal with special problems.

Judiciary Independence

33. By independence is meant the non-interference by the executive authority in the affairs of justice. King Abdul Aziz gave special rights to the religious scholars by virtue of their qualifications in the Shari'a. The Saudi Judicature is as independent as any other authority in the land. This means that the king has both duties and rights, as the concept of the monarch who has only rights and no duties is unknown in Islamic law. This means that Islamic courts are independent and there are certain procedures that help the Judicature to remain independent. In brief, these are:

1st. Selection and nomination of judges are based on high standard, long experience, capability and loyalty. Judges must be graduates of Shari'a colleges and are appointed by a special Royal Decree. In addition to normal salaries, judges are entitled to additional fringe benefits.

2nd. The immunity enjoyed by judges means that they cannot be transferred or their services terminated by the Executive Authority.

3rd. Saudi judges enjoy full protection by the Law in order to retain their independence in judgements. Their immunity safeguards them against any form of abuse.

4th. Judges are restricted as regards their judiciary position. They must be impartial and should not pass judgement in matters involving relatives, enemies or personal interests. They should not have contact outside the court with either of the contending parties or their representatives. They should also not participate in any activity that may blemish their reputation, such as an occupation outside their portfolio.

The Administrative Criminal System in the Kingdom

34. There are courts that handle criminal matters and examine specific cases and disputes; there are courts of summary jurisdiction with one judge; the Supreme religious Court, which consists of seven grand judges, deals with serious offences and crimes; there

are also numerous courts of First Instance as well as two courts of Appeal, one in Riyadh, the Capital, and the other in Mecca. These are known as the Courts of Cassation and many judges are employed to deal with criminal and civil cases. Cases related to murder are referred to the Supreme Court which revises the sentences passed by other courts.

35. It is quite difficult to distinguish between the preliminary questioning and interrogation regarding a given accusation, as both are conducted by the police and are not subject to the jurisdiction of any judicial authority. In this sense, there is a great similarity between the British and Saudi systems. In order not to violate the traditions of the Kingdom, the idea of forming a semi-judicial court for investigations was not pursued.

36. Litigious procedures could be taken by:

a) The individual who wishes to lodge a suit against another individual or the authorities;
b) The police, bearing in mind that the Saudi judges conduct open trials in the interest of public morals, and they thoroughly examine all aspects of every case;
c) The presence of all parties concerned and the observance of justice and equality between the two contending parties.

Judgement Procedure

37. Each party has the legal right to defend his case. The court does not welcome large crowds in the court-room during the hearing and forbids side consultations which might affect the technical aspects of the trial. Once a crime is firmly established with concrete evidence, the sentence is passed at the end of the session. The defendant and the plaintiff should substantiate the points they want to make with concrete proof. It is worth noting that proof and evidence must be proceeded by the plaintiff, particularly with regard to "hudoud" crimes. Proof may be substantiated through material evidence, documentary evidence or witnesses.

38. A self-confident offender should feel completely free to express his views without any restriction and his confession should not be subject to any pressure. Custody, imprisonment or confiscation of property cannot take place without warrant. The withdrawal of self-confession is permissible; but in that case, another trial is conducted. No consideration is given to anything arousing suspicion during the trial.

39. In Saudi Arabia, the accused is innocent until he is proven guilty. This shows that every possible effort is made to ensure that justice is meted out.

SECTION 2: PARTICIPANTS' PAPERS

Practical Measures to Alleviate the Problem of Overcrowding

*by H.J. Shardin bin Chek Lah**

Introduction

Malaysia has a population of 16.9 million (Economic Report 85/86) of which 14.02 million reside in Peninsular Malaysia and 2.88 million reside in East Malaysia. The ethnic breakdown are 53.9 percent Malays; 34.9 percent Chinese; 10.5 percent Indians; other races 0.7 percent (Focus on Malaysian realities).

In a multi-racial society like Malaysia, the prison population likewise comprises 37.23 percent Malays; 31.56 percent Chinese; 13.8 percent Indians; and 17.37 percent other races in the total prison population of 21,066 as of December 31st, 1988.

The average rate of annual increase is 8.6 percent reckoned over a period of five years. In comparison with the population of the country, 16.9 million, it amounts to 0.125 percent (prison population 15,864 as of Dec. 31, 1984).

All this while the Prisons Department of Malaysia is lucky to have escaped and overcome serious crises in the prisons, due to the wise decision and effective action of the prison administrators. The deteriorating position of the Prison regime and security are obvious from the fact that all Prisons Institutions are overcrowded, thus, forcing cutbacks on accommodation, training facilities and rehabilitation programmes for prisoners.

At present most of the prisons are fully accommodated by all categories of prisoners, which makes the control and development of good self-inmate relationships difficult. Due to the world recession and the countries general economic constraints, large financial allocations for the buildings of new prisons and the recruitment of more staff could not be fulfilled.

At the rate the prisoners are increasing, the situation of overcrowding can only worsen with time. The big question is "should we keep on building more and more prisons just to accommodate the increasing number of prisons, or what other measures could we adopt to overcome overcrowding in prisons?"

1. Construction of New Facilities

Most prisons in Malaysia were built by the British during the last century, many of them nearly 100 years old. From the outside they look powerful, forbidding and desolate. Each cell-block has one, two or three tiers of cells, squeezed in orderly rows along both walls. The middle is left free, so that an officer is able to see in all directions. As many as 500 prisoners are herded together in one block. These conditions result in a perturbing devaluation of human beings. There is no doubt that the structure and layout of a prison building influences the prevailing atmosphere and the morale of prisoners and staff. Though originally built to hold fewer than 200-600, some of the old prisons, like Pudu, Taiping, Penang and Johor Bahru, have 2,000 to 4,000 prisoners. In the last few years, determined efforts have been made to improve the large, old prisons with renovation of old blocks and cells. A few smaller buildings were added to the already

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crammed compound, and there is no more rooms for further expansion. Some of the old prisons are not only crowded with prisoners, but also with buildings, towering metal fences and barbed wires.

Building new prisons is a very slow process. The New Selangor Central Prison in Kajang was built under the First Malaysia Plan by the Public Works Department and the project started in 1970 took nearly 16 years to complete. With a view to overcome the overcrowding problems and to replace existing old, ill-adapted prisons, the Department is in the process of building a number of new, modern penal institutions, and this will perhaps take another decade or two to be completed if undertaken by the Public Works Department.

In this respect prisons in Malaysia are concerned about prisoners rehabilitation and their re-entry into society. There are nearly 22,000 prisoners in Malaysian Prison Institutions. True this number can be read as 22,000 misfits, miscreants and wrongdoers. In a great many cases however, the forgotten truth is that these people may also be skilled workers like carpenters, masons, mechanics, craftsmen, welders and artisans. They form a pool of captive talent and unharnessed potential for productive labour and the prisons Department has taken this opportunity to capitalise on this hitherto unrecognised fact. Seventy skilled prisoners recently built the New Prisons Headquarters in Kajang in record time of 18 months at a cost of $2.7 million. In contrast the Public Works Department had estimated the project to cost a minimum of 3.5 million, and would take about 3 years to complete.

The Department has been given the blessing to build 4 new Remand Centers: 1 Open Prison; 1 Drug Rehabilitation Centre; and 2 new Prisons; and on average, 75 percent of the work has been completed. These prisons when completed will be able to accommodate the present number of prisoners, till the year 2,000.

2. Cooperation between the Criminal Justice and the Private Sector

Unless immediate steps are taken to find counter measures to overcrowding in prisons the system which administers justice in the country will continue to stand accused of using outmoded methods to deal with present day complexities, and no defence is acceptable.

The expansion and amendments to legislation over the years, principally through statutory provisions, has imposed such burdens on the current method of administering justice as it is unable to bear without sacrificing, at least in some small measure, the quality of justice. While the public has a right to expect the courts to administer justice in the most efficient manner and with minimum delay, it is not always possible to dispose of cases expeditiously because of the increasing number of civil litigations and criminal prosecutions. At the moment Malaysia is also short of Judges, Magistrates, Police Prosecutors, and even court officials to deal with the increasing work-load. The economic constraints have also cut back on recruitment and even if the Government is able to provide the allocations, recruitment of these professionals would still be difficult, because of the training and experience required. However, something must be done quickly to correct the present state of affairs if justice is to be done.

2.1. Pardons

Pardons have long been in existence in the form of the royal prerogative of mercy, as an exceptional means to revise the effect and application of the criminal law in certain cases, like the Death Sentences. Pardons are broadly classified into two types, i.e. general and individual. General pardons are promulgated in the form of a Cabinet Ordinance in commemoration of special occasions of national significance, like "Merdeka Day" or Independence Day.

On the other hand individual pardon is

provided for in the Prison Rules of 1953 which have significance from the view point of Prison Rehabilitation, since they are awarded on the ground of individual need.

The King or the Rulers in Council may remit the residue of the prisoners sentence through petitions and quadrennial reports on prisoners submitted by the prisons on every prisoner who has during the term of imprisonment completed 4, 8, 12 16 or 20 years of his sentence.

The Minister of Home Affairs may also grant remission without limit to prisoners who have given special services, but then the number of those granted remissions through these provisions are very small to merit even a mention in the prison statistic, and has not in anyway helped to ease the overcrowding in prisons.

However, pardon as a royal prerogative of mercy and the remission of sentence should not be used as means to reduce overcrowding in Prisons.

2.2. Fine

Another strategy by which Malaysian law tries to reduce imprisonment is by imposing fine or monetary penalty, that is a sum of money fixed by the court as penalty for an offence punishable by fine or imprisonment, or both. The main difficulties arise where the sentenced person is in default of payment, either because he has no money or deliberately refuses to pay the fine. In these cases the person is sent to prison for as many days as he is in default of payment. The number of persons in default and therefore imprisoned has increased. So fine has not in any way helped to reduce the prison population. Perhaps we should allow an offender to pay fines in instalments, or order a deduction from his salary, like its being done in some countries. It is believed that this system would serve the purpose of a fine, in its true sense.

2.3. Compulsory Attendance Centres

In an effort to avoid sending first offenders of minor offences to prisons, the Government as far back as 33 years ago, set up two compulsory attendance centres under the Compulsory Attendance Ordinance 1954. It was an excellent alternative to imprisonment for offenders of the category mentioned, as sending them to prisons would not only burden the prisons with custodial functions, but also disrupt their family ties, and gainful employment. The short period of incarceration would not in anyway help in their rehabilitation programmes, and the social stigma attached to it would also hamper their repatriation into the community.

Under this system first offenders of minor offences under sentences of imprisonment for not more than three months were committed to these centres for not more than three hours daily, after their usual working hours. They had to report to the centres daily five days a week from 5:00 to 8:00 p.m.

These two centres functioned for a couple of years, but "they died as soon as they were born" so to speak. The Courts in Penang and Kuala Lumpur seldom took advantage of using the Compulsory Attendance Ordinance 1954 and the existence of these two centres deminished. The reasons were unknown. Perhaps it was due to the conservative outlook on sentencing and punishment. Anyway both the Compulsory Attendance Ordinance 1954 and the Compulsory Attendance Rules 1955 have not been repealed.

Now 33 years later, all the Prisons Institutions in the country are overcrowded, perhaps the authorities would now consider using the Compulsory Attendance Ordinance 1954 to send traffic offenders to these centres. More Highways are being developed, and the tremendous increase in the number of vehicles on the roads today will definitely increase the number of traffic offenders in the future. This type of alternative to imprisonment is most suitable to traffic offenders, as its being done successfully in Japan.

2.4. Alternative to Imprisonment

In Malaysia no new innovative sanction has been recommended as an alternative to imprisonment. Every sentence carries a term of imprisonment from a day to natural life. The crime rate has risen and so are new legislations. This is certainly true in the sense that imprisonment has not been avoided when passing new ACTS. The reasons why imprisonment is look upon as an inevitable criminal sanction is the belief in a deterrent effect of that enormous prison machinery, and the belief that it is possible to train and educate at least a certain percentage of prisoners to change their criminal habits and indeed the belief that for security reasons they should be kept away from societies of a longer period. Perhaps the main reason is that there is no other choice or alternatives by which Malaysian law can use in trying to reduce or avoid imprisonment.

So the main strategies by which Malaysian law can try to reduce imprisonment is by resorting to alternatives. However, without a greater consent of effort on the part of the authorities to introduce some form of alternatives, the courts will have no choice but to resort to a fine or imprisonment or both. Therefore the trust for the future would have to be in finding a niche in the present criminal sanctions, so as to come up with some form of alternatives to imprisonment.

The alternatives in our time must be humane and not of the type with a concept of "an eye for an eye." On the other hand penalties must fit the crime and terrify the onlooker.

2.5. Pretrial Detention

It cannot be denied that there is a widespread practice in our criminal justice system to remand suspects in custody before trial. It is believed that the detention is imposed too soon, too often and too long. No doubt that there are non-bailable cases where remand in custody is simply inevitable, but there are also others, who are detained for failure to find sureties, or afford a bail. We must realise that unnecessary confinement before trial cannot only put an offender at a grave disadvantage in terms of social stigma, loss of income or jobs and damage to family ties but also causing a cutback on much needed prison accommodation.

I suggest that the present system of pretrial detention should be carefully studied, so that the practice, if used strictly according to principles would result in fewer cases of pretrial detention, particularly in the field of minor offences.

2.6. Community Service

Community Service is another form of alternative to imprisonment which is being used in other countries, but it is not without a disadvantage, the amount of manpower which has to be engaged in finding and supervising the community service jobs is remarkable and the community service system is thereby more costly than it might seem at the first glance. However, provision for the avoidance of imprisonment in the case of default to pay the fine should be made by ordering the offender to do community service in old folks homes, hospitals, orphanages, other welfare homes, town councils and city halls. Offenders who are in default to pay fines, should be assigned to these homes under the supervision of the homes superintendants. They should be made to do community service after their normal working hours for 3 hours daily. Thus the social damage to the offenders and his family is reduced to a minimum, since he is not cut off from his work, family and social ties. Besides, this system of community service will not cost the Government a single cent. There are already old folks and welfare homes, hospitals and town councils all over the country, where the offenders could be sent. This form of community service should also be used for first offenders of minor offences whose sentences do not exceed 2 years.

2.7. Drug Addicts

A case in point is the amendment to the Dangerous Drugs Ordinance to cope with

drug addiction which is becoming a serious problem. The increasing number of drug addicts and drug traffickers in prison have formed a menance in the prisons. Today the increasing number of drug addicts and drug traffickers poses special problems to the staff with increasing work load and making it more arduous. Drug addicts and drug traffickers have an unsettling and disturbing effect in prisons, and their presence are apt to interfere or hinder the training and treatment of the other offenders. While the drug addict as a medico-socio problem needs special attention all the time, the drug trafficker with his powerful and strong connections outside has to be prevented from subverting other offenders or members of the staff for his own purpose.

Drug addicts in the first place, should not have been confined in prisons, for they not only pose as a threat to the prison regime, but also to the security of the prisons. They should not be punished but treated for being drug addicts because nothing much can be done for them by way of treatment or rehabilitation in prison. The accommodation and space demanded by them in already overcrowded prisons is a problem that has been weighing heavily on prison authorities for quite sometime now. The earlier they are rerouted away from prisons the better in terms of prison accommodations.

3. Application of Community-Based Programs

3.1. Program for Pre-release Prisoners

Introduction

The practice of having prisoners (before their release) to work outside prison walls in the fifties was curtailed due to the communist insurgency and the declaration of the Emergency. Prior to that some 40-50 prisoners from the Pudu Prison were under the employment of the Borneo Society, a construction company; in Negeri Sembilan another batch of 50 prisoners were employed in a rubber estate, they were from the Kem Kendong. The work included the clearing of the estate, planting of rubber trees and tapping them as well as involvement in social work around the surrounding areas.

The scheme to re-employ prisoners for such work was re-introduced in 1981 whereby selected prisoners benefited from the plan.

The present scheme known as the "Ibrahim System" named after the Chief Director of Prisons, Dato Ibrahim, aims at integration of prisoners to return to society as responsible and gainfully employed members.

a. Objective

The "Ibrahim System" amongst other things aims at:

1. Integration and socialisation of prisons;
2. Nutures positive values and responsibility to face the challenges of the outside world;
3. To eradicate inherent social stigma of prisoners by involvement in social work;
4. To instill in the general public the need and necessity in helping prisoners to lead a normal after-prison life.

Broadly the scheme is to enable the smooth transition into normalcy after their release from the prison which would enable prisoners to prepare for their return to their families, save money to supplement the family expenditure, regain their self-respect thus regaining acceptance in society as well as being a part and parcel of society as responsible and gainfully employed members.

b. The board for the scheme

Prisons adopting the "Ibrahim System" having a body called the "Committee for the Pre-released Prisoners" comprising the following:

The Director or Superintendent of Prison;
Deputy Superintendent;
Reception Officer;
Counselling Officer;

An Officer in-charge of the Pre-release Camp.

This Committee would be responsible for:
Selection of prisoners for the Scheme;
Board and Lodging facilities;
Type of work suitable, wages;
Discipline including its methods of implementation.

This Committee ascertains the eligibility of prisoners who merit inclusion in the scheme. It is also required to establish a detailed operation plan together with its procedures, etc.

c. Selection of prisoners

The important criteria in choosing the proper candidates should include:

1. Star class prisoners or second time prisoners who do not have outstanding cases against them;
2. Having served a portion of their sentence leaving a period of 6 to 12 months before their release;
3. Long-term prisoners of 5 years and above should have at the earliest a balance of 24 months or lesser before release;
4. Possess good record and suitably recommended by the Prison Officer-in-charge;
5. Have no record of escape or attempted escape;
6. Are sound in physical and mental health.

Those selected are housed at the Kem Prabebas (Camp for Pre-release) which is outside the Prison proper or to a camp near the work site or such other pre-release centres.

Prisoners desirous of being considered for this scheme should apply to the authorities in a Form entitled "Application for work under the Pre-release Scheme." Such applications are voluntarily undertaken. This scheme would encourage such prisoners to be disciplined amongst other things in order to enable them to qualify.

At present, almost 2,000 prisoners or 15 percent of the inmate population are engaged in the services outside the prisons, in the 5 pre-release camps, 6 pre-release centres and 2 pre-release camps within the worksite throughout Malaysia.

d. Lodging and its suitability

The camps and centres are equipped with amenities and privileges which are better than those in regular prisons; prisoners in prisons without such pre-release facilities are housed separately within the prison.

Such selected prisoners are given training and guidance in social integration amongst themselves and their families, religious guidance, physical fitness awareness complimented by emotional awareness and training and counselling in appreciation of regaining self-respect. These counselling, training and guidance are aimed at overcoming and aiding them in their everyday lives. Such positive motivation are calculated to instill responsibility and awareness of the necessity towards society. These activities are conducted in groups of 6 to 12 persons. These group therapies are conducted by voluntary religious, counselling and law enforcement agencies which are experts in their own leanings.

e. Work and wages

The Ibrahim System includes these categories of work: factories, estates, agriculture, construction, landscaping, the building of new prisons, other housing projects and also collectivism. Under the collective working prisoners together with locals carry out the cleaning of places of worship, welfare homes, recreational parks and also the construction of centres for the poor which fall under the "Skim Keselamatan and Pengembangan Desa-Desa."

Work outside the prisons necessitates supervision of prison officers who are paid allowances as ascertained by the Financial Procedures. Other schemes, transport, etc.

are borne by the firms concerned while social services, transportation are provided by the prisons. Prisoners working under this scheme are covered by insurance and are paid wages by the firms concerned.

Since its inception, these schemes were given coverage by the mass media to inform the general public as regards its progress and success. Public support have been encouraging gauged from the request received.

Payment of wages to these prisoners are almost similar to wages paid to normal workers engaged in similar work, except that those prisoners involved in gotong royong are not paid in cash but are given extra rations, weekend leave outside the prison and other privileges.

Wages of prisoners engaged in such work are sent to the Prison Headquarters which would be credited into the Trust Fund under the management of the prison authority. Seventy percent of the wages would be put into the Trust Fund under each prisoner's credit with the remaining 15 percent going into the Social and Welfare Fund for prisoners and the government revenue accounts for the last 15 percent.

Part of the prisoners' personal earnings could be channelled toward his own needs or to his family; personal savings is encouraged in order to assist him after sentencing.

An important aspect of this program is to enable the prisoner to sustain his family ties and responsibility though financial aid derived from his wages.

It is noteworthy that some 40 previous inmates of prison had been employed by a contractor who employed them during the prerelease period as tractor drivers, etc. This is most encouring in that it is indicative of the discipline and quality of work prisoners are able to render.

f. Discipline-method and regulation

To facilitate the Ibrahim System, discipline and its methods and regulations to maintain peak efficiency has necessitated certain restrictions, etc. During his tenure of work outside the prisons a prisoner is restricted to his worksite, prohibited from drug taking consumption of alcohol and the use of the telephone. Breach of these rules forfeits his privilege in the Drug Centre of the prison or the other rehabilitation centres.

g. Others

The Ibrahim System is still in its infancy in its concept to return to normalcy within society of prisoners when one considers the advancement made in other countries like the United States, England where such practices have had a long history.

As in any such program prediction as to feasibility based on past experience or future tendencies is not something easily forecast yet certain factors and indications can be gauged:

1. The Work Force of the Ministry of Home Affairs is currently studying the possibility of alternatives to compulsory prison sentencing: the Parole system which includes compulsory attendance centres and personal bond;
2. The numerous requests from the public and other organisations to the Prisons to participate in their activities;
3. Studies by graduates and portgraduates pertaining to the various aspect of the penal system;
4. Public involvement (by organisations) mirrors the philosophy towards the rehabilitation program.

The Prison Administration cannot hope to implement its policy successfully without the understanding and positive commitment and sincerity of each component in Malaysia.

3.2. The Working and Introduction to the Ibrahim System

The Ibrahim System

1. The Prisons system in Malaysia gives paramount importance to security, training and rehabilitation of prisoners. Towards this

end the Prisons Department has had several programs based on current laws pertaining to prison management as well as on the United Nations Standard Minimum Rules for the Treatment of Prisoners, with the re-establishment of ex-prisoners as law-abiding and gainfully employed members of society as major concerns of the Department, which would nuture their self-respect complementing sense of responsibility.

2. Thus the Ibrahim System as practised by the Prisons Department is intended to incalculate in the prisoners, through training and guidance, a sense of responsibility and awareness upon their eventual return to society. The loss of freedom with attendant incapacitation and punishment should not forfeit an offender serving sentence towards reintegration to society upon his release.

Such Correctional System has long been practised in advanced countries; the Swedish Correctional System in implementing this program in 1974 regards facilitation of a prisoner's rehabilitation in society, the inclusion of permissions to do work, study, vocational training and other specially-arranged activities the mainstay of such rehabilitation schemes.

With these in mind, prisoners awaiting eventual release are selected by a Board for Rehabilitation, for work and activities that are beneficial for them upon their release. Apart from these, the Ibrahim System prepares the offender to be a responsible and useful member of society.

a. Aims and objective of the Ibrahim System

1. The eradication of social stigma attendant on offenders through social and welfare activities.
2. Nuture positiveness and responsibility to equip them to combat the challenges in the future.
3. Educating the public understanding and active role in helping the ex-prisoner.

b. Counselling

Counselling has been the major force behind the Ibrahim System which is based on the Prisons Act 1952 and the Rules and Regulations of Prisons 1953:

1. *Rule 3(1)(c) Sek. 1*
   Prisoners are, at all time, to be treated in such manner that would encourage them to respect themselves and be aware of their responsibilities that would assist them in their moral rehabilitation; to be deligent in their work as well as to be responsible citizens when they are released.
2. *Rule 74 Chap. 8*
   Each and every prisoner is required to work, whenever possible in groups outside their confinement quarters and should not be engaged in work that is not sanctioned by the Chief Director of Prisons or the Officer in-charge.
3. *Prison Enactment Sek. 54*
   Whenever a prisoner is transported to a prison or from a place of detention to another as contained within the ambits of lawful detention, such a prisoner in reckoned to be within a prison and should be treated and accorded such treatment as if he were within a prison.

Board of Rehabilitation

Prisons which have the Ibrahim System Program are required to establish a Board of Rehabilitation, which is responsible for selection of prisoners that are eligible comprised of the following members:

Head of the Institute
Superintendent/Asst. Superintendent
Records Officer
Industrial Officer
Counselling Officer
Welfare Officer
A senior officer responsible for administering the Program

c. Duties and responsibilities of the board of rehabilitation

1. Interviewing and selection of eligible

prisoners and preparing complete personal data on Borang Cabutan PPT. 67.
2. Selection of staff to run the Program.
3. Advising and detailing staff as well as the prisoners regarding the objective and rules and regulations pertaining to the Program.
4. The preparation of proper lodging as well as other necessary amenities.
5. To oversee that the rules and regulations are adhered to and the disciplinary actions to be taken against offenders.
6. To study and approve applications from the public regarding the minor works required. Work requiring large numbers of prisoners require the sanction of the Chief Director of Prisons.
7. Ascertain the rates of wages commensurate with the work to be done or done.
8. Ascertain the number of prisoners required for each type or work undertaken.
9. Emphasis to be maintained on security and lodging.
10. Visit project sites and evaluate progress from time to time.
11. To receive reports as well as complaints regarding work undertaken.
12. To see to the welfare and well-being of prisoners such as visits, correspondence and medical aspects of prisoners.
13. To conduct meetings and discussions pertaining to the Program.
14. Prepare reports to Headquarters.
15. To interview prisoners about to be released.
16. Any other responsibilities deemed fit to be carried out to ensure the success of the Ibrahim System.

d. Eligibility of prisoners

The Board of Rehabilitation is to scrutinize application and selections of prisoners under this Scheme according to its rules and regulations. Prisoners with criminal cases pending cannot be considered for this Program.

1. Priority is given to first time offenders whose release from prisons is 12 months before.
2. Life imprisonment prisoners whose conduct and discipline merit consideration and who is about to be released within 2 years could be considered.
3. Prisoners with 6 months period before release, whose conduct is good and who is industrious could be considered upon the recommendation of the officer incharge.
4. Other categories of offenders with specific skills.

e. Non-eligibility

The following prisoners are not eligible for the Program:

1. Prisoners who are sentenced to prison until their natural life.
2. Detainees, remand, T.M.T./W.D./W.A.D.
3. Prisoners sentenced to Death.
4. Unfit and mentally unsound prisoners.
5. Escapees.
6. P.C.O. Prisoners.
7. Commercial crime offenders.
8. Bankrupts.
9. Disabled and prisoners aged 60 years and above.
10. Those previously on the scheme.
11. Others, which are found to be unsuitable, by the Board.

f. Activities of the Ibrahim System

Programs under this Scheme should be beneficial to both the prison and the public (society), fulfilling the slogan "From society we come, to it should we serve."

The undertaking of the various work under this System represents:

Voluntary such as gotong royong, cleaning and clearing of graveyards, welfare homes, villages and any such other activities considered to be of benefit to society.

g. Rates and payment of wages

Daily rated payments for work done ac-

cording to the following scales:

1. Service to Government agencies not exceeding $2.50.
2. To other agencies and private person(s) not less than $7.50.
3. To prison staff $5.00.

h. Earnings of prisoners

Payment to prisoners under this Scheme must be put into the Trust Fund under the jurisdiction of the Prisons Department Malaysia. The breakdown figures are as follows:

1. 15% of earnings to be allocated to the Government.
2. 15% of earnings to be allocated to the Trust Fund.
3. 70% of earnings to be credited to the prisoner.

i. Regulations under the Ibrahim System

The law and rules and regulation concerning prisoners selected to participate in this Program are as follows:

1. Prohibited to leave work site without the knowledge of officer in-charge;
2. Prohibited to receive, to be in possession or smuggle any prohibited goods such as drugs, alcohol, etc.;
3. Prohibited to have contacts with others who are not directly concerned with the project;
4. Instigation of other prisoners to unlawful acts;
5. Deliberate destruction of property and equipment;
6. Escape or attempted escape—Sec. 121(2)
7. Irresponsible conduct; indisciplined and rude;
8. Malaise;
9. Theft and other criminal activities;
10. Arguing and or fighting with each other;
11. Refusal to accept order and refusal respect officers;
12. Any other activities deemed unfit that could destroy the good name of the Prisons Department.

j. Actions taken

Actions taken against prisoners under this Program who breached the terms and conditions laid are as follows:

1. Offenders to be punished under Prisons Ord. 1952 Cap. 122.
2. Loss of eligibility to participate in this Scheme.
3. Loss of privileges and amenities.
4. Warnings.
5. To be left out in future project under this Program.

k. Role of prison officers under this program

1. Prison officers plays an important role in ensuring the success of this Program which entails the understanding of its concept and aims as well as the behavior and mental attitude of prisoners under their charge.

2. Patience and honesty are required of the Officer in-charge. To be of exemplary character in order to influence those under his care to be more receptive and responsible.

3. Opinions related to the work undertaken by prisoners should be given due attention to induce enthusiasm amongst them not only to promote progress of work but also to promote goodwill between officers and prisoners.

4. Wage orientated work in the fields, estates, repair and construction of houses including renovation (government as well as private dwellings), landscaping and others that could benefit the participants.

Community Programs Aimed at Reducing Crime Rate

"Prevention Is Better than Cure"

The present rate of crimes are rising, especially amongst the youth in the country; amongst the more common activities that are crimes related are:

1. Drug abuses and dependency leading to crime in order to sustain the dependency.
2. Unemployment amongst the youth and those in the middle age group.
3. Gangsterism.
4. Others.

It is impossible to eradicate crime and criminals person but one can rely on the facts that involvement in crimes can be reduced, at least to an acceptable level, with the implementation of programs that will educate the people or re-channel their energies towards in more crime-free society. It has been accepted that such programs, although, not necessarily a foolproof one in itself, yet tends to minimise the incidence of crime and crime related activities.

In the effort to tackle the drug problem which is now the number one enemy of the country, the Administration and the Legislature of Malaysia, have devised tough anti-drug laws, ranging from the Capital punishment, imprisonment as well as the confiscation of ill-gotten wealth from drug-trafficking. Judging from the current arrests effected as well as the confiscation of wealth hidden behind seemingly legal fronts, one can expect a marked reduction of this type of criminal activity.

Those on drugs could be rehabilitated through the various drug rehabilitation centres; counselling and after-care programs. The crux of drug rehabilitation is the redemption of self-respect, social acceptance, committed family support and of course, through effective religious reawakening.

The civic courses currently run in schools tend to play an effective role in the preparation of youngsters in facing the world with all its lacerations. Perhaps one could hope for a more vigorous youth after such civic courses. Most certainly such civic course should not be confined with the portals of schools only. The general public could benefit with civic courses for the public and even though they are now in progress, it would be beneficial if efforts to step up such courses could be undertaken immediately.

It is a proven fact that without religious background, a man can be as malleable as metal in a furnace. With this is mind, religious education must be given together with sustained religious practices; otherwise all efforts would go down the drain. In many societies where religion has a weak hold on the public crime rates are astounding. Thus it cannot be over emphasised the paramount importance of religious upbringing, education and its continued practice.

Idleness is said to be the creator of mischief; this is more true now since affluence in our society leaves much leisure for the populace. To overcome such idleness, those responsible must find valid ways and means to keep not only the young, the youth, but also the elderly busy with some form of activity. This could be in the form of sports and the running of sport organisations, social work, of other voluntary organisations concerning themselves with the welfare of the citizens. Indeed in this field, Malaysia in fortunate in having various sports and voluntary sport bodies to cater for the leisure of the youth of this country; but are we doing enough? We should reflect on our efforts. Too much efforts is being put on competitive sports, elite sports and sports projecting an image rather than involvement in sports to generate a healthy lifestyle to combat idleness. Mass participation should be the norm. Inexpensive games where all could participate are to be preferred. This is not to suggest the abandonment of the already established sports but one should be wary in propagation the use of sports as a means to combat idleness.

Through sports, some could channel their energy as a hobby to be a means of sustaining oneself financially as in the case of football and other sports. Coaching and the like could ward off financial insufficiency. But sports alone could absorb all the various kinds of unemployment that is slowly creep-

ing into our society. Yet the youth and the unemployed should be educated in the dignity of labor and a grounding in the work ethic. With an optimum level of employment, crime rates should proportionately decline. To create jobs suitable for the temperament of the unemployed, the authorities must be realistic in its efforts. Exploitation of labor and such malpractices must be eradicated. We ask a pertinent question. . . is this being done? Perhaps those managers of industries that shape our economy should rethink and be positive in their efforts to eradicate unemployment. It is a known fact that with effective employment generating enough income for all the strata of the population, the tendency towards criminality fades yet Man could not be predictable for monetary greed, and power is an overpowering adverse characteristic of mankind. People should be taught to be contented humble and godfearing for the lack and greed for money has been said to be the root of all evil. Not that money is the root of all evil.

In its finality, the fight against crime envisages a vast amount of concerted efforts by all using all the various available resources. Where such resources are not present, one should be innovative enough to create them and to fuel them so that such ideas are not stillborn destined to die before they could taste the sweet air of success.

To put into effect programs, whether voluntary or with sanction of the authorities, effort alone cannot produce much result. Without money, with finances, nothing could be done. Thus in order to implement whatever schemes to combat crimes, from law enforcement to the school premises, the Government is the most likely sponsor to succeed.

It is ferverently hoped that apart from Governmental agencies, the private establishments too lend their unreserved support to make the fight against crime a workable idea no matter how difficult or unpleasant it might be.

By this we hope the programs of Community as mentioned, will reduce the number of criminals. Thus by these programmes it should lessen the number of persons being sentence to prison.

Conclusions

It is expected that if the proposals I have mentioned above were put into effect, the overcrowding in prisons could be reduced, particularly for drug addicts and those who have committed minor offences, since this is the field where a great number of orders are issued today.

However, the prison authorities are to be commended for their generally farsighted and human approach to prisoners' rehabilitation. Community service, pre-release programs, Ibrahim System, joint-venture projects, open prisons, have all been highly successful in easing the burden of prisons. This is the brain-child of the Director-General of Prisons himself who has the courage and the initiative to implement these innovations without official sanctions. He thought it fit to do something quickly, or face the consequences of prison riots, hunger strikes, murder, mass escape and all that you can think of in a prison crises.

Perhaps the planned establishment of new prisons to be built with prison labour and the recent announcement that the Government will be allocating more funds for the building of more courts, and the recruitment of more Judiciary officials will help ease the Prisons Department's own burden. However, without a greater concertedness of effort on the part of the Government and amongst a wide-ranging gamut of official agencies towards finding alternatives to imprisonment and settling problems of illegal immigrants, drug addicts, remand prisoners and judicial inertia, the true burden of numbers will not be fully eased by the simple provision of space.

Criminal Justice System in Papua New Guinea

*by Alphonse Jimu**

1. Introduction

The Criminal Justice System in Papua New Guinea has three district areas of administration. The Police Force, the Department of Justice and Corrective Institution Services. The Police Force is responsible for the investigation of crimes, and the apprehension and laying (filing) of charges against those responsible. The main function of the Department of Justice is providing legal advice to the State. The Magisterial Services and National Court is responsible for the administration of the courts where charges are heard by members of the Judiciary, who then decide on the guilt or innocence of the accused and impose a suitable sentence. The second responsibility within the Department of Justice lies with the Community Based Correctional Programme, the Probation Service, whose duty is to supervise community-based sentences handed down by the Court. The third area of administration lies with the Department of Corrective Institution Services whose responsibility is to carry out custodial sentences imposed by the Courts, and to hold remand prisoners prior to sentencing.

2. The Background of Police Force in Papua New Guinea

The Royal Papua New Guinea Constabulary is the civil Police Force responsible for the enforcement of law, the preservation of peace and good order, the protection of property, the prevention and detection of offences and the bringing to justice of offenders. The Police Force was formed in Papua New Guinea one hundred years ago under the Colonial administration and it has played a vital role towards the development of this country.

3. The Bringing to Justice of Offenders

One of the fundamental duties of a policemen is to arrest the offender who is about to commit, or is committing or has committed an offence for which the penalty is imprisonment. When the offender is arrested, the policemen has to tell the offender his rights under the Constitutional of Papua New Guinea Section 42 (2) to send a message to speak to a private member of his family, a personal friend, a lawyer, or to the Public Solicitor. After the arrest the offender's freedom of movement is restricted and the offender will be under the custody of the police. In case of serious crime the offender's record of interview will be taken by the police and he may sign the record of interview if he wish. The Police will then formally charge him and take the arrested offender without delay before the Court during operational hours.

3.1. Police Lockups and Cells

When the prisoner is not brought before the Court due to some reasons, like when the Court is not in session, the prisoner will be locked up in the Police Station Cells. Before the prisoner is locked up in the Police Cells the police have to search the prisoner and remove all his personal property for safe keeping, and to ensure that the prisoner does not take any instrument or other item to hurt

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himself or cause injury to other prisoners. While in police custody, the prisoner is allowed to pledge bail and there upon release. The prisoners who are not eligible for police bail are those who have been charged for committing indictable offences.

3.2. Welfare of the Prisoners

The prisoners in police custody are looked after by the Police and the prisoners are given two to three meals a day. When the prisoner is sick the police will take him/her to the hospital for treatment. The prisoners also have access to a telephone, free of charge, to ring their families, or lawyers. The prisoners are kept separately in the cell blocks according to their sex and age, the adult male prisoners are kept in separate cells, the female prisoners are kept in their own cell block and the juvenile prisoners are also kept separately.

4. Judicial System

In Papua New Guinea we have four main types of Courts and these Courts hear and determine the cases that come before them.

4.1. National Court

The National Court is a high court in the country and it hears and determines the cases for prisoners who have committed indictable offences and it cannot be heard summarily before the court of summary jurisdiction. The judge on the bench and the police will be represented by a lawyer from the Public Prosecutor's Office and the prisoner will be represented by a lawyer from the Public Solicitor's Office. After hearing all the evidence, the judge hands down his decision of guilt or innocence. When the judge finds the prisoners guilty he will impose a penalty of imprisonment, or the judge will grant a good behaviour bond for some period of time. If the prisoner is innocent the judge will dismiss the case and the prisoner will be set free.

4.2. The District Courts

The District Courts are located in all provinces in Papua New Guinea and these Courts are run by the Magistrates, and they deal with the cases that are not very serious. These Courts are very busy courts in the country and they deal with the people every day for breaking summary offences. These courts send people to prison for short periods of time. The person appearing before these courts can find a lawyer to defend the case. In these courts, police prosecutors plea cases before the Magistrates, who after hearing all the evidence hand down their decisions to send to prison, the find or good behaviour bond. If there is no case to answer then the cases dismissed. These are provisions in this court that allow appeal to the next higher court if the decision made by the lower court is not in best interest of the State or Offender. Then the National Court will hear the appeal and determine whether the District Court has made an error in his judgement.

4.3. The Children's Courts

The Children's Courts are established in all provinces in the country and only few Magistrates in the Provinces have the jurisdiction to hear these cases. These Courts consist of a Magistrate, the Police Prosecutor, the welfare officer and two laymen and all these people will sit before the Magistrate for a hearing. They are allowed to ask questions of any witnesses in Court if they doubt the evidence. After the Magistrate hands down his decision, the Welfare Officer and two laymen will get together with the Magistrate to discuss what penalty should be imposed on the child. In most cases, the child will be given a good behaviour bond under this parents custody. If the child has a previous record the court might send him to a Boy's Centre to work under the supervision of Church men, or sometimes the child will come under the care of a Welfare Officer. However, not very many children go to prison as the majority are sent to a Boy's Centre.

4.4 Village Courts

The Village Courts system was established some years ago in a few provinces in the country and it is moving slowly into other provinces and districts. This is a community-based court system and it has worked well in some provinces. The community, themselves, elect their leaders to be Village Court Magistrates, Peace Officers and Village Court Clerks. The Village Court Officials have to attend short courses to know what their responsibilities are and how to run the Courts. The courses are usually run by the Village Court supervising Magistrates in the Provinces. The Village Courts Magistrates have judicial powers like the Magistrates, and lived and work in their respective communities. Most of the prescribed offences in the Village Courts Act relates to the community and customary laws. Therefore, the people are happy to have their Village Courts running smoothly. When a Village Clerk receives a complaint from someone he writes out a summons paper and serves it on the offender. The offender is given at least one week to appear before the Village Court to answer to the charge. If he/she fails to turn up for the date set for the hearing, the clerk will serve him with a warning notice and a new hearing date will be set. After the hearing is completed the Magistrate will hand down his decision based on community-based programmes. Most of the time the Magistrates order compensation for the complainant. An example of compensation conditions are as follows:

1. To complete a certain number of hours of community service work.
2. Monetary compensation to the State for damages incurred.
3. Monetary compensation to the complainant or victim.
4. To work a certain number of hours for the complainant as retribution for the offence.

The community members, largely, are happy and do not want to see people in the community go before the District Court and end up in Corrective Institutional Services.

5. Corrective Institution Services

The Corrective Institution Services is a Department of its own and is responsible for carrying out custodial sentences imposed by the Courts and to hold remand prisoners prior to sentencing. The Department has established Institutions in all the Provinces in the country to hold the prisoners and to rehabilitate them before they are released back to the community. This Department also is held responsible for the welfare of the prisoners while serving his/her term in the prisons.

5.1. Recent Trends in the Prison Population

The Prison Population is increasing every year in this country and the Department of Corrective Institution Services is finding it hard to cope with the situation. The country has increasing crime problems and accordingly the prison population is rising. Papua New Guinea has its own crime problems as well as tribal fights in the Highlands Region and this is where most arrests occur. These prisoners are not budgeted in terms of money, therefore, extra food, clothing, and money are exhausted and there is nothing left for other things. The problem of crime will not decrease unless everybody including national leaders, provincial leaders, police, church, and community leaders as well as the parents of the youths work together to fight crime in the country. The tribal fights can be stopped if Law Awareness Campaigns go right into the villages in the rural areas, otherwise the tribal conflicts will continue.

Jobs creation in the Government and Private Sector might help diminish some of the crime problems in the country, by putting young people to work.

5.2. Practical Measures to Alleviate the Problem of Over-crowding

1. Construction of new facilities. This is one of the solutions that the National Government has to look into very critically in terms of allocating funds to the construction of the new prison facilities. Some of the prison blocks have to be replaced with new buildings to accommodate the prisoners. In some institutions the facilities are not very good and the prisoners have to live in such conditions as there is no other place to keep them.
2. Application of community-based programmes. In 1985 Papua New Guinea's Department of Justice established the Probation Service and by 1990 all Provinces in the country will have probation officers to utilize this service. This is the only community-based programme so far the country has and the Probation Officers have already started working other programmes. The programmes have been successful so far and the National Government has to allocate more funds to speed up the programmes to other Provinces.

The Village Courts in Papua New Guinea is another community-based court system which has to be improved with extra funds to make the system more effective and present conditions of the Village Courts Officials should be upgraded. The Village Court Officials are selected by the community to represent the community.

The country needs more similar services like the Probation Service to rehabilitate the prisoners with the assistance of other community-based programmes. Unlike the Courts, which often send offenders to jail jeopardizing the offenders' employment, familiy relationships and businesses, the community-based services are effective at returning offenders back into the community where they can become productive members.

3. Co-operation between the Criminal Justice and the private sector. There has been good response from the private sector and it has contributed in terms of finance, training and expertise. The programme like the Law Awareness Campaign, which is conducted every year and sponsored by the private sector, has been effective in disseminating information through the mass media and providing pamphlets for the schools and other community services.

The private sector has also contributed to the church run Juvenile Prison Centres (Boy Centre) every year. The churches have their own trained layman who look after and work with the juveniles sent to the centres by the courts. These centres also receive financial support from the National Government.

4. Other Effective Policies. The education system in the country is to be reviewed and introduces compulsory education for the children from seven years to seventeen years. In the present system a child has to go to school at the age of seven years to do his/her primary education and after six years if a child did well in grade six final examination, he/she will be selected to go to high school and a child did not do well will have no placing in the high school selection. These children have the knowledge and they are intelligent but the system has forced them out from school. These children are at the age of twelve to thirteen years old and they could not get any more further education.

Then these children started to look for something to keep them busy and when they feel hungry, they steal a loaf of bread or a biscuit because they have no money to buy. The police will be called into the shop to arrest the children who were involved. After the children were arrested and charged before the court they received a bad name and were no longer wanted by their families. To survive they have to steal more and more and they will eventually end up in prison. We have a problem with the juvenile offenders and each year the number of juvenile offenders have increased more than adult offenders.

The present Juvenile Delinquents Centres in the country have inadequate facilities to rehabilitate the juvenile offenders particularly in education. Some centres have only farming equipments and they train them to make garden only and teach offenders with correspond lessons. This training is sometimes not suitable for short-term offenders and after he is released from the centre he is gone and no one follows up to see what he is doing in the community and with his family.

Another Probation Service System is to be established and it will directly come under the Department of Home Affairs and Child Welfare. The officers from this department will work closely with the community and draw up community-based programmes for probationers. The Community can appoint some volunteer probation officers to supervise the community-based programmes. The overall supervisor will be welfare officers to check to see that the programme is working well in the community.

In Papua New Guinea Department of Corrective Institutional Services has introduced some new concepts for the rehabilitation of offenders such as:

1. Home leave
2. Work release
3. Weekend detention
4. Voluntary supervision scheme

And if these new concepts come into operation, it will help the problem of overcrowding in prison institutions throughout the country.

6. Administration of Institutions, Treatment, Health Care of Security

The Administration and Management of the Institutions, Treatment, Health Care or Security are very sensitive areas of responsibility and the outsider who has little experience in the institutional services would not be able to adequately evaluate the system. Unless he/she is an expert with adequate experience in Institutional Services and has good knowledge of the establishment, the assessments would be superficial at best.

Some Measures Trying to Alleviate the Problem of Prisoners Overcrowding in Thailand

*by Prapun Naigowit**

1. Preface

In Thailand, the Department of Corrections which is attached to the Ministry of Interior has responsibilities both for detention and rehabilitation of adult offenders. It is also responsible for confinement of persons awaiting trial by court order. Separately, juvenile offenders[1] are under the jurisdiction of Juvenile Court which have their own correctional institutions.

The problems of juvenile offenders and the measures for treatment are beyond the scope of this discussion.

2. Problem of Prisoners Overcrowding

In 1985, there were 88,072 inmates of all types in 120 correctional institutions of the Department of Corrections when the rates of capacity for all institutions were only 46,000 inmates. Therefore, the number of inmates were over twice the capacity. Trends in prison population seem to increase every year. Between 1979-1985 the increasing rate of inmates was 3,290 per year whilst the Department could build only one prison with a capacity of 500 inmates per year. Consequently, each year there are 2,790 inmates overcrowded in all correctional institutions throughout the country.[2] Table 1 shows the statistics regarding the number of inmates relative to the number of staff between 1979-1988.

Table 1: Number of Inmates and Staff at the End of Year

Year	Number of Inmates	Number of Staff
1979	68,329	7,457
1980	75,496	7,751
1981	73,464	8,120
1982	71,387	8,270
1983	80,463	8,467
1984	85,208	8,633
1985	88,072	8,805
1986	91,841	8,931
1987	95,990	8,931
1988	71,591	8,931

Source: Department of Corrections

It should be noted that the number of inmates in 1988 decreased because in 1987 the Act on Deletion of Wrongdoer's Blameworthiness on the Auspicious Occasion of the Sixtieth Birthday Anniversary of His Majesty King Bhumibol Adulyadej and in the following year the Royal Decree for Pardon of 1988 was also enacted, yielding a large number of released prisoners.

While the number of inmates greatly increased, the number of prison staff did not increase commensurate with that of inmates. The number of staff stood at 8,931 persons for the three years between 1986-1988.

The problem of prison overcrowding effects the living conditions in correctional institutions such as insufficiency of accommodation, food, medical treatment, etc. Consequently, standard minimum rules for the treatment of prisoners may be difficult to achieve. Furthermore, insufficiency of prison staff causes difficulty in rehabilitating offenders. Merely controlling prisoners from

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escape is a heavy burden for prison staff, thus they have not enough time for observing and training prisoners.

3. Construction of New Institutions

There was a discussion that in developing countries in the Region the first priority is economic development with consequent provision of employment opportunities for a large section of the population and uplifting the standard of living. Therefore the natural tendency of the Governments of these countries is to accord less importance to the development of penal services in order to meet other commitments.[3] This conclusion is still applicable in Thailand today. Due to limitations of finances, construction of new institutions is curtailed even though the number of criminal justice personnel are inadequate. However, according to the Fourth Plan of the Ministry of Interior (1987-1991), a new prison or correctional institution will be built in order to solve the problem of prison overcrowding.

At present there is a prison in Bangkok situated in a commercial area owing to the growth of city and population. Therefore, there is a plan to invite the private sector to invest in the area. The Government will entitle the investors to build commercial complexes and the investors will build a new prison elsewhere in exchange. Even though it is a good plan it will take a long time and entail a long process, and will be achieved in the distant future.

4. Alleviation of Prisoners Overcrowding by Non-institutional Treatment

(1) *Fine*: The old measure and still in use at present day to alleviate the problem of overcrowding is payment for fines. This measure is used instead of short-term imprisonment. Fine may be imposed by payment of money only or with concurrence of suspension of imprisonment. In 1986, the number of offenders fined by Courts was 351,369 persons out of all 495,848 offenders convicted and the amount of payment equalled 324,643,276 bath[4] (or about US$ 13,000,000).

However, some offenders are unable to pay fines and they have to put in confinement in lieu of fines. Therefore, improper use of this measure might cause overcrowding.

(2) *Probation*: In the Sixth National Economic and Social Development Plan (1987-1991), Chapter 4: Plan for Promoting Peace in Society, provides that the Government will use the probation system of the Ministry of Justice and the Department of Corrections to lower density in penal institutions and reduce the government's burden in controlling criminals and prisoners. Communities and families should participate in the spiritual and behavioural reform of criminals and prisoners.

According to the Thai Penal Code (1957), Section 56, it provides about probation before putting in correctional institutions that:

> "Whenever any person commits an offence punishable with imprisonment, and, in that case, the imprisonment to be imposed by the Court does not exceed two years, if it appears that such person has not been previously sentenced to imprisonment, or that he has been previously sentenced to imprisonment, but it is the punishment for an offence committed by negligence or a petty offence, the Court may, if it deems appropriate after taking into consideration the age, past record, behaviour, intelligence, education and training, health, condition of mind, habit, occupation and environment of the offender, or the nature of the offence, or other extenuating circumstances, pass judgment that he is guilty, but the determination of punishment is to be suspended, or the punishment is determined, but the execution thereof is to be suspended and then release, with or without conditions for controlling his behaviour, so as to give

him an opportunity to reform himself within a period of time to be fixed by the Court, but it shall not exceed five years as from the day on which the Court passes judgment."

In 1979, the "Act on Implementation for Probation According to the Penal Code" was enacted and the Central Probation Office was established in the Ministry of Justice. There are two main functions of the office, that is, pre-sentence investigation and supervision of probation.

Table 2: Statistics of Pre-sentence Investigation and Supervision of Probation throughout the Country

Year	Pre-sentence Investigation (persons)	Supervision of Probation (persons)
1984	3,675	5,285
1985	4,796	7,875
1986	7,390	9,402
1987	9,839	11,156
1988	10,577	10,354

Source: Ministry of Justice

(3) *Remission of Sentence*: The Penitentiary Act (No. 2) of 1977, Section 3 has introduced the system of remission of sentence, it provides that remission of sentence shall be granted not more than five days a month according to the rule, procedure and condition prescribed by the ministerial regulation. However, remission of sentence shall be applied only when a convicted person has undergone imprisonment by a final judgment of the Court not less than six months or not less than ten years in case of life imprisonment when commutted to a fixed period of imprisonment. System of remission is based on the good behavior, deligence, progressiveness in education and good work performance of the convicted prisoners in institutions. According to the Ministerial Regulation, No. 8 of 1978, a convicted prisoner of excellent class, very good class and good class will be granted remission of sentence 5 days, 4 days and three days per month, respectively.

In 1980, the Penitentiary Act (No. 4) was enacted, and Section 4 of the law provides that a convicted prisoner who is permitted for public work outside prison can be granted remission of sentence equivalent to the

Table 3: Number of Convicted Prisoners and Remission Days between 1978-1987

Year	Convicted Prisoners	Remission Days Granted	Average Number of Remission Days per One Prisoner
1978	3,787	13,651	3.6
1979	9,595	282,571	29.4
1980	9,927	374,114	37.7
1981	7,963	360,057	45.2
1982	9,495	669,504	70.5
1983	11,401	1,168,235	102.5
1984	10,998	617,309	56.1
1985	11,864	686,022	57.8
1986	12,899	713,328	55.3
1987	12,891	1,024,876	79.5

Source: Department of Corrections

time spent in public work.

Number of remission days can be deleted if convicted prisoners break the prison rules.

The Fourth Plan of the Ministry of Interior suggests to increase remission of sentence from not more than five days per month to eight days per month.

(4) *Parole*: According to the Penitentiary Act of 1936, Section 32 (5) specifies that parole can be provided under the condition set by the Minister of Interior, however parole shall be provided only when a convicted prisoner has undergone punishment not less than one-third of the period of imprisonment or not less than ten years in case of life imprisonment and the period of parole shall not be less than one year but not more than the rest period of imprisonment. Convicted prisoners released on parole will be put under supervision by probation officers.

Table 4: Convicted Prisoners Released on Parole between 1978-1987

Year	Number	Increased-Decreased (%)
1978	438	+ 26.59
1979	455	+ 3.88
1980	606	+ 33.19
1981	602	- 0.66
1982	420	- 30.23
1983	1,136	+170.48
1984	1,470	+ 29.40
1985	1,523	+ 3.60
1986	1,956	+ 28.43
1987	2,278	+ 16.46

Source: Department of Corrections

At present, Thailand faces the problem of shortage of probation officers. The increasing rate of government officers in each agency is limited to not more than 2 percent per year. Therefore, voluntary probation officers in the private sector are needed to implement the good functions of probation and parole. In 1987, 1,152 voluntary probation officers were trained by the Department of Corrections.[5]

In Japan, in recent years nearly two-thirds of the offenders who are receiving correctional treatment are left in the community under the supervision of probation officers with extensive participation of volunteers.[6] Attitudes of people in society are very important to the success or failure of this system. If people do not trust that prisoners can be reformed, the system of voluntary probation officers will be unable to achieve its goal. Therefore it is specified in the Sixth National Economic and Social Development Plan (1987-1991), Chapter 4 (4.3), that the Government will seek public support to help former prisoners and criminals lead a normal life in society and avoid further crime.

(5) *Pardon*: Another measure used for alleviation of prisoners overcrowding in Thailand is pardon. There are two types of pardon, individual pardon and general pardon. Individual pardon is provided in the Criminal Pro-

Table 5: Results of Petitions Submitted for Pardon

Results	Thai Prisoners		Foreign Prisoners		Total
	Male	Female	Male	Female	
Dismissed (Death sentence)	19	–	–	–	19
Dismissed (Other punishment)	88	7	19	1	115
Granted to life imprisonment	25	–	–	–	26
Granted to reduction of imprisonment	22	7	–	–	29
Granted to release	3	2	29	11	45
Total	157	16	48	12	233

Source: Department of Corrections

cedure Code of 1935, Section 259 that: after a case has become final, a person sentenced to whatever punishment or an interested person, wishing to petition the King praying for pardon, may do so by submitting such petition to the Minister of Interior. In 1987, 233 prisoners submitted petition for pardon as shown in Table 5.

General pardon is granted on various occasions, according to the Criminal Procedure Code (No. 9) of 1974, Section 3 provides that the Cabinet, in case it deems appropriate, may give advice to the King to grant pardon to any inmate which shall be enacted in form of a royal decree. The latest one is the Royal Decree for Pardon of 1988 which marked the occasion of His Majesty the King's longest reign in Thai history.

In general, pardon is deemed to have no deterrent effect and is not any form of rehabilitation. However, Thailand has her culture and tradition on loyalty to the King. His gracious mercy granted for pardon is deemed to remind the offenders not to commit any wrongdoing again.

5. Some Efforts of the Public Prosecution Department in Solving the Problem of Overcrowding

The Public Prosecution Department as an agency in criminal justice system has taken part in solving the problem of prison overcrowding by using some kinds of preventive measures. Although the measures do not directly tackle the problem of overcrowding they are useful in some respects in crime prevention and treatment of offenders.

(1) *Measures of Safety*: The Thai Penal Code (1957), Part 2 discusses measures of safety separately from Part 1 which discusses punishments. According to Section 39, there are five types of measures of safety, viz, relegation (or protective custody), prohibition to enter a specified area, execution of a bond with security for keeping the peace, restraint in an institution for treatment and prohibition to exercise certain occupations. The specific measures prescribed by law are attached in Annex 1.

In fact, measures of safety are provided by the Code for over 30 years, but almost of the measures are rarely used in practice. However, the Fourth Plan of the Ministry of Interior (1987-1991) specifies that guideline for operations will be set up in order that the Public Prosecutor will submit motions to Court in putting the measures of safety into real practice for the purposes of controlling some kinds of offenders and recidivists. To implement the plan, on January 4, 1988 the Public Prosecution Department has established a new division named "Safety Measures Division" to handle these measures, the result of operations is shown in Table 6.

In 1988 there was no case submitted for relegation because in 1987 the "Act on Deletion of Wrongdoers' Blameworthiness on the Auspicious Occasion of the Sixtieth Birthday Anniversary of His Majesty King Bhumibol Adulyadej of 1987" was enacted. As a result, offenders' past criminal records were deemed expunged, therefore there is no case qualified for relegation.

(2) *Legal Dissemination and Assistance in Conciliation of Disputes*: It is one of the principles in criminal law that ignorance of law shall not excuse any person from criminal liability. This rule is also provided in Section 64 of the Thai Penal Code (1957). However, in reality some people may commit some offences without knowledge that they violate the laws. The Public Prosecution Department as a principle legal agency which has its branch offices throughout the country, therefore, is assigned by the Government to disseminate basic legal knowledge to people especially in rural areas and to assist in conciliation of disputes, etc. In 1982, the Bureau of Civil Rights Protection and Legal Aid was established to carry out the tasks. The work performance of the Bureau is shown in Table 7.

(3) *Proposal for Applying the Measure of Suspended Prosecution*: Suspended prosecution is a measure of pre-trial screening of cases by public prosecutors. Some offenders are not

Table 6: Number of Cases Submitted for Applying Measures of Safety between February 22, 1988-February 21, 1989

Types of Measures of Safety	Number of Cases Submitted	Pending Cases	Cases Disposed Out of Court	Court Applied Measure	Court Dismissed
1. Prohibition to enter a specified area (Section 45)	2	1	–	–	1
2. Execution of a bond with security for keeping the peace (Section 46)	1	1	–	–	–
3. Restraint in an institution for treatment (Section 48)	3	–	2	–	1
4. Prohibition to exercise certain occupations (Section 50)	1	–	–	–	1
5. Prohibition from drug addiction (Section 49)	1,085	8	9	326	742

Source: Public Prosecution Department

Table 7: Work Performance of the Bureau of Civil Rights Protection and Legal Aid between 1982-1987[7]

No.	Activities	Counted by	Total Aims for 6 years	Operations					
				1982	1983	1984	1985	1986	1987
1.	Provide assistance in lawsuits	Cases	14,507	6	7	72	1,218	1,474	2,018
2.	Render legal consultation services	Persons	160,815	1,008	27,174	6,453	25,841	20,722	33,688
3.	Provide assistance for cases within authorities of public prosecutors	Cases	3,005	–	–	103	215	234	650
4.	Assistance in conciliation of disputes	Persons	10,925	–	–	26	1,604	2,392	2,396
5.	Dissemination of legal knowledge	Villages	23,362	206	314	1,503	6,503	5,833	5,766
6.	Training of essential legal knowledge for village leaders	Persons	170,200	400	2,103	10,659	47,003	35,567	43,786
7.	Training courses for rural development officials	Persons	3,698	–	–	133	–	–	3,153
8.	Provide legal officials	Villages	605	–	–	29	47	110	281
9.	Training for trainers	Groups/ persons	10/400	–	–	1/45	2/80	4/168	3/119
10.	Exhibitions and demonstrations on legal proceedings	Events	228	–	–	5	43	84	–
11.	Support other projects, e.g. as trainers	Events	3,180	–	–	685	961	911	–

really habitual criminals but unfortunately committed offences by chance or sometime by negligence. Suspended prosecution, therefore, is applied for such kind of offenders who are placed under probation for a period of time. This measure is widely used in the U.S.A., Japan and some other countries, but it has not been used in Thailand.

The Public Prosecution Department tried to apply this measure about ten years ago but it was objected to by some agencies who pointed out that according to the Criminal Procedure Code (1935) the Public Prosecutor has powers only to prosecute or not prosecute offenders but has no authority to suspend prosecution. After a period of controversy, the Public Prosecution Department decided to omit the plan.

However, the Fourth Plan of the Ministry of Interior (1987-1991) specifies that the Public Prosecution Department will propose a draft for revision of the Criminal Procedure Code (1935) and will draw out the ministerial rules on suspended prosecution and rehabilitation of offenders by public prosecutors for some kinds of offences. If this plan is worked out, it will be another measure to alleviate the problem of prison overcrowding by means of a non-institutional treatment in Thailand.

6. Conclusion

Alleviation of the problem of prison overcrowding by means of constructing new prisons is more difficult to accomplish because it requires large budgets, personnel and large areas for construction. Application of community-based programmes such as probation and parole are better and more cost-effective in alleviating the problem. However, attitudes of people in society are very important for the success of such measures. Furthermore, every agency in criminal justice system should be used to its fullest degree. For instance in Thailand, applying the measure of suspended prosecution with probation for some kinds of offenders will help in solving the problem of prison overcrowding in some respects.

Notes

1. Act Instituting Juvenile Courts of 1951, Section 4 provides that: "Child" means the person who has reached the age of seven years or upwards, but not exceeding fourteen years. "Young Person" means the person who has reached the age of fourteen years or upwards, but not exceeding eighteen years, and excluding any person who has become *sui juris* by marriage.
2. The Fourth Plan of the Ministry of Interior (1987-1991), Chapter 11, p. 121.
3. Report for 1982 and Resource Material Series No. 23, UNAFEI, p. 153.
4. Annual Report of the Ministry of Justice 1986, p. 126-127.
5. Annual Report of the Department of Corrections 1987, p. 28.
6. Community-Based Treatment of Offenders in Japan, Rehabilitation Bureau, 1981, on the preface.

Annex 1

The Thai Penal Code*

Part 2
Measures of Safety

Section 39. The measures of safety are as follows:

(1) Protective custody;
(2) Prohibition to enter a specified area;
(3) Execution of a bond with security for keeping the peace;
(4) Restraint in an institution for treatment;
(5) Prohibition to exercise certain occupations.

Section 40. Protective custody is the keeping in custody of a habitual criminal within a specified area in order to prevent him from committing offences, to reform his character, and to train him for occupation.

Section 41. In the case where any person who has been sentenced to be subject to protective custody, or has been sentenced to imprisonment of not less than six months for not less than twice for the following offences:

(1) Offences relating to Public Peace as provided in Section 209 to 216;
(2) Offences relating to Public Security as provided in Sections 217 to 224;
(3) Offences relating to Currencies as provided in Sections 240 to 246;
(4) Offences relating to Sexuality as provided in Sections 276 to 286;
(5) Offences causing Death as provided in Sections 288 to 290, and Sections 292 to 294;
(6) Bodily Harm as provided in Sections 295 to 299;
(7) Offences against Liberty as provided in Sections 309 to 320;
(8) Offence against Property as provided in Section 334 to 340, Section 354 and Section 357,

and, within ten years from the day of having been discharged from the protective custody or of having undergone the punishment, as the case may be, commits any of the specified offences again so that the Court sentences him to imprisonment of not less than six months for such offence, the Court may regard him as a habitual criminal, and may sentence him to be subject to protective custody for not less than three years but not more than ten years.

The offence committed by an offender at the time when he is not yet over seventeen years of age shall not be deemed as an offence to be taken into consideration for protective custody according to this Section.

Section 42. In calculating the period of protective custody, the day of passing judgment by the Court shall count as the day on which protective custody begins. Should there be any punishment of imprisonment or confinement to be undergone by the person subject to protective custody, it shall be executed first, and the day following that on which liberation from imprisonment or confinement takes place shall count as the day on which protective custody begins.

Regarding the period of protective custody and the liberation of the person subject to protective custody, the provisions of Section 21 shall apply mutatis mutandis.

Section 43. Prosecution for protective

* Compiled and translated by Watana Ratanawichit, Odeon Store, Bangkok, 1969.

custody shall be the exclusive power of the Public Prosecutor, and it may be requested together with the prosecution of the case which forms the basis for prosecution for protective custody, or it may be made afterwards.

Section 44. Prohibition to enter a specified area is the prohibition to enter a locality or place specified in the judgment.

Section 45. Whenever the Court passes judgment convicting any person, and deems appropriate for the sake of public safety, the Court may, whether there be a request or not, give order in the judgment that, when such person has completely undergone the punishment according to the judgment, he shall be prohibited to enter a specified area for the period of not exceeding five years.

Section 46. If it appears to the Court from the statement of the Public Prosecutor that any person is likely to cause danger to another person or the property belonging to another person, or if in the trial of any case, the Court will not convict the prosecuted person, but there is reason to believe that he likely to cause danger to another person or to the property belonging to another person, the Court shall have the power to order him to execute a bond in a sum not exceeding five thousand baht with or without security. for keeping the peace during such period as fixed by the Court but not exceeding two years.

If such person refuses to execute a bond, or cannot furnish security, the Court shall have the power to order him to be confined until he executes the bond or furnishes security, but the confinement shall not be more than six months or the Court may give order prohibiting him to enter a specified area according to Section 45.

The act committed by a child not over seventeen years of age shall not be subject to the provisions of this Section.

Section 47. If a person executing a bond according to Section 46 breaks the bond, the Court shall have the power to order such person to pay the sum of money not exceeding that determined in the bond. If he fails to pay it, the provisions of Section 29 and 30 shall apply.

Section 48. If the Court is of the opinion that the liberation of any person having a defective mind, mental disease or mental infirmity, who is not punishable, or whose punishment is reduced according to Section 65 will not be safe for the public, the Court may give order sending him to be restrained in an institution for treatment. This order may, however, be revoked at any time by the Court.

Section 49. In the case where the Court passes judgment imposing imprisonment on any person, or passes judgment that any person is guilty, but the determination or execution of punishment is to be suspended, the Court may, if it is of opinion that such person has committed the offence owing to habitual drunkenness or harmful habit forming drug addiction, determine in the judgment that he shall neither take liquor nor harmful habit-forming drug within a period not exceeding two years as from the day of having undergone the punishment, or from the day of liberation on account of the suspension of the determination or execution of punishment.

In the case where the person mentioned in the first paragraph fails to comply with what is determined by the Court, the Court may give order sending him to be restrained in an institution for treatment for a period exceeding two years.

Section 50. Whenever the Court passes judgment convicting any person, and considers that such person commits the offence by taking advantage of or on account of the exercise of his occupation or profession, the Court may, if is of opinion that he will commit such offence again if he exercises his occupation or profession further, give order in the judgment prohibiting him to exercise his occupation for a period of not exceeding five years as from the day of having completely undergone the punishment.

SECTION 3: REPORT OF THE COURSE

Summary Reports of the Rapporteurs

Session 1: The Extent of Prison Overcrowding, Causes and Feasible Measures to Cope with the Problems

Chairperson: *Mr. Prapun Naigowit (Thailand)*
Rapporteur: *Mr. Randall Oliver Yorke (St. Lucia)*
Advisers: *Mr. Clair A. Cripe*
Mr. Kunihiro Horiuchi
Mr. Yutaka Nagashima

Introduction

In recent years the most significant problem, with which the justice system of the majority of the world's countries have been faced, is that of overcrowding in prison. At present with the exception of a few countries such as Japan and Saudi Arabia, the situation appears from all information available to have reached its level of tolerance, from not only the administrative and general staff of the prison institutions but also from the inmates.

Before proceeding further, it is necessary to consider three categories of crowding:

(a) Crowding by the ratio of institutional population to that of country population. In this aspect, it was agreed that though the inmate number is on the increase the situation globally has not at this time reached alarming proportions but that the rate of increase is considered to be far in excess of what could be considered average.

(b) Overcrowding by virtue of the institutions having more inmates than the designed capacity. Information available proved that in the majority of countries this situation exists and in some instances, to the extent of 4 to 5 inmates being housed in a cell designed to hold one. The exceptions to this are Japan, Saudi Arabia, and Marion Maximum Federal Security Penitentiaries of the U.S. This unhealthy situation is found to be further aggravated in countries, where the remand inmate population is very high and the rate of case disposal, alarmingly slow.

This situation when examined with even the most realistic and compromising acceptance of the general scarcity of finance cannot but be deemed as inadequate.

(c) Overcrowding by virtue of the institution having not only far in excess of its planned capacity but, at the same time, lacking back-up facilities which would enable it to function, firstly with respect to security, the primary function of all penal institutions; secondly to afford humane and hygienic conditions and; thirdly to attempt effective rehabilitation through work, social activities, vocational and educational training.

It was found that a rather high number of institutions which fall in this category exist. These alarming realities are a cause for great concern as these institutions cannot in any way serve the functions required, but instead will serve only as a place for the further demoralization of inmates and enhancement of criminal tendencies. These situations must at all cost be rectified if society is to benefit from the criminal justice system.

Recent Trends in Prison Population

The recent trends in prison population of most of the countries examined showed that the largest percentage increase was registered with respect to offenses related in one form or another to the drug trade. Offenses of housebreaking, larceny, fraud and embezzlement are on the increase in most cases to support drug habits. The number of offenses of drug trafficking is also noted to be on the

increase and world reports indicate no immediate hope for its reduction. Again in this regard, Japan and Saudi Arabia are exceptions with their drug related offense rates showing a decline.

The following are cited from reports on institution conditional with reference to overcrowding in Japan and Brazil. One is offered as an example where the issue of prison overcrowding was promptly handled and successfully diverted, the other suggests a system in peril.

The Situation in Japan[1]

At present, there are 74 headquarters (58 prisons, 9 juvenile prisons and 7 detention houses) and 117 branches (9 branch prisons and 108 branch detention houses) in Japan.

The daily average number of prisoners in Japanese correctional institutions were 103,170 persons in 1950, the maximum ever reached. This figure declined year after year, reaching 45,690 persons in 1975, the minimum ever recorded.

After this, the numbers steadily climbed upward until in 1986, the average reached 55,348 persons. (In 1987, 55,210 persons.)

The accommodation rate (the rate of the actual number of prisoners to the authorized number of prisons) in the year of 1987 was 87.0 percent.

We may point out two aspects in order to understand why there is no overcrowding problem in Japan. First, the number of serious offenders who should be incarcerated is small. This is due to the existence of special conditions which sustain a low rate of crime such as low rate of unemployment, high level of welfare and education, comparatively less disparity between the poor and the rich, strict gun control and many police units in the community.

Second, only advanced offenders are sent to prisons and incarcerated in Japan. Police, Public Prosecutor's Offices, Courts, Prisons and Probation Offices screen the offenders in each stage of criminal proceedings which reduces the number of offenders to be incarcerated by using effective measures such as release of trivial cases by the police, suspension of prosecution, fine, suspension of sentence, parole, etc.

The Challenge of Penal Execution in Brazil[2]

The precariousness of the Brazilian Penitentiary System is manifest. A large number of our prisons have been neglected, and this presents a gloomy scenery: Partly-destroyed galleries and pavilions, unhealthy cells, kitchens and refectories which frighten because of their dirtiness, condemned electric and hydraulic installations.

Prisoners under sentence or arrest or awaiting trial, sane or mentally abnormal, promiscuously live together inside these establishments, real storehouses of human beings, without any perspective of individualization in the penal execution.

The prisoners, most of them idle, some of them working without receiving any salary, exploited by private companies or by the penitentiary administration itself, feel the effects of it all. They do not have any adequate medical pharmaceutical or odontological assistance; feeding is not sufficient, either in its quantity or in its quality; school education and professional teaching are simply a farce; and the religious and social assistance turn out to be irrelevant.

Lacking adequate judicial attention, thousands of them could get out of prison wherein they are abandoned by means of "habeas-corpus," parole, penalty unification, criminal revision, etc. Sometimes they do not obtain their freedom because of the lack of a warrant of decarceration though they may have already completed their time. Yolanda Catao and Elizabeth Sussekind have reported the case of an inmate who published a letter in a Rio de Janeiro Newspaper denouncing this kind of violence. Sentenced for four years of imprisonment, he had already completed his time, but despite all his efforts, he

remained in the Penal Institute Helio Gomes." The fact is that, since the prisoners belong to the lower classes, they cannot pay lawyers who might start the judicial mechanisms in order to obtain their rights.

Justice, in its slowness, has contributed to an even more difficult situation, by making hundreds of people wait many years for their trial, in prison. Newspapers have told about the drama of a prisoner who had to wait 18 years to be tried, and at last, was acquitted for the crime he had been unfairly arrested.

Table: Prison Population Capacity Needs and Outstanding Warrants of Commitment

Statistics of March 1987—August 1988

Date	Total Population	Capacity	Need	Warrants not Processed
MAR/87	71,735	41,250	35,770	251,502
AUG/87	81,738	40,459	45,699	251,513
DEC/87	87,053	40,375	50,934	206,928
APR/88	83,621	40,997	47,758	214,621
AUG/88	84,240	42,301	46,624	250,969

Practical Measures to Alleviate the Problem of Overcrowding

Clearly these situations of overcrowding which exist in countries in the categories of (b) and (c), that is overcrowding by virtue of capacity and overcrowding not only by virtue of capacity but also from inadequate back-up facilities, should not be allowed to continue.

Such overcrowding creates not only inhumane conditions under which the inmates are forced to live, but also creates situations of prisoner unrest and general discontentment. Further, it in no way enhances the staff morale, which statistics prove, has always been adversely affected when prisoner unrest and dissatisfaction occurs, through no fault of theirs and over which they have no control.

The following are therefore suggested as solutions to the problems of overcrowding.

1. Construction of New Facilities

It is suggested that in all cases of overcrowding as in instances (b) and (c), where possible, the existing facilities should be upgraded by the construction of new buildings on vacant areas, the transfer of inmates to the new facility, the demolition of the old building or buildings and the construction of new ones with additional beds. Where this is impossible, completely new facilities should be constructed, in which case close attention should be paid to the present trend of offenses and estimates of the future, with regard to the land area for new institutions with respect to the size and capacity of new buildings as present day building costs are already reaching prohibitive levels and anticipated to continue to increase.

It is, therefore, for this reason and the fact that the construction of prison institutions has as history indicates never been a priority on the budget of any country, unless the situation as at present in the U.S. where crime rather than overcrowding has become a national problem. The result of the inadequacies of the criminal justice system to provide sufficient prison beds and adequate rehabilitation programmes through work, vocational and educational training, needless to say, the allowing of crime to go unchecked due to the lack of facilities, will only escalate the already disturbing level of criminal activity, with its sometimes rich rewards, thereby increasing societies concern for their general safety and protection as stipulated under the constitution of their respective country.

2. Application of Community-Based Programmes

Community-based programmes from their inception were implemented as an alternative to imprisonment but now must be utilized not only to this end but also as a means to alleviate prison overcrowding. Communi-

ty-based programmes must, therefore, be made the fullest use of and must be expanded to encompass a much wider scope of offenses and offenders in the hope of assisting in the alleviation of the serious problem of overcrowding at present existent in many countries of the world. It is, therefore, recommended that all first offenders charged with offenses such as shoplifting, uttering, disorderly behavior, unlawful fighting, obscene language, minor assaults, traffic violations, and other such minor offenses and in default of payment of fines should be subject to punishment by community service orders. Community service orders should also be utilized with respect to other offenders charged with similar minor offenses who are not recorded as habitually committing the same or similar offenses. Consideration could also be given to the execution of community service orders in the community in which the offense was committed as a hope of additional deterrence to would-be offenders.

Such community service orders could be served in cleaning and the general upkeep of government offices, health centers, hospitals, parks, playing fields, beaches, roads, etc. This alternative will not only serve to alleviate overcrowding but would also, to whatever extent, decrease the cost of cleaning and upkeep of public facilities. The deterring factor of the high cost of supervision of community service could be reduced and certainly made less burdensome if the offenders were to be supervised by personnel from the institutions, where the order is to be carried out. It is envisaged that a remarkable reduction in prison population would be realized through the fullest use of community service orders.

3. Co-operation between the Criminal Justice System and the private Sector

Statistics show undisputedly that the crime rate in countries with a high level of unemployment is always grater than that of countries with low unemployment. This undoubtedly affects the prison population, as with more crime there are automatically more convictions and ultimately more prisoners. This ripple effect is evident even in countries with low levels of unemployment with respect to ex-inmates. Though employment may be available, the stigma of imprisonment has a peculiar unemployable label attached, which not even the most sophisticated method of rehabilitation can remove without a definite decision being taken by the private sector with regard to employment of ex-inmates. It must be remembered that man is by nature a vulnerable creature of habit and that during incarceration or, whatever the duration, because of his vulnerability he will become used to, more so if he had not previously been to the basic necessities for at least an average standard of existence. If unfortunately, upon release, gainful employment cannot be obtained to maintain an average standard of existence the stage will more than likely be set for further criminal activities even if committed solely for the purpose of providing basic needs.

It is, therefore, of utmost necessity that there be co-operation at more than one level between the criminal justice system and the private sector.

(1) That the private sector should assist the criminal justice system financially in providing anti-crime publicity be it in the form of TV and radio programs, booklets, posters and in any other useful forms. Publicity and advertising have been proven to work in all other circumstances in which it has been utilized and there is very little doubt that it can and will work with respect to crime prevention. Thereby causing a reduction in prison overcrowding, of course for the financial assistance the private sector could be granted tax exemptions by the governments as an incentive.

(2) That there should be co-operation which would allow the correctional system, prior to the release of an inmate, to provide the private sector with all the relevant information, e.g., age, education and skills in or-

der to secure for him where necessary gainful employment. This would not only provide employment for the offender upon release but would also assist him in his social rehabilitation.

4. Other Effective Policies of Crime Prevention and Methods Which Could Be Utilized to Assist in the Alleviation of Overcrowding

It must be remembered that crime can be reduced as it is a creation of humanity, manmade and as much can be controlled, manipulated, diverted, sublimated, repressed, and reduced. Sometimes the cost of so doing may result in the decision that the cures is worse than the disease but that is a matter of study, priorities, and hard decisions. The error of the past has been to think in terms of a single programme, as if that could be a panacea. It is concluded that a substantial reduction of crime would be possible with a multipronged programme that would simultaneously inhibit, prevent, deter, difficult, incapacitate and punish. The following are a few measures which could be implemented to achieve this goal.

1. Lowering the Level of Violence

Though the evidence available is not clear, there is some indication that the dissemination of images of violence is suggestive to some impressionable people. Though one could be convinced that less violence and innovative methods of committing crimes as shown at the cinemas and on TV would mean a lesser amount of crime, the system would have to be cautious in the methods of effecting such change without too strict an imposition of censorship. The mass media's influence on the public is becoming stronger and efforts should be taken to introduce standards or regulatory guidance in the different fields of mass media.

2. Gun Control

Statistics show that a large percentage of offenses and violent crimes committed are perpetrated with the use of weapons, hand guns topping the list. Strict gun and arms control would no doubt result in a reduction of violent and fatal crimes. In some developing countries, insurgency and political discord is generating violence and increased dissemination of guns and ammunition, particularly among the young population. Strict regulation over sales and possession of guns and firearms should be considered as a way to reduce the increasing numbers of crimes related to guns and dangerous weapons.

3. Increasing Police Presence

In most countries the police to population ratio, area and number of crimes is inadequate. A greater police presence would not only result in more arrests, but also in fewer crimes. Crime reduction could be achieved by the introduction of police boxes into communities and the utilization of civilian personnel to perform duties now being performed by police but which duties do not warrant the need for trained police thereby making more police available for the prevention and detection of crime. The police box or "koban" system has already proven successful in both the prevention and detection of crime in Japan and would no doubt have similar effects if introduced elsewhere. The police box system has been significant in crime prevention and has resulted in better police and community relations.

4. Suspended Prosecution

Legislation affording the use of suspension of prosecution would undoubtedly cause a marked reduction in overcrowding, particularly in countries where the jurisdiction of the criminal code is extremely extensive, thereby enforcing penalties of imprisonment for even the most minor offenses, such as traffic violations and disorderly behavior and offenses that are committed as a result of ignorance of the law and accidental circumstances.

Quite apart from providing an avenue for the reduction of overcrowding in prisons,

suspension of prosecution would also afford the offender a second chance thereby avoiding the indelible stigma of criminal conviction and reduce the possibility of developing a "career" criminal.

5. Speedy Disposal of Cases and Bail

The speedy disposal of cases of persons being held in detention awaiting trial is most certainly one of the methods which will assist in reducing overcrowding. As statistics show a large number of people being held in detention awaiting trial comprises a substantial number of the prison population. Affording reasonable bail for most offenses would assist in the reduction of overcrowding and render a more equitable justice system.

6. Suspension of Sentence

The utilization of suspension of sentence will assist in reducing overcrowding especially in cases where the conviction alone is sufficient punishment and will act as a deterrent, bearing in mind that punishment is not enforced with the purpose of destroying the offender but as a means of the deterrence from further crime.

7. Fines

The imposition of fines is yet another method of sentencing but which must be used with discretion if it is to serve the intended purpose of avoiding incarceration and thereby assisting in the alleviation of prison overcrowding. Exorbitant and unmanageable fines should be avoided as much as possible.

8. Pre-sentencing Probation Report

The use of pre-sentencing probation reports will undoubtedly assist in reducing overcrowding as it shall afford the presiding judge, or magistrate with a complete and accurate history of the offender, enabling him, in accordance with the latitude and guidelines prescribed by the criminal code, to more appropriately impose the most suitable punishment for each offender.

9. Community Involvement

The level of crime can be reduced by well formulated programmes of community patrols. Highly visible community patrols can deter would-be offenders, direct and redirect youth into anti-crime programmes, educate the community at large in good crime preventive methods and inform the police of suspicious persons and activities, thereby creating an atmosphere of mutual goodwill and trust between community and police.

10. Parole

Parole is another avenue for reducing overcrowding but should not be granted to inmates solely for the purpose of reducing overcrowding but should be utilized as an incentive for promoting good order, discipline and industry.

11. Pardon

Pardon is a form of inmate release and sentence reduction used in some countries. In the countries where this form of release and sentence reduction are used, it is effected to coincide with events of national significance, such as in Thailand to commemorate the occasion of the longest reigning king in Thailand's history. This form of prisoner release and sentence reduction is effective in reducing overcrowding.

12. Release on License

This form of prerelease has proven successful in the countries where it has been used and is recommended as a useful means of reducing overcrowding.

13. Weekend Detention

Weekend detention is an alternative form of sentencing which could be utilized to assist in reducing overcrowding. However, this sort of sentencing should only apply to persons with sentences of one to six months and those who are considered eligible by evaluation.

14. Compulsory Hospitalization

Compulsory hospitalization is imposed as a sentence with the duration dependent upon the treatment. With respect to alcohol and drug-addicted offenders, it will not only reduce prison overcrowding but will also be more meaningful than incarceration in a prison setting.

15. House Detention

This method of sentencing will no doubt aid in reducing overcrowding. However, because of financial constraints, this method cannot be easily implemented in the less economically powerful nations as the monitoring methods required for proper supervision of home detention are at present very costly.

16. Recruitment and Staff Training

The effectiveness of any institution can be assessed by the quality and calibre of its personnel. The correctional service is no exception, hence too great an importance cannot be placed on the recruitment and training of the personnel of the correctional services. Training should not stop at recruitment but should be a continuous programme with the constant improvement in the treatment of offenders being its main goal, for the more capable the personnel, the greater the rehabilitation possibilities. Appropriate recruitment and training of staff will provide better correctional services resulting in lower recidivism rates and a reduced prison population.

Conclusion

It was unanimously agreed that as history indicates that man from his earliest days for one reason or another broke rules, laws, and contravened norms of society, so it is today and we should not fool ourselves into believing that a crime-free society could be a reality. But that by virtue of the rapid global population increase and cost of operating institutions for the incarceration of offenders, coupled with world improvement in every field, it is necessary also to improve conditions in penal institutions as well as finding new methods for dealing with offenders. At the same time being cognizant of the overcrowding situation which at present exists in the majority of world countries. It is hoped, therefore, that the suggested solutions to the problems of overcrowding, which are not exhaustive, prove beneficial for the purpose of crime prevention and the alleviation of prison overcrowding.

Finally it must be borne in mind that all of the aforementioned suggestions will come to naught without the total and unflinching cooperation between every agency in the criminal justice system. "This is because the criminal justice administration is a continuous flow of procedures, and any problems hampering one agency's functions have a great impact on the functions of other agencies, sometimes impeding fair and effective administration as a whole—the issue of overcrowding in prisons, are often related to several agencies and cannot be solved through one agency's efforts if there is not full understanding and cooperation from other related agencies."[3]

Notes

1. Cited from paper presented by Messrs. Kazuo Kitahara and Satoru Ohashi.
2. Cited from paper presented by Mr. César Oliveira de Barros Leal.
3. Welcome remarks given by Mr. Hiroyasu Sugihara, director of UNAFEI to participants of the 82nd International Training Course on April 17, 1989.

Session 2: The Development of Effective Alternatives to Imprisonment and Other Related Issues

Chairperson: *Mr. Ovitigala Withanage Oliver Bernard Weerasena (Sri Lanka)*
Rapporteur: *Ms. Estrella O. Avena (Philippines)*
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I. Introduction

This report is the result of a group undertaking which involved the enthusiastic and fruitful participation of a federal police inspector of Brazil; a probation officer of Japan, a public prosecutor, also of Japan; a director of the Social Sciences Association of Peru; a regional director of the National Police Commission of the Philippines; a District Judge and Magistrate of Sri Lanka; and a Judge of the Criminal Court of Thailand. With the valuable advice and guidance provided by a visiting expert, Professor Theodore N. Ferdinand and UNAFEI professors, Messrs. Itsuo Nishimura and Shigemi Satoh, discussions were focused on several selected items with special reference to the alternatives to imprisonment obtained in the countries represented, other measures utilized to reduce pressures on prison population and some of the problems which stand in the way of effective implementation of non-custodial measures. Attempts were also made to offer proposals and recommendations regarding the possible areas for the improvement of existing non-custodial methods and the development of new ones.

Preliminary questions centering around the need for non-custodial measures brought forth a variety of responses. These included the perceived failure or inadequacy of the capabilities of prisons to rehabilitate offenders, the poor conditions obtained in some institutional facilities, the ill effects of imprisonment on the prisoner and the negative results that could bear upon his family during his confinement, the economic and social costs of imprisonment, the financial difficulty, if not impossibility, of constructing new prisons, the delay in the administration of justice and so forth. There was, however, a ready acknowledgment that alternative methods should be more fully developed and utilized in as much as these measures could better facilitate the reformation and rehabilitation of offenders, when properly applied.

It must be mentioned that the time allotted for the discussions was a constraint for a more exhaustive presentation of the participants' views and opinions and that reference materials provided by the UNAFEI and the lectures of the experts and professors during the training course were valuable inputs.

II. Alternatives to Imprisonment

There are many kinds of alternatives to imprisonment that exist within the context of the criminal justice systems of the countries represented. These are available before the trial, at the trial and after the trial stage.

Pre-trial and Trial Stage

At the *pre-trial stage*, the police and other agencies responsible for the enforcement of special penal laws, such as those relating to violations of motor vehicle, customs, revenue and railway laws, are authorized to dispose of minor cases without resorting to criminal prosecution. Warnings, compulsory attendance in lectures on traffic laws, administrative fines for minor traffic violations, customs and revenue law infractions are resorted to in Brazil, Japan, Peru, Philippines, Sri Lanka and Thailand. These measures have prevented the influx of numerous and minor cases into the criminal justice system.

There are traditional concepts and practices of settling minor disputes among community members and these have found their way into the formal legal system of some

countries. In the Philippines, there are barangay (village) courts in the barangays which are the basic political units. These barangays are headed by elective officials. The barangay court constitutes a mandatory mechanism for the arbitration, conciliation and amicable settlement of light or petty offences where the offender and the victim are members of the same community. Since the implementation of the law on the matter in 1980, these courts have settled 665,098, or 89.3 percent of the total 744,678 disputes submitted. The success of this indigenous concept has led to proposals for the expansion of its coverage. A similar system was introduced two years ago in Thailand on an experimental basis with the establishment of arbitration committees in the villages of one province. The results of this experimentation will have great effect on the extension of the method to other provinces in the future. On the other hand, the conciliation boards which were created in Sri Lanka in 1958 to handle criminal disputes among community members are not operative at the moment. The people lost confidence in these bodies when persons with no apparent impartiality nor skills in handling disputes were appointed as members of the boards mainly (if not solely) because of political party affiliations.

A scheme at the pre-trial stage that has had significant impact on the criminal justice system of Japan is the system of *suspension of prosecution*. The public prosecutor has the discretion to suspend prosecution of an offender after considering some factors such as the character, age and environment of the offender, the gravity or particular circumstances of the offence, and certain conditions subsequent to the offence, including the offender's repentance and the victim's feelings, even if there is sufficient evidence to warrant the institution of prosecution. If the public prosecutor deems it proper to suspend the prosecution taking these factors into consideration, he does not prosecute the offender but, instead, he drops the case completely without resorting to trial. It was reported that in recent years, about 40 percent of non-traffic penal code offenders benefited from this system. In 1987 alone, the number of suspects in penal code offences and traffic professional negligence who were granted suspension of prosecution numbered 266,535 and 211,839, respectively. The success of this system could be attributed to its flexibility and the wide discretion afforded to the public prosecutor. There are also some safeguards against possible abuse in the exercise of the prosecutor's discretion. When a victim is not satisfied or does not agree with the suspension of prosecution, he may appeal to the inquest of prosecution. This is a kind of special committee which is composed of civil people, selected at random. This committee will conduct the inquest. Moreover, the law provides a special procedure to be followed in cases of abuse of power by public officers. When a victim is dissatisfied with the suspension of prosecution in such cases, he may appeal to the court and the court may direct the institution of the prosecution of the case and for this purpose, the court may appoint a person to prosecute from among practicing lawyers. The institution of prosecution by the court, however, has been rarely exercised. The integrity of prosecutors and the internal system of consultation between the prosecutor and his superior officer have also contributed to the impressive results of the system. In Sri Lanka, an equivalent system exists but is also rarely used. This is the power of the Attorney-General to enter a *nolle prosequi* to discontinue proceedings against an accused.

A prosecutorial authority which is provided under the Criminal Procedure Code of Thailand is the grant of *provisional release*, with or without bail, with or without security, to an alleged offender or accused who is kept in custody and has not been charged in court. The same authority is given to the inquiry official and to the court which issued a warrant of detention or tries the case. The right to apply for provisional release is a constitutional one and this right is exercised with

frequency.

There are other options available that could prevent or reduce unnecessary or prolonged detention in prisons. *Bail* can be availed of by an accused person either at the pre-trial or trial stage in most of the countries with the exception of Peru where bail has been reported to be virtually not present. In Sri Lanka, all offences are, in principle, bailable. However, the Code of Criminal Procedure Act of 1979 makes a classification of offences that are bailable and those which are not. In the case of bailable offences, it is mandatory for the authority concerned i.e. the police or the court, as the case may be, to grant bail. For offences categorized as non-bailable, such as murder and treason, only the superior courts i.e. the Court of Appeals and the Supreme Court can to grant bail. Concern has been expressed over a number of situational problems on the matter of bail in the country. For example, questions have been raised over the uniformity of its application, the propriety with which the courts have exercised their discretion on whether to deny or grant bail and the inability of accused persons to actually enjoy temporary liberty either because of the refusal of the court to grant bail or due to the excessiveness of the bail, if granted. It has been voiced that, following judicial precedents, the principal issue that must be determined on the matter of bail should be the possibility that the accused will appear to stand his trial and not abscond. In Japan, bail is mandatory except in those cases where the law provides otherwise, e.g. where the accused is charged with an offence punishable by death, or imprisonment with or without forced labor for life. In these cases, the courts have the discretion to grant or deny bail. The Japanese are likewise court empowered to *suspend the execution of detention* by entrusting the accused to the charge of his relative, a protective institution and the like, or restricting his dwelling. In the Philippines, the rights to bail is constitutionally guaranteed and is extended to all accused persons, except those charged with capital offenses where the evidence of guilt is strong. However, in practice, a big percentage of arrested persons cannot afford to post bail because of their lack of financial capacity to do so since a large number of them are indigents. At present, detention prisoners who are awaiting or undergoing trial compose 90 percent of the total jail population in cities and municipalities, and in the metropolitan jails, the figure has gone up to as high as 95 percent. The prolonged confinement of detention prisoners because of inability to post bail has been a main cause of overcrowding in prisons. Long-term solutions to the problem of jail congestion seem to point to the area of bail reforms and eliminating the sources of delay in the adjudication of cases. There is also a need for more effective utilization and even amendment of the law on release on recognizance so that a greater number of accused persons, instead of being committed to prison for failure to furnish bail pending trial, may be placed under the custody of a responsible person in the community. In other countries like Thailand where provisional release without bail is permitted, Sri Lanka where conditional discharge of an offender prior to conviction or after conviction is allowed, Japan where the suspension of execution of detention is authorized, and Peru where provisional freedom is sanctioned, recourse to these measures may be maximized under the circumstances set forth in their laws.

Post-trial Stage

At the *post-trial stage*, and more particularly at the sentencing stage, an array of dispositions are available to the courts and these measures may be imposed singly or in combination with others. Such measures include *admonition* and is usually applied in cases of juvenile offenders. The imposition of *fines* is used for a wide range of offenders. In Japan, fines are imposed in a great number of cases. In 1986, for example, 95.7 percent of all offenders, including those involved in traf-

fic violations, were fined and most of them were disposed of by summary proceedings. Moreover, heavy reliance is placed on the Traffic Infraction Notification System when dealing with minor traffic offences. In Japan, fines (including minor fines) are also penal dispositions, with detention at work house as substitute for non-payment of fine. In the Philippines, fines are generally not used due to the inequalities that may arise from its application. In case of failure to pay fine when imposed as penalty, subsidiary imprisonment is provided by the court. Because of the low economic status prevailing among a big number of convicted persons, criminal justice authorities should look toward introducing measures for possible substitutes of subsidiary imprisonment.

Another alternative available at the sentencing stage is the *system of suspended sentence* which has been adopted in several countries as a means of avoiding the negative effects of imprisonment and of helping the offender to reform himself. This system involves either the suspension of determination of the sentence or, if the sentence is determined, the suspension of the execution of the sentence, or both. In Japan, the court is empowered to suspend the execution of the sentence of imprisonment in specified instances. In Sri Lanka, courts which impose a sentence of imprisonment on an offender for a term not exceeding six months or two years, as the case may be, may order that the sentence shall not or may not (respectively) take effect unless, during a period specified in the order being not less than five years from the date of the order, such offender commits another offence punishable with imprisonment. In the Philippines, in the case of youthful offenders, the court shall determine the impossible penalty but instead of pronouncing judgment of conviction, it shall suspend all further proceedings and shall commit such minor to the custody of an institution or responsible person until he shall have reached the age of twenty-one years or for a shorter period. In Thailand, the court, after passing judgment that an accused person is guilty, may suspend the determination of the sentence or, after the determination of punishment, it may suspend the execution of the sentence and release him, with or without conditions for controlling his behaviour.

Sri Lanka's legal system also allows the *conditional discharge of offenders* without proceeding to conviction, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed. The same measure is permissible on persons who have been convicted on indictment of any offence punishable with imprisonment, after considering the same factors such as character of the offender and so forth. Also, in Sri Lanka, the court may, in lieu of imposing a sentence of imprisonment in default of payment of fine, enter an order referred to as a "community service order" (CSO), directing the accused person to perform stipulated service at a given place in a state or state-sponsored project within a period of one year from the date of the order. While the CSO has been introduced as early as 1973, this system was put in to force in 1985 only. At present, the required number of the hours of work are between 40 and 240 within a one year period. While some authorities have described the CSO in other jurisdictions as a simple but effective method of training and control, its impact on the Sri Lanka criminal justice system has yet to be assessed.

Probation is another common alternative measure to imprisonment and a method of non-institutional treatment which is community-based. In Japan, there are 2 systems of probation: One is principally for juveniles and another is mainly for adults. The former is a non-criminal disposition of the family court which is based on the Juvenile Law. The latter is a complementary measure to a suspended sentence of imprisonment in accordance with the Penal Code. On juvenile

probation, the family court may place on probation a juvenile who has committed an offence or has been adjudged as a "predelinquent" even if his offence or misbehaviour is serious as long as the court is convinced that the needs of the juvenile indicate the necessity for the grant of probation.

In Japan, as in other jurisdictions, there are certain requirements for eligibility for probation. For one to qualify for adult probation, the sentence should be three years or less, or 200,000 yen or less if the penalty imposed is a fine. Also, the offender must not have been sentenced to imprisonment for the last five years. Moreover, the offence in question must not have been committed during the probation term previously ordered, if any. An outstanding feature of the Japanese probation system is the reliance on large numbers of volunteers who have assumed an indispensable role and have been integrated into the system as well as in the structures of other rehabilitation services of the government without becoming professionalized totally. The voluntary probation officers (VPOs) form the core of volunteerism in Japanese probation services. The VPO system has two very significant and strong qualities. One is the essentially non-official status of VPOs. Such being the case, they are psychologically more acceptable to probationers because they do not represent governmental authority to the extent that professional probation officers (PPOs) methods in dealing with offenders do. The other important feature of the VPO is its local nature. The VPOs live and work in the same areas as the probationers assigned to them and therefore could easily maintain continuing and close contact with the offenders. However, the VPO system, just like any other system, is not without problems. Rapid social changes that have occurred in Japan have made recruitment and retention of VPOs increasingly difficult. Also, the age gap between VPOs and the probationers they serve, who increasingly are young persons, has been noted. Efforts to recruit VPOs from younger age and more professional groups have not been very successful because citizens between twenty and forty years of age tend to be more preoccupied with their own family responsibilities, occupations and professions.

In the Philippines, the adult probation law is of comparatively recent application, having been promulgated by means of a presidential decree in 1976 and its substantive provisions having gone with full force and effect in 1978 only. However, probation, as a concept, has been incorporated in and resorted to under the country's Revised Penal Code as early as 1932 for juvenile offenders. Also, the Dangerous Drugs Act of 1972 allows probation to certain types of violators and the Child and Youth Welfare Code affords probation to offenders below 18 years of age. The adult probation system is an alternative measure to imprisonment for first time offenders who are eighteen years and above and who are not otherwise disqualified by law. The other salient features of the system are that it can be availed of only once and thus, an offender who has been granted probation can no longer apply for the same privilege for an offence that he might commit and be convicted of in the future; post-sentence investigation and post-sentence investigation reports are indispensable requirements before the court can make its disposition on a petition for probation; and the court's disposition to grant or deny probation is final and not appealable. Since 1976, a total of 63,709 convicted persons have been granted probation under this system and from this, it can be deduced that adult probation has gained an encouraging degree of acceptance and favourable response. Moreover, the government derived benefits in the form of savings of about 430 million pesos for the same period of time. While the adult probation law specifies the age of those who may benefit from it, there has been a gradual increase in the number of youthful offenders referred by the courts to local probation offices. This calls for a continuing di-

alogue between judges and probation administration officials to review dispositions under the Child and Youth Welfare Code and the Adult Probation law to ensure consistency in the application of these two laws.

In Thailand, the probation system has been introduced for juvenile offenders since 1952 but for adult offender, it has just been seriously used nine years ago. As of today, there are only twenty five out of the seventy three provinces, which have provincial probation offices. The concept of pre-sentence investigation is an important feature of the probation process. With the aid of a pre-sentence report, the court may determine the appropriate sentence to commit a defendant to an institution or to grant him probation. Compared with other state agencies which were established in the same period of time, probation seems to show a high rate of growth. However, it has been pointed out that an assessment of the effectiveness of the adult probation system could yield better and more accurate results after some time when the system will have been extended to all provinces in the country. Some problems and obstacles, however, have been identified in the meantime as regards the implementation of the system. These include the lack of co-operation of probationers, especially drug offenders, as to the conditions imposed by the court; the failure of the accused to give accurate data about his personal circumstances and the uncooperative attitude on the matter on the part of his relatives; the lack of support to the probation officer from other agencies, both public and private; and the heavy load of probation officers who usually supervise 200 probationers per annum each. The last one mentioned could be minimized in the near future with the programmed establishment of probation offices in all the provinces of Thailand.

Early measures of release such as *parole* have been observed to be in force in all the countries of the group participants. The availability of community-based treatment programs and facilities has been an important factor in helping parolees find their way back into society as productive and law-abiding citizens. In Japan, the Rehabilitation Aid Hostels (Half-way Houses) have done a good share in making the transition of a parolee's life from a custodial to a non-custodial one much easier by providing after care services. These half-way houses not only cater to parolees but also to probationers who may qualify under the law for the after care of discharged offenders. The number of half-way houses, however, have decreased and this could be attributed to financial difficulties in maintaining hostel with the decrease of number of residents and the problem of securing able personnel, both for management and treatment programs. Aside from parole, *remission of sentence, good conduct time allowance, public work allowance, work of study allowance*, and *pardon* are other dispositions that are available to shorten the length of stay of a convicted person in prison.

III. Substantial Problems Which Stand in the Way of More Effective Implementation of Non-Custodial Measures

The discussants noted that some of the more important problems or constraints which have to be addressed in order that existing non-custodial measures may be fully and more effectively implemented include the followings: manpower and financial resources shortage, deficiency in appropriate legislation, negative attitudes of community members, and lack or inadequacy of research on the rehabilitative effects of non-custodial measures.

On the problem of manpower and financial resources, most of the comments pointed to the need for bigger financial allocation from the government so that additional personnel, particularly, probation officers, could be employed, more rehabilitation centers, especially for the youthful offenders, could be established and the services of existing ones expanded and improved. Also, it was the

consensus that to supplement and complement whatever the state can give for these purposes, it is necessary that community awareness, interest and support should be developed and solicited. The need for the services of more voluntary probation officers to support and assist in the supervision and rehabilitation of offenders could probably be met if people were better informed about the probation system and its merits. For disseminating information to stir public awareness and drum up support for such system, the private sector, particularly the media whether print, radio, broadcast or cinema, could be tapped and utilized.

The need was felt for new and appropriate legislation in order that the rigidity of penal laws may be relaxed and made more flexible and/or to provide legal basis for new options in criminal justice matters. Towards this end, the system of suspension of prosecution, volunteer probation officers, suspension of sentence (as distinguished from suspension of execution of sentence), community service order, day fineds, work furlough, study furlough, home leave and the like which have been successfully adopted in some countries should be given much consideration in jurisdictions where these are not yet existing. The expansion of the coverage of laws concerning release on recognizance, probation, after-care services should also be seriously looked into. Proposals to decriminalize certain types of minor offenses such as vagrancy and to depenalize victimless crimes such as simple negligence and imprudence which have been made in the Philippines and are now pending consideration by its legislature, could be considered by the other countries. Areas for urgent reforms in any of the criminal justice agencies and of the entire criminal justice system should be identified for possible short-term and long-term solutions. For example, the problems of judicial delay, detention pending trial and prison overcrowding could be reduced if innovative criminal procedures could be effected. In some countries, however, it was pointed out that new legislations are not necessary for the present and what is needed is the implementation of existing ones.

Regarding the negative attitudes of the community, the discussants characterized these as one of ignorance, indifference, skepticism or hostility. Also, a general feeling of insecurity in the community has been expressed as a prevailing one with the presence of released convicts. To some, especially the victims, their concept of justice means punishment for the offender. It was pointed out, however, that probation has been generally acceptable in the countries that have this system and the same holds true as regards suspension of prosecution, with particular reference to Japan, because the victim's feelings are considered, among other factors, before suspension of prosecution is resorted to. Again, there was a general consensus that information campaigns, with maximum utilization of media, could be a very potent influence in changing people's attitudes.

The lack or inadequacy of research studies and related work on the rehabilitative aspects of non-custodial measures has been expressed by the discussants and this could be attributed to some factors such as the low priority placed on the importance of research, the expenses which research could entail and the lack of expertise and facilities for research work. However, since the importance of research could not and should not be ignored, especially for planning and policy directions, it was suggested that government agencies may tap the resources of the academics so that collaborative efforts could be made in the area of research.

Efforts to rehabilitate offenders would be adversely affected not only by the negative attitudes of the community but also by the lack of clear administrative and criminal justice policies, particularly on correctional policies. The situation could be exarcebated if the economic conditions obtained in a country have reached a critical level as this would prompt the government to give more priori-

ty to other concerns and less priority to the rehabilitation of offenders. It seems that Peru is in such an unfortunate situation now and this has elicited a doubtful attitude about the effectiveness of some of the few non-custodial measures existing in the country. However, an experimental proposal was presented as one possible response to improve the existing treatment programs and services to youthful offenders. Briefly, the proposal suggested a new model for the rehabilitation of such offenders that would combine both institutional and non-institutional strategies, by transferring the management of a correctional center for young offenders (Instituto de Menores No.1-Maranga) from the hands of the government to a new non-governmental organization which could be formed by joining the financial and human resources of non-profit private agencies which work in specific programs with young people and those of a private university. The proposal underscored the need for the active participation and support of non-governmental organizations since the prevention of crime and treatment of offenders is not the responsibility of the state alone but it is likewise the concern of the community.

IV. Recruitment and Trading of Staff for Effective and Efficient Implementation of Non-Custodial Measures

Since non-custodial measures generally imply supervision over the released offender by an authority, the recruitment and training of persons involved in the implementation of these measures assume vital importance. There is general assent among the participants that better and more extensive and intensive training for probation officers would make them more effective and efficient in their work. Recruitment of probation officers should consider not only academic qualifications but also their personality and behavior. For voluntary probation officers, it was expressed that it would be desirable if younger and professional ones could be recruited.

Training should also be extended to other personnel in the criminal justice agencies. Seminars, conferences, with group workshop sessions preferably, among participants from the criminal justice system should be conducted regularly. For better results, these could be done on a collaborative and coordinative basis among the agencies involved and local universities, thus affording representation from criminal justice practitioners and scholars on this field as well.

Training courses, seminars and conferences in foreign countries could provide and facilitate exchange of information and technology and promote cooperation and understanding in certain areas of common concern and interest.

V. Methods of Obtaining Public Cooperation

There is no doubt that any government effort on any program, including crime control and prevention, could yield better results if there is public cooperation and support. This is truer still when it comes to the implementation of non-custodial measures which necessarily requires the understanding, cooperation and collaboration of the community members. There are different ways by which public cooperation can be obtained. The encouragement and recognition of non-governmental organizations' roles in community based treatment programs is one such measure. This has been successfully illustrated in the case of voluntary probation officer in Japan. The conduct of seminars, symposia and similar activities to enable as many people as possible to better understand and be more aware of the positive effects of non-custodial measures is another means. Utilization of media information should also be resorted to.

VI. Coordination Among Agencies

The different components of the criminal justice system are all parts of a whole system. Any weakness in any of the links which form part of a chain could have adverse, if not disastrous, effect on the other links and the system as a whole. The need has been expressed for a clearer and better understanding of the interdependent nature of these components and the necessity has been noted for an integrated approach to crime prevention and treatment of offenders, including the implementation of non-custodial measures, without undermining, of course, the independence of different departments, ministries or agencies involved.

The integration of the system and the coordination of agencies should be initiated from the top level of government. The highest ranking officials of these agencies should hold regular discussions among themselves and agree to commit themselves and the resources of their respective agencies to the common policies that could be arrived at. The policies should be translated into more specific issuances and guidelines which should be handed down to the lower levels for their observance and implementation. Similar coordinative efforts should be pursued at the lower levels. Better integration and closer coordination will no doubt result in the avoidance of conflicts and contradictory policies and practices. These will prevent, or at least minimize, wastage in human and financial resources.

Some of the areas identified for integration related to integrated approach to planning, criminal justice information system and training. To facilitate integration and coordination, *ad hoc* bodies, like the Judges' Institute in Sri Lanka, and the multisectoral councils or committees whose memberships are representative of the criminal justice system, such as the Peace and Order Council and the Technical Panel on Crime Prevention and Criminal Justice in the Philippines, could be created. The existence of liaison units or persons could also be effective coordinative mechanisms. Moreover, the sponsorship by the government of regular national conferences, seminars and training courses for criminal justice administrators and practitioners could encourage and foster coordination and integration. Furthermore, the government could also strengthen its linkages with private associations or agencies, especially those who are directly involved in rehabilitation services, and whose efforts should be officially given recognition by the government.

On the international level, coordination and cooperation could be pursued through memberships in and contacts with international bodies or agencies, attendance in international conferences, seminars and training programs, and maintenance of linkages, like the designation of correspondents, with international agencies, foreign criminological and other similar institutes. The participants acknowledged the role of the United Nations and the United Nations Institutes, especially the UNAFEI, for their efforts and support in this area.

VII. Conclusion

The workshop participants having discussed matters connected with the topic pinpointed the prevalent laws and processes relating to non-custodial measures in their respective countries. The similarities and differences, the perceived strengths and weaknesses, the problems and proposals, the hopes and doubts about the progress in the development and implementation of these measures were bought to the fore. It was observed that no system in any of the country represented is perfect but yet there is ample scope for improvement and innovation. It is hoped that the efforts put in by the participants would serve as a useful basis to work upon along the areas mentioned in the report.

The workshop participants owe a great deal of gratitude to the advisors for their

guidance and advice without which this workshop would not have been fruitful. Finally, the participants extend their sincere gratitude to the UNAFEI under whose auspices they were able to enjoy this rare opportunity.

Session 3: Treatment Programmes for Specific Categories of Offenders

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Introduction

The group members consisted of four correctional officers, two police officers, a probation officer and a judge.

All members reported continuing development in the approach to the treatment of offenders in their respective countries, with increasing emphasis on treatment and training programmes—as the main means of rehabilitation. All systems now have more specialist expertise relating to correctional policies, programmes and techniques than ever before. In the light of these developments, the proposal to formulate ideal programmes for long-term prisoners, physically and mentally handicapped prisoners, and juvenile offenders was unanimously agreed by all members. Although different countries have different cultures, customs and most important of all resources, we all believed that we could benefit from the knowledge and ideas we gained during our discussions here and perhaps with some modification, apply some of the ideas to our local systems. We therefore decided to focus our attention upon:

(a) Programme for long-term prisoners;
(b) Programme for physically/mentally handicapped prisoners, and;
(c) The treatment of juvenile offenders.

I. Special Programme For Long-Term Prisoners

A. General Remarks

The ultimate aim of corrections in modern penal philosophy is the rehabilitation of offenders. Correctional administrators nowadays endeavour to provide various social reintegration programmes for prisoners so that after release they can become contributive and participative members of the society again. The rehabilitation of long-term prisoners is a particularly important task because they are separated from the society for a relatively long period of time and their social re-adjustment will be more difficult in comparison with short-term prisoners.

Long-term prisoners are often considered to be dangerous or violent offenders due to the type or nature of crimes which they have committed. Hence, they are usually separated from the general penal population and placed under close observation in maximum security correctional institutions. In addition, they are sometimes not allowed to handle certain tools or equipment. Thus, correctional administrators face considerable constraints in introducing programmes aimed at the rehabilitation of long-term prisoners. Because of such constraints, programmes for the rehabilitation of long-term prisoners are often limited in scope or may even be ignored.

It is clear that the traditional concern for institutional security has sometimes inhibited the development of programmes for long-term prisoners. However, progressive correctional administrators should consider the introduction of innovative programmes aimed at developing the talents, intellectuality, physical health, mental maturity, social techniques, and employment skills of long-term prisoners. Such programmes can be

conducted in such a manner that will impose practically no security hazards. For example, if a long-term prisoner has talent in water colour painting, the practice of painting does not involve the use of sharp tools and will also promote the mental development and employment skill of such a prisoner. However, it must be borne in mind that the programmes should not make the long-term prisoners a special type of prisoner with special rights and privileges. The emphasis is on ensuring that, the behaviour of such prisoners is closely observed and effectively monitored.

B. Main Emphasis of the Special Programme

(1) To Provide for the Training of Long-Term Prisoners in Industries to Enable Them to Have Access to High Technology

It is recognized that the types of Industrial Training provided initially for long-term prisoners are relatively narrow because some long-term prisoners, especially those convicted of violent offences, are normally not given access to tools of a dangerous nature. Nevertheless, a variety of trades may be suitable for them such as:

(a) Garment making;
(b) Printing;
(c) Computer operating (provided that there is no access to outside networks); and,
(d) Operation of sophisticated machinery, etc.

In an effort to encourage a satisfactory work ethic, long-term prisoners should, as far as possible, be maintained on a continuum of employment within a small number of trades, thereby fostering a type of "work career development" whilst they are undergoing their sentences.

Meanwhile adequate training should be afforded to the long-term prisoners so that they can eventually attain the required skill level well before release.

(2) To Encourage Long-Term Prisoners to Settle Down in the Institutions and Adjust to the Environment

All new prisoners should be required to undergo a course of induction immediately following admission. During the induction period, the following talks should be given by suitable staff to assist the inductees to get acquainted with all aspects of their environment.

Staff	Topics
(a) Induction Staff	prison routine including rules and regulations, rights and privileges, services available, etc.;
(b) Welfare Staff	Individual and family welfare facilities, public assistance;
(c) Hospital Staff	physical health and personal hygiene;
(d) Security Staff	prohibition of gang activities;
(e) Education Staff	library facilities, education courses including moral education;
(f) Psychological Staff	psychological services, I.Q. test, etc.; and,
(g) Industrial Staff	all aspects of industries including industrial safety.

Apart from the talks organized during the induction period, group counseling sessions should be given as soon as the induction period is over. The aim of this session is to help new admissions to adjust to the institutional life more easily and to improve their interpersonal relationships, civic and moral attitudes.

The duration and the content of the normal induction programme is generally considered sufficient and adequate because

usually the long-term prisoners have been remanded for a considerable period of time and are, therefore, familiar with the prison setting.

It is not considered necessary to provide a separate or extended induction programme for long-term prisoners. However, for some prisoners who become deeply depressed when, for example, all avenues of appeal have been rejected, an intensive counseling programme may be provided by the psychological and welfare staff to help them to settle down.

(3) To Encourage Long-Term Prisoners to More Gainfully Use Their Spare Time

The following voluntary education programme and activities should be made available to prisoners:

(a) Self study courses: offered by qualified schoolmasters to cover the full spectrum from beginner to high school level;
(b) Correspondence courses: offered by various outside bodies;
(c) External degree courses: offered by universities/professional bodies;
(d) Evening education class: conducted by charitable organizations or government employees;
(e) Participation in public examinations: both government and professional bodies;
(f) Hobby classes: geared to prisoners' interests in various fields such as music, languages, drawing, painting, chess, etc.;
(g) In addition, more commercial classes, like book-keeping leading to the attainment of qualifications conferred by the Public Examination Bodies and social studies which would keep the prisoners abreast of events in the outside community should be made available;
(h) All prisoners should be informed during the induction period and thereafter at periodic intervals of all formal education opportunities available to them;
(i) Every prisoner should be encouraged to enroll in various study courses;
(j) Books on related subjects should be made available in the library to assist prisoners in their studies;
(k) With the assistance of voluntary religious service bodies prisoners may carry out the responsibilities imposed upon them by their religious beliefs. Their attendance at religious activities must, however, be on a voluntary basis;
(l) Prisoners must learn to take care of their physical health and to develop their capacity to participate in sports and make self-fulfilling use of leisure time. Because these abilities are considered to be necessary for emotional health, the recreation programme is viewed as an indispensable part of the programme. It helps each prisoner to develop a wholesome regard for his health by promoting co-ordination and muscle tone appropriate to age and general condition. It helps to impose self-confidence through the mastery of new skills and game rules. It is expected that each of these elements is applicable and transferrable to the life of the prisoner outside the realm of sports and recreation so that he may develop a wholesome attitude towards his own life upon release. In addition specialist staff should organize interest groups which offer a wide variety of activities at leisure hours so that the prisoners may learn to make good use of their spare time for healthy activities. Such activities may include drawing, painting, pottery, music appreciation, etc. Moreover, the establishment of formal classes serves as a better incentive for the prisoners to pursue further learning.

(4) To Provide Mental Health Services Par-

ticularly with Regard to Problems Associated with Lengthy Imprisonment

The mental health of all prisoners, especially long-term prisoners, must be kept under close observation at all times.

In-depth individual counseling and assessment should be provided for every long-term prisoner on admission by specially trained staff. Any case requiring special attention or treatment should be immediately referred to the appropriate section for necessary action. Throughout the period of imprisonment continuous assessments of the prisoners should be conducted to review their current emotional needs and problems. Appropriate therapy and support should be available for the treatment of their emotional/behavioural difficulties and to assist them in dealing with problems arising from lengthy incarceration.

The main emphasis should be to strengthen the confidence and determination of prisoners and to help them gain a better insight into their problems through individual counseling and group therapy. In addition, there should be access to crisis intervention facilities when the prisoner experiences adjustment difficulties or is affected by grief or anxiety brought about by separation from his family. Nevertheless, it is anticipated that increasing rapport between staff and prisoners should lead to the containment of certain problems before they reach the crisis level. The sessions should be further intensified a few months prior to release in order to help the prisoners prepare for their re-integration into society.

(5) To Provide Assistance to Long-Term Prisoners in Maintaining Family or Other Normal Relationships with the Outside World

Talks on welfare services should be included in the induction programme for all newly admitted prisoners. All prisoners should be individually interviewed by welfare staff in an effort to understand their personal or family problems resulting from their imprisonment. Follow-up interviews should be made individually so as to ascertain the need for any further action or treatment. Additionally, arrangements should be made for case-workers to visit those families experiencing particular problems related to the imprisonment of a family member. Case-work counseling should be conducted for the purpose of reconciling strained relationships between prisoners and their families.

To assist long-term prisoners in maintaining family relationships, the welfare staff should closely monitor the frequency of visits by family members to ensure that the rate of visiting does not drop in the later stage of imprisonment.

For those prisoners with no friends and relatives, the welfare staff should co-ordinate visits from appropriate religious or approved volunteers.

(6) To Provide Training/Counseling for the Long-Term Prisoners before Transfer to Another Institution and before Their Release

It is a common phenomenon that the family tends to pay fewer visits at the later stage of long incarceration. In addition, prisoners may feel aggrieved when being transferred to another institution. After having settled down in a maximum security institution, some prisoners do express their desire to stay on even though they know that they can be better rehabilitated and resocialized through treatment in low security institutions, where they are encouraged to have a sense of responsibility and self-regulation. In such cases the welfare staff should make contact with the family to encourage more frequent visits.

Individual counseling should be provided to prisoners before and after transfer by both the transferring and receiving institutions in order to resolve the prisoner's adjustment problems, if any, resulting from the transfer.

Wherever possible, as an incentive to good behaviour, arrangements should be made for well-behaved prisoners to have home leave and to stay in a half-way house shortly be-

fore release. Pre-release counseling should be organized for them prior to their release and assistance rendered where necessary. These counseling sessions must be geared to preparing prisoners for their return to society and to cultivate in them the right attitude towards life.

II. Special Programme for Physically/ Mentally Handicapped Prisoners

A. General Remarks

Physically or mentally handicapped prisoners are entitled to the same privileges accorded to other prisoners. However they may be unable to participate in all of the normal activities due to their handicaps. Therefore special programmes are considered necessary for the physically or mentally handicapped prisoners in order to prevent any further physical or psychological deterioration as a result of their imprisonment. One of the most common programmes for physically or mentally handicapped prisoners is occupational therapy. In order to make occupational therapy a successful treatment programme for the physically or mentally handicapped prisoners, correctional administrators must ensure that qualified personnel are assigned to implement appropriate programmes which should be properly resourced.

It must be recognized that an ordinary prisoner may face difficulty in returning to the society even if he is prepared to abide by the law and become a contributive and participative member of the society after his release. However, in the case of a physically or mentally handicapped prisoner, even though he is rehabilitated while in prison, he is likely to experience even more difficulty in being accepted by the public because of his physical or mental handicap. Therefore, it is essential that correctional authorities coordinate with social agencies in the community so that a physically or mentally handicapped prisoner, who for example has learned a trade or skill while in prison can find suitable employment once he is released. It may be necessary to arrange for a place of residence and/or special employment opportunities through the joint efforts of the correctional authorities and the appropriate special agencies in the community.

B. Physically Handicapped Prisoners

(1) Objective

Within a correctional setting, the objective of the programme can be summarized as follows:

(a) To promote institutional and individual adjustment of physically handicapped prisoners;
(b) To help prevent physically handicapped prisoners from relapsing into crime; and
(c) To maximize the residual capabilities of the physically handicapped prisoners so as to enable them to carry on an independent and productive life.

(2) Classification and Location

The types of physical handicap usually found in penal establishments can be summarized as follows:

(a) Sensory handicaps (deafness, mute or dumbness, or blindness of various degrees);
(b) Gross injury or loss of all or part of a limb or body; and,
(c) Paralysis of most or only part of the body.

Some modifications to buildings have to be made for those suffering from gross physical defects to make it possible, for instance, for wheelchairs to be accommodated in lavatories and washrooms. Institutions built on a hilly terrain with many steps or staircases are not suitable for physically handicapped prisoners. The provision of hand rails, PVC mirrors, adequate lighting, call bells, non-slip

flooring, footstools and rubber mats in bath, surrounded by rails should be provided. Some supervisory staff should be taught to conduct sign language, braille and lip-reading classes.

(3) Psychological Services

A psychologist should interview and carry out tests on the handicapped prisoners to assess their psychodynamic state. Adjustment problems, if evident, should be dealt with by intensive counseling carried out by the psychologist or other professionally qualified staff. The psychologist should work in close cooperation with the medical officer and other members of the staff to assist the handicapped prisoners to adapt to the different life style that is necessary as a result of their disability. Psychologists should help the handicapped to attain emotional stability, healthy orientation, realistic self-worthiness, a positive self image and to develop the necessary confidence to enable them to face their future.

(4) Physiotherapy Treatment

Therapeutic exercises involving bodily movement may be necessary to correct the impairment, improve muscule skeletal function or the maintenance of a state of well being. Advice from the physiotherapists and other specialists should be sought and the patient may be required to regularly attend follow-up sessions in an outside Psysiotherapy Department.

(5) Occupational and Vocational Training

Occupational and vocational training should commence as soon as the handicapped prisoners are well adjusted to the correctional setting and to this end, the occupational therapist should visit regularly. The occupational therapist and the vocational training officer should work together to devise a training programme to assist rehabilitation and the provision of diversional therapy or vocational training as the case may be, to suit the individual needs.

(6) Education

Prisoners who feel the need to study should be assisted by the school master who should establish a purpose-planned educational programme to meet the learning needs of handicapped prisoners. For sensory handicaps, the special education unit should be required to provide appropriate support such as sign launguage classes for the deaf and mute, and braille classes for the blind.

(7) Welfare Service and Pre-release Care

Welfare staff should provide the disabled with all possible assistance to solve problems encountered by them during their imprisonment. They will need to take note of the patients' response to the rehabilitation programme and coordinate with other agencies to establish favourable family relationships, to solve housing problems; to look for suitable employment and to refer to the appropriate social work organizations for assistance after release from prison. The agency representatives should be encouraged to visit such prisoners regularly during their period of imprisonment so as to assist them in planning their future.

(8) Exercise

Prisoners must be encouraged to participate in suitable exercise and recreational games designed and organized by specially trained physical training instructors. Those activities will help improve self-esteem and confidence.

(9) Provision of Prosthesis and Medical Aids

Arrangements must also be made to provide prisoners with prosthesis or medical aids (hearing aids, speech aids and technical aids) as appropriate.

C. Mentally Handicapped Prisoner

(1) Definition

"Mentally handicapped," in this context, refer to mental/ intellectual deficient cases (deficient in both general intelligence and the

behavioural domains) rather than mentally ill/disordered cases. Deficits in intellectual functioning are usually identified or confirmed through formal psychological assessment techniques which must be administered by qualified examiners.

(2) Identification

To ensure early detection, diagnosis and treatment, staff of a correctional institution need to take note of the following maladaptive behavioural manifestations which are common to those with intellectual deficiencies:

(a) difficulties in following routine and consistent inappropriate responses to instructions;
(b) poor psychomotor co-ordination;
(c) accident prone;
(d) impulsivity;
(e) gullibility, easily provoked and manipulated by others, and;
(f) consistently identified as a laughing stock or particularly vulnerable to ridicule.

(3) Special Programme

To cater for their special needs, special educational, social development and vocational programmes should be implemented with the following objectives:

(a) to promote the application of basic academic skills to daily routine activities;
(b) to promote application of appropriate reasoning and judgement under different conditions;
(c) to train practical work skills and instill a proper work habit for future employment;
(d) to promote social skills and communication techniques for better institutional adjustment; and
(e) to promote reintegration of the intellectually deficient inmates into society after release.

The programmes should include education classes, a social development group, and a skill training workshop.

(4) Education Classes

Handicapped prisoners need to be given training in basic educational skills and academically related behaviour. Such classes should take the form of small group learning and be based on a specially designed learning package that consists of a variety of learning activities and teaching aids. Such packages should be jointly constructed by the psychological and educational professionals according to the special needs of the particular prisoners. The main object is to develop the prisoners, functional reading and writing abilities, to promote study habits and general life skills. Taking account of the learners' limited learning potential, abstract knowledge should be minimized while application to daily life or job related situations need to be encouraged.

(5) Social Development Group

This is a form of group counseling for mentally handicapped prisoners with special emphasis on promoting their social/adaptive skills. The psychologist should interview the prisoners and carry out psycho-educational assessments. Adjustment problems with special concern of their educational progress, will need to be dealt with by intensive counseling and individual treatment programmes.

The psychologist should work in close cooperation with the other relevant members of the institution to promote the prisoner's psychological well-being and life skills. An educational package for applied academic skills should be designed and constructed by psychologists with the assistance of the school masters.

(6) Skill Training Workshop

Bearing in mind their sub-average abilities in following work instructions and taking precautions against industrial hazards the mentally handicapped prisoners need special

training in the basic skills of tool manipulation. The skill training workshop should aim at developing the prisoners' skills in basic woodwork and simple manual tasks. In view of their limited learning abilities, it may not be possible to teach them comprehensive craft skills for immediate employment, but rather to develop their psychomotor skills and facilitate their future learning in other specialist rehabilitation centers. All the training exercises should put the emphasis on manual skill training; the use of power tools may have to be limited, at least in the early stages of training.

After-care officers should provide all the necessary assistance to the mentally handicapped prisoners to solve their problems during institutionalization. After or shortly before the prisoner's release, they should refer them to the appropriate organizations for job placement or further specialized training for the handicapped.

In some cases, mentally handicapped prisoners may suffer from sensory handicaps such as hearing loss or speech deficiencies. On the recommendation of the medical officer, prisoners found to have sensory handicaps should be referred for further assessment by specialists. Speech therapy can be arranged for inmates with severe speech problems and hearing aids should be provided to those suffering from hearing loss.

III. Programme for Juvenile Offenders

(1) Aim

Separate institutions should be established to provide facilities for the training and reformation of juvenile offenders. The training should aim at instilling good working habit and sense of responsibility so that offender may become independent and law-abiding citizens upon release.

(2) The Programme

The programme should provide for full time residential training including educational and vocational training with special emphasis on discipline, conduct, moral education, appearance and personal hygiene.

(3) Academic Education

Inmates who are under school leaving age must receive compulsory education. All inmates upon admission should be given an attainment test to determine their level of academic achievement before being placed in appropriate education classes. The programme should cover academic subjects, moral education, life and social skill, leisure activities and work skill. Specific textbooks should be prepared taking into consideration the unique factors of the inmates who differ from normal school pupils in age, social experience, learning attitude and motivation. Regular examinations and tests are to be held to monitor their progress. In addition, inmates are to be encouraged to take part in various open examinations. Facilities are to be provided for those inmates with educational levels beyond the main stream to meet their special needs. In addition to the teaching staff, educational psychologists should be made available to offer assistance in curriculum planning and development. Particular attention is to be paid to inmates with special learning needs such as those with intellectual deficiencies or other learning problems.

(4) Vocational Training

Inmates are to be assigned to vocational training classes, taking into consideration their interest, past experience and the recommendations of qualified staff. Vocational training serves the following four main purposes:

(a) to engage the inmates, both in mind and body in productive work;
(b) to help them appreciate the value of constructive labour in a decent society;
(c) to develop their skill which will lead to a certificate of achievement; and,
(d) to familiarize them with the trades available in the institution, thereby affording them job opportunities upon release.

Subjects need not be confined to designated vocational training or construction indus-

try training courses; other skills can be included under this heading.

(5) Psychological Treatment

Psychological treatment are useful to facilitate inmates' general social adjustment and promote the development of insight in order to effect positive behavioural changes. It is to be provided in the form of individual/group counseling and psychotherapy by a clinical psychologist in order to reduce anxiety, promote more adaptive behaviour, build morale, increase self-awareness, develop the ability to analyse facts, communicate feelings, and reduce resistance to training. Issues such as alcohol, drug and solvent abuse, anger control, AIDs, etc., may all be suitable for group sessions. Inmates are to be facilitated within the group sessions to improve their problem solving skills in social situations so as to generate a sense of success and confidence.

(6) Physical Education, Recreation, Hobbies and Sports

The physical education syllabus should cover a wide range of activities including gymnastics, athletics, circuit training, physical training and team work. The purpose of physical education is to promote physical well-being and enable the offender to acquire individual skills from which he may derive identity, self-respect and a sense of personal achievement. Activities should be planned to take account of individual needs, ability, aptitude and potential, and they should be organized so as to encourage thought as well as action.

To encourage healthy, socially acceptable hobbies and to promote confidence, a variety of recreational activities should be organized such as participation in scouting, guiding, outward bound courses and community services.

(7) Pre-release Programme

A pre-release programme, characterized by three approaches namely:

(a) Information of social resourses;
(b) Development of studies/career prospects; and,
(c) Development of social awareness,

should be offered to all inmates prior to release. This programme plays an important part in preparing inmates to return to the community. Temporary release should be considered for some inmates to enable them to take part in workshops and courses run by the probation service, preferably in their home area but may also be in the area local to the institution.

(8) Aftercare

After release inmates should undergo a period of compulsory supervision under the guidance of qualified social workers (aftercare officers) who would ensure that all supervision requirements of the supervision order are complied with. The supervises should be recalled to the institution should he fail to comply with any of the supervision requirement during the supervision period. Throughout the supervision period the aftercare officer should conduct home and workplace visit to ensure that the inmate leads a law-abiding life and to assist him in solving problems through legitimate and socially approved means.

Conclusion

Great care should be given to prevent the gradual development of the "institutionalization syndrome" especially in the case of long-term prisoners, by keeping their minds and bodies as alert as possible. This can be maintained through attendances at various kinds of occupational/therapeutic workshops where team work and group approach is stressed to guard against prisoners becoming too withdrawn.

Special and in-service training for the staff concerned is needed to enhance their understanding of the aims and contents of all these programmes and to promote their awareness of the need of these prisoners.

Private organizations are also expected to contribute various social, recreational, therapeutic and counseling programmes to prisoners upon their return to the society and most important of all to provide them with job opportunity.

Only by adopting the right approach and methods will all the above services and programmes prove to be a success. The guidelines contained in these programmes are not exhaustive. These programmes require team work, support and external assistance. It is the aim of all correctional administration to help the offenders to re-integrate into the free community and become contributive and productive members of the society.

Session 4: A Staff Training and Other Issues Regarding the Improvement of Corrections Administration

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I. Introduction

Corrections is one of the pillars of the Criminal Justice System. It plays a very important role in crime prevention and in the over-all maintenance of peace and order in the community. Correction lies within the broad spectrum of Crime Prevention. The rehabilitation program given to the offender in a correctional institution is in reality a preparation for him in his eventual re-entry into the free society. An offender is given sufficient and adequate education and training opportunities inside the institution, because when he is released, it is the free community where his real challenge will begin. Incarceration can be considered as just half of the offender's journey towards reformation. A rehabilitated offender who has been successful in his re-entry into the free community diminishes the possibility of a commission of another crime. Therefore, corrections is actually crime prevention.

The focal element in the rehabilitation of offender is the "correctional officer." He is an important agent, who can either make or break an offender. The correctional officer possesses the prime responsibility of influencing to a great extent the attitude and behavior of an offender. Studies have shown that whatever type of program is given to the offender, no result will be produced unless the prisoner himself desires to change and reform himself. This is the challenge of the correctional officer, that of executing the difficult task of influencing the offender to change. When an offender is incarcerated, he feels rejected and alienated from the rest of the world. The correctional officer can either reinforce or change that view. His skill and expertise in handling the offender can help a great deal in restoring in the prisoner hope, self-respect, dignity and eventually, the desire to live a reformed and peaceful life as a law-abiding citizen.

Evidently, the success of the rehabilitation program depends a great deal on the correctional officer's ability and skill to implement effectively and efficiently the various institutional activities and undertakings.

It is of paramount importance that the correctional staff be given the necessary training and preparation to assume an equality difficult and challenging task. Efforts should be directed toward the creation and maintenance of a pool of workers equipped with the knowledge, skills and attitudes in handling the various types of offenders and in implementing the objectives of the correctional establishment.

The U.N. Standard Minimum Rules No.46 (1) states:

"The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institution depends."

The correctional officer must be familiar with the institutional goal, and is at the same time, sensitive and responsive to the changing needs of times. The training should

awaken in the officer an awareness of the great importance of his responsibility so that he will be properly motivated to perform and comply with his job requirements.

Staff recruitment, training, and the provision of attractive salary, benefits and other incentive schemes, should occupy a priority status in any correctional institution. A well-trained and efficiently-managed correctional staff will truly make a big difference. It can be considered as the moving force in the pursuit of the goals and objectives of the correctional institution.

Group IV has been assigned this very important theme, Staff Training and Other Issues regarding the Improvement of Corrections Administration. The group decided to divide the main subject into four major parts.

First, we will discuss the existing condition in our respective countries, in the area of staff training and development. Specific areas which will be covered are:

a. Recruitment of Correctional Personnel,
b. Salary Scheme and Other Work Incentives,
c. Employment of Specialists,
d. Training of the Staff

Second, we will zero in on the existing problems relative to the above-mentioned areas.

Third, we will try to focus on some other related issues regarding the improvement of corrections administration.

Lastly, we will present our suggested solutions to the problems.

II. Existing Conditions

The five countries represented in this group (Japan, Philippines, Fiji, Korea, and Brazil) have agreed to categorize the correctional personnel. The grouping of the personnel is based on the specific functions/duties performed in the institution. This is done to facilitate the easy identification of responsibilities of the personnel and to pinpoint those people who play important roles in the rehabilitation scheme. Likewise, those personnel who have to be carefully recruited, trained and developed can be clearly identified.

The classification of personnel is as follows:

(1) Director and his staff—these are the policy-makers, and high-level officers who assume the highest posts in the institution. In other countries the Head of Prisons are called Director-General of the Corrections Bureau, Commissioner of Prisons, etc., but they all mean the Head of the Correctional Institution.
(2) Specialists/Medical Personnel—Doctors, nurses, dentists, psychologists, social workers, teachers, trade instructors, agricultural experts, and other professionals who represent specialized fields and with technical expertise.
(3) Administrative Personnel—those primarily concerned with clerical work and other day to day operations. Examples are clerks, typists, maintenance workers and the like.
(4) Custodial/Security Personnel—those who are charged with custodial, security and rehabilitation functions. The group has agreed to focus primarily on the training and development of the custodial/security personnel.

A. Recruitment of Correctional Staff Specialists, Custodial/Security Officers

In all the five countries represented, all applicants must pass a government examination first, before they can be considered for employment in the Correctional Institution.

Having met this general requirement, the prospective employee must possess the specific qualification required by the Institution. Generally, the requisites for admission are:

1. Age—17-29;
2. Education—at least elementary or high

school graduate, although the trend now is that most applicants are college graduates;
3. Physical and mental fitness;
4. No criminal record.

In Korea, a male applicant must have served 3 years in the military before he can be considered for admission. But he can perform his military duty during the term of office.

B. Salary Scheme and Other Work Incentives

The salary of the correctional staff in the representative countries normally follows the salary scale standard set by the respective governments. In the case of Japan and Korea, the correctional employee who stays longer in the institution gets a higher salary.

In the Philippines and Fiji, a correctional employee receives what can be described as a "sufficient" amount of pay, good enough to maintain his daily needs.

The salary of the correctional employees of Brazil depends on the position. The director and specialists receive comparatively good salaries. On the contrary, the low-rank employees, specifically the custodial/security officers receive only meager amounts.

The correctional employee in majority of the countries receive the following benefits aside from their regular salary:

1. living allowance;
2. housing allowance;
3. hazard/risk allowance—In Korea, the correctional employees are solely given this kind of allowance. In Brazil, this type of allowance is generally the only one accorded the correctional employee;
4. bonus—In Japan, Korea and the Philippines, the employee receives yearly bonuses. However in Fiji, a bonus is given only after 5 years of service.

C. Employment of Specialists

Japan, Philippines, Korea, Brazil and Fiji employ and utilize the services of specialists. This group of workers comprises the doctors, dentists, nurses, psychologists, sociologists, social workers, educational teachers, vocational teachers, agriculturist and other experts.

The most commonly employed in the five countries are doctors, nurses, dentists, psychologists, and vocational/educational teachers. Other specialists like sociologists, social workers and agriculturists do not form part of the correctional staff in such countries as Japan, Fiji and Korea.

It is a common observation among the members that only a very *small number* of these personnel are employed, thereby limiting their services to only a minimal number of prisoners. Additionally in some countries, some specialists like psychologists function only in one specific area of correctional work, that of classification of offenders.

D. Training of the Staff

The prevailing system in the area of staff training which is existing in the representative countries provides an initial pre-service training course for new recruits. Orientation courses are likewise given, so as to acquaint the new employee with the institution's general rules, regulations and policies. It is, however, noted that the duration of the initial course differs from one country to another.

1. Japan

Two kinds of training courses are provided the correctional staff. One is called the Junior Courses which are conducted by the Branch Training Institute for Correctional Officers attached to the regional correctional headquarters. The other is the Senior Courses, which are conducted by the Training Institute for Correctional Officers at the main office in Tokyo.

The Junior Courses include:

a) Primary Course—This is a basic training and education in academic and practical subjects conducted for 220 days and is given

for newly-recruited correctional officers both in the juvenile and adult institutions.

b) Regular Secondary Course I—This course which lasts for 3 months provides a higher level of training for senior correctional officers. The trainees have passed a competitive entrance examination and are chosen from among those working in detention houses, prisons and juvenile prisons.

c) Regular Secondary Course II—This is completed in 3 months, and is given for those personnel in juvenile training schools, juvenile classification homes and women's guidance home. The participants to this course are screened by means of an entrance examination.

d) Special Courses—These courses tackle subjects on specific institutional operation and are given for less than 2 months. Correctional officers engaged in the specific type of duty are invited to attend.

The Senior Courses include:

a) Regular Advanced Course I and Regular Advanced Courses II—Both of these courses last for 6 months and embody a higher level of training and education designed for senior executives and correctional administrators. Trainees are screened by an entrance examination.

b) Advanced Special Courses—The duration is less than 3 months and is given for specific rank or group of correctional personnel to up-date knowledge on various theories and practices of correctional services.

c) Research Fellowship Courses—The fellows are selected from among correctional officers who pursue research work and studies on the theory and operational practices in the correctional service.

2. Korea

The Research and Training Institute which is an office under the Ministry of Justice takes charge of the education and training of the correctional staff.

Newly recruited junior staff have to undergo 4 to 12 weeks of training wherein they are given courses in professional education, military art and moral education. Newly-recruited senior staffs, on the other hand, undergo a training program which lasts from 16 to 22 weeks.

For officials who have not undertaken any professional training for 3 to 5 years since their appointment, the Institute conducts a three week re-training program, in order to develop and maintain skills and abilities relative to the performance of their work. All correctional officials undergo a three week professional training program.

Instructors from within the institution and from outside provide lectures on such subjects as penal administration law, the criminal procedure code, criminal psychology. Custodial/Security officials take practical military art and drills.

Additionally, selected correctional officials are given opportunities to study abroad and to conduct inspections of correctional facilities in other countries.

Also, the government provides study grants for graduate courses in correctional administration for the correctional staff.

3. Fiji

Two offices had been established to undertake the review, assessment and implementation of staff training and development within the Fiji prisons. One is the Prison Officer's Training Board which has the following membership.

Comptroller of Prisons (chairman)
A nominee of the Permanent Secretary for Home Affairs (secretary)
A nominee of the Public Service Commission (member)
The Superintendent, Headquarters and Training (member)

This body gives advice to the Comptroller of Prisons on matters pertaining to prison officers training which includes training courses, course contents, examination requirements, etc.

The other is the Staff Training Center for Prison Officers, which is the main office actually performing the staff training and development activities.

Fiji has 4 regular courses given to prison staff. These are as follows:

a) Primary Training Course—This is given to newly-recruited personnel and is a requirement for permanent appointment as a prison officer Class "C." A prison officer undergoing this training is simultaneously subjected to an on-the-job training performance and probationary requirements.

b) Subordinate Prison Officers Training Course—This is given to Class "C" prison officers who aspire for promotion to prison officers Class "A" and "B" rank.

c) Junior Officers Training Course—For Prison Officers "A" and "B" who intend to assume a junior officer rank.

d) Senior Officer Training Course—Junior officers undertake this training course to qualify for a senior officer rank.

Basic subjects which make up the curriculum include prison procedures and duties, security, law penology and management. Management topics center on the techniques of supervision and human relations.

4. Brazil

The several states of Brazil differ in the system and management of penitentiaries. Some states have training institutes for prison staff while others do not have. The majority of the states suffer from the absence of an established training institute for prison staff. Although the Brazilian government has a general law which governs penal execution, each state, on the other hand, is given a fair amount of autonomy to handle and manage the operation of its penitentiaries. Such system, therefore, which lacks uniformity in the prison management causes problems in most state penitentiaries. Many prison institutions in the various states experience a deplorable condition in prison staff management.

5. Philippines

The Bureau of Prisons has its Personnel Training School (PTS) which takes charge of the training and development of the correctional staff.

There are two types of courses given to correctional employees. These are the Regular Courses, and the Non-Regular Courses or Special Courses.

(A) Regular courses

For new employees, an orientation course is given for one week. Subjects in this course include the organizational and functional setup of the institution, prison rules and policies, rehabilitation program of the institution, personnel benefits and privileges, etc. This also includes a tour of the prison vicinity to acquaint the new employee with the officials of the Bureau and the physical plant of the institution.

After two to three months of actual work, the new personnel undertakes the other regular courses offered by the P.T.S.

There are five regular courses given by the training school. Extensive training in security and custody, prison management and techniques, social science subjects such as criminal psychology and the like are provided the correctional staff. The five courses are as follows:

a.1) Basic Custodial Procedures—given for custodial personnel only;
a.2) Correctional Administration and Treatment Course—given for both custodial, administrative personnel and for some specialists;
a.3) Science of Fingerprint—for those engaged in fingerprint work;
a.4) Leadership Course—for senior custodial personnel;
a.5) Senior Management for Penal Institution—for Supervisors and other ranking prison personnel.

(B) Non-regular courses

These are courses specifically developed to train a group of personnel who will perform particular tasks assigned by the Director of Prisons. Non-regular courses are special courses developed to meet certain needs of the institution. The following have been developed by the P.T.S.

b.1) Trainers Development Course—for middle-level supervisors who will become lecturers/teachers in the P.T.S.;
b.2) Records Management Seminar—for personnel handling and managing the official records of the institution;
b.3) New Performance Appraisal;
b.4) Seminar on the Reception and Initial Classification of Prisoners;
b.5) Anatomy of Escape.

The prisons staff is likewise given opportunities to take part in various training and seminars conducted by other organization/institutions outside the Bureau of Prison.

III. Problems Existing in Each Country

A. Recruitment

Apparently, the problem of attracting suitable applicants to fill in the positions in the correctional organization appears to be a common problem in the five representative countries. The negative image that has been attached to the offenders is seemingly being carried over to the correctional officers. Although in some countries this is not intensely felt, in other countries however, there still exists a strong resentment and distaste for correctional work. Consequently, this condition decreases the size of the labor market for the correctional institution, thereby denying the organization of a wider choice of suitable applicants. There is therefore a need to disseminate information regarding the vacancies in the correctional organization on a wider scale so as to reach as many prospective applicants as possible.

The recruitment of correctional personnel follows a general pattern in the five countries. Specific qualifications standard had been set in each country, which is followed and adhered to in selecting its applicants. However, some problems exist in the selection of applicants.

The screening of specialists/medical and administrative personnel does not pose a considerable problem to the institution, simply because these personnel constitute only a small percentage of the total correctional staff. The bulk of the correctional workers are mostly custodial/security personnel and this is the main focus of the recruitment problem. More importantly, they are the ones directly involved in the rehabilitation of offenders.

Even though a general criteria has been met, it is noted that the prospective employee is not being evaluated and assessed extensively. The applicant's integrity, professional capacity and personality make-up are not being thoroughly appraised. It must be noted that these are the most essential qualities which should undergo close scrutiny of the prison administration.

Some countries require a definite educational qualification for its applicants. However, in certain cases, personnel with low intellectual capacity and poor perceptive skills are recruited. This type of workers improve minimally, in spite of exposures to some forms of training and education. With this intellectual and personality make-up, one cannot expect an efficient and effective delivery of institutional service.

Generally, a background clearance is required from the applicant. However, this clearance which would show that an applicant has no previous criminal record could not suffice for the needed information regarding his level of integrity and personal suitability. But in some countries, this is made as the sole reference in ascertaining the aforementioned qualities. A background clearance could not provide an accurate account of how an employee would behave when subjected to manipulations and pres-

sures exerted by the prisoners. Moreover, the applicant's work attitude, motivation and basic principles in life could not be determined by this clearance alone.

It is of prime importance to assess extensively the personality make-up of a prospective employee.

B. Salary Scheme and Other Incentives

The salary of the correctional staff in the five countries follows the salary scale standard set by their respective governments. A correctional personnel normally receives a salary which is equivalent to what other government employees receive.

In some countries like Brazil and Fiji, the allowances given to correctional workers come in such amount that only a little is added to the basic pay. Needless to say that the salary of an ordinary correctional employee could not conveniently suffice for the growing needs of his family.

In Brazil, there is a wide disparity of pay scale of the specialists and senior correctional officers and the low-rank custodial/security personnel. This causes resentment and discontent among the custodial/security staff. The salary of the junior security personnel is not commensurate to the amount of work being done. It must be remembered that the custodial staff mostly the junior officers is at the baseline of the correctional work, performing the difficult task of maintaining security and rehabilitation of offenders. If we are to expect a more efficient work performance from the correctional personnel, there should be a corresponding incentive to motivate them to work and to boost their enthusiasm.

In Japan and Korea, however, a pay increase comes with the length of stay in the institution. Those who have stayed longer in the organization, get a higher salary than the others.

With regards to promotion, the system varies from one country to another. Applicants for promotion in some countries have to pass certain examinations and to fulfill definite requirements in order to qualify for higher positions. In countries like Fiji, there is a continuous mobility in the position ladder. This is due to the fact that correctional personnel have a fixed tenure of office, as stipulated in the employment contract. They work for a period of five years after which the work contract is renewed. The renewal will depend on the performance of the personnel and in his interest to continue working.

In other countries, upward movement in the career ladder will depend on the vacancies available. Most often, vacancies occur only when old employees retire. The absence of a concrete system which would provide opportunities for career advancement in the correctional organization adds up to the lowering of morale of the personnel.

C. Employment of Specialist

Rule 49 (1) of the United Nations Standard Minimum Rules for the Treatment of Offenders states,

"So far as possible, the personnel shall include a sufficient number of specialists, such as psychiatrists, psychologists, social workers, teachers and trade instructors."

Common among the representative countries, except in Korea, is the insufficient number of specialists employed in the correctional institution. By specialists, we mean the doctors, nurses, dentists psychologists, sociologists, social workers and trade/vocational instructors. Understandably, this group of people perform very specific functions and with limited area of work. This is one of the reasons why the correctional organization does not opt for a bigger number of this group of workers. For instance, a psychologist in most cases, functions only in the classification of prisoners. Such important work as guidance and counseling, group and individual therapy are not usually being performed and given due emphasis.

The psychiatrists, psychologists, social workers and teachers are sometimes not in-

cluded among the prison staff tasked to programme the rehabilitation activities for prisoners. Unfortunately, their expertise and technical know-how are not utilized to the fullest, for the benefit of the offenders. The modern practice in penal institutions in advanced countries focuses on the full utilization of experts like psychologists and sociologist in the whole rehabilitation program. They do not only function in the classification, but are also very much involved in the actual interpersonal relationship with prisoners and in the various research projects being done by the institution.

The services of specialists are quite expensive and not too many of them would want to work in a correctional institution. This is another problem which has to be faced, that of attracting these people to work in prisons.

It has also been noted by the members of Group IV that in most countries, some specialists come in conflict with custodial/security personnel. The inability of both staff to see their specific roles and definite areas of responsibilities, causes friction in the working relationship.

Ideally, specialists and security officers should establish a cooperative effort in the implementation of the rehabilitation programme. They should work together to attain the goals of the correctional institution.

D. Training of the Staff

One problem in the area of staff training which has been discussed by the group is the implementation of a pre-service training course for new employees. In some countries, pre-service training is given in a very short period of time. It therefore happens that a new employee enters the prison service with less knowledge on the basics of correctional work. Although some countries provide an on-the-job training course, the others don't have this system. Difficulty is then experienced by the new employee, who after being provided with theoretical knowledge, could not reconcile his learnings with the demands of the actual work. The adjustment process of the new recruit to the institution, to his functions and responsibilities, is then hampered to a certain degree.

It is of great necessity to subject the new employee to an extensive theoretical and on-the-job pre-service training programme if he is to assume a most challenging task of rehabilitating the offenders.

Another is the lack of a standardized training manual. Problems are encountered due to the absence of a basic framework with which to identify appropriate training objectives in consonance with the institutional goals. Such matters as the choice of training courses, methodology, training paraphernalia and other resources pose difficulties to the training staff. Without a training manual, priorities cannot be set and training courses are given using the hit and miss method. The organizational need therefore cannot be seen from a more comprehensive perspective, and training goals become vague.

The subjects in the courses have also been examined. The group agreed that there is a need to include more behavioural social science subjects in the training curriculum for custodial/security personnel. However, the method of teaching these subjects should incline to a more practical approach, which can be readily applied in the actual prison situation.

The lack of an adequate number of good trainers and instructors to implement the training program have likewise been pointed out as a problem. The success of a training course depends on how well the subjects had been effectively imparted by the trainers to the trainees. In some countries, lecturers from within the institution are called in to teach in the training institute. These lecturers often lack the skills in teaching and are unable to elucidate on the assigned subject matter. This produces a considerable strain on the part of the learner, who has to undergo a strenuous training schedule and yet gain nothing from an ineffective teacher/instructor. Ultimately, no learning takes

place and the time and resources spent in the program are wasted.

Also the group brought up the importance of international training exchange and cooperation to enable correctional officers to compare existing conditions in various countries and learn from each other's experiences in the area of correctional work.

IV. Suggested Solutions

Having discussed the pressing problems in the area of staff training and development, the group tackled the most appropriate solutions that could be adapted and implemented. It must be noted that the suggested solutions are not perceived to be the best remedy to the difficulties encountered in correctional administrations. The proposed solutions should be seen in the light of each country's political, social and economic realities. It is however the goal of the group to provide a starting ground to enable the correctional administrators in various countries to devise practical solutions to the problems, which suit the local condition.

A. Recruitment

1. To attract a bigger number of suitable applicants, vacancies should be published in various government publications and if possible, in academic institutions. This practice is being done currently in Fiji. The system will create a bigger labor market for the correctional institution and consequently a wider choice of suitable applicants.

It is also necessary to inform the public of the activities of the prisons, its goals and importance in the society. This will help minimize, if not erase the negative impression that has been attached to correctional institutions. In relation to the recruitment problem, the scheme can help in attracting people to work in the prison establishment.

2. In-depth interview of applicants is considered an indispensable tool in screening and selecting would-be employees. A Screening Board can perform this procedure. The Board should be composed of experienced ranking prison officers, specialists (i.e. psychologist) and personnel administrators, who possess the skill in assessing an individual's capability. The members of the Screening Board can evaluate readily the applicant's integrity, professional capacity and personal suitability, by means of the question and answer technique. The spontaneity of the applicant's response and his unconstrained reactions during the interview can provide essential information about his capacities and personality make-up. Additionally, certain appraisals can be made to predict how he will behave in an unlikely situation, when he is subjected to pressures by the prisoners. The information taken from the interview, the test results, and the background clearance, can help the prison administration assess extensively and objectively, the applicant's level of integrity, professional capacity and personal suitability.

3. Although the group believes that there should be no definite educational qualifications for an applicant, it was however pointed out that an applicant should possess an adequate level of intelligence to enable him to fully grasp, vital information from preservice and inservice training and from actual experience in prison work.

As Rule 47 (1) of the UN Standard Minimum Rules says, "The Personnel shall possess an *adequate standard* of *education* and *intelligence.*"

It is also necessary that the prison personnel should have keen perceptive skills and a rational disposition, because he will be dealing with offenders who can manipulate and influence him to a large extent. Knowledge, skills and the right attitude in dealing with problem people like the offenders, are a must for a correctional officer.

B. Salary Scheme and Other Work Incentives

1. To attract and retain suitable employees it is necessary to provide an attractive salary scheme and a reasonable benefit package. Correctional work is an arduous job, and

a prison personnel is from time to time subjected to the difficult task of maintaining security and implementing the rehabilitation program for the offenders. There is a need to provide incentives to motivate him to perform efficiently and to boost his morale and enthusiasm for work.

As contained in the Rule 46 (3) of the UN Standard Minimum Rules,"...Salaries should be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work."

Since this is a financial matter which has to be dealt with in the light of the country's economic condition, then it is the prime responsibility of the heads of the department or ministries concerned with correctional work to plan an adequate and sufficient salary and benefit package for prison personnel. If possible, efforts should be directed to:

a) allocate resources for the regular pay increase of all correctional personnel;
b) diminish or check the wide disparity of pay scale between senior/ranking prison officials and junior officers, so as to avoid discontent and apathy among the prison staff.

Also, the giving of awards and scholarship in recognition of an employee's achievements in the service can be used as an incentive to uplift morale and heighten zealousness in the performance of job.

2. Another point which has to be considered is the promotion of correctional personnel. The Prison Management should establish a career plan which will afford opportunities for professional advancement in the prison service. Both long range and short range programs should be drawn which will carefully structure the career path of the correctional staff, and allow for an expedient upward mobility in the career ladder.

C. Employment of Specialists/Medical Personnel

1. The services of specialists/medical personnel are essentially needed in a correctional institution. Some experts like psychiatrists, psychologists, sociologists, social workers, teachers and trade instructors should perform an active role in the rehabilitation program of the institution.

As in many countries, recruitment of these specialists poses a difficulty since they demand a higher pay and a more convenient working condition in exchange for their expertise. Confronted with this problem, the group presented two solutions.

First, vacancies for such position should be posted in colleges and universities, so as to attract a considerable number of newly graduated applicants to fill in vacancies.

Second, to forge ties or links with educational institutions, so as to get the services of specialists from the academe. In consonance with the agreement, the new graduates can be required to render services to the correctional institution for a certain period of time, as part of their practical learning experience. The prison institution and the specialists will mutually benefit from the arrangement.

2. The range of work of such experts as psychologists should not be confined to one specific area. Apparently, the full professional expertise of some specialists are not being utilized sufficiently.

Psychologists, sociologists and social workers can also be utilized in the following work areas:

a. Guidance and counseling;
b. Group and individual therapy;
c. Research and feasibility studies;
d. Facilitating tie-ups or links with the community; (i.e. civic and religious groups)
e. Designing work program/educational activities for inmates.

One of the most important functions of a psychologist is to provide information and theoretical knowledge to custodial/security staff, which will help them in assessing and

evaluating the offender's behavior. Better understanding will ultimately result in better handling of the offenders.
3. Efforts should be exerted to establish a harmonious working relationship between the specialist and the security personnel. Cooperation should be cultivated between the two and they should be made to realize the relationship of their functions in the institution.

D. Training of the Staff

The training of the correctional staff should be aimed towards the attainment of the following goals:

1. The provision of adequate information about a trainee's general and specific duties and responsibilities as a correctional officer;
2. The inculcation in the mind of the trainee the importance of his task, and the loftiness of the social service which he is undertaking;
3. The development of discipline, the right work attitude and conscientiousness in the performance of assigned tasks;
4. The preparation of a personnel for higher position and responsibility and the development of awareness and appropriate responses to the changing demands of the prison service.

In the course of the discussion of the problems, the group presented the following solutions.

First, the pre-service training course should be given for an adequate period of time, which would allow ample opportunity for the trainee to grasp the theoretical aspect of the curriculum and at the same time experience the actual work in the field. This calls for an on-the-job training program, accompanied by regular evaluation of the learning gains through practical tests. This procedure will enable the new recruit to reconcile theoretical knowledge with practical experience.

New personnel should be taught the basic information about the organization, the institutional policies and procedures, the manner of handling the offender and specific duties he will perform after his training course.

Second, the training institutes of the correctional establishments should have a standard training manual which would embody the institution's goals and missions.

It should likewise outline the various courses, prescribed for specific levels of employees and present methodologies and resources which should be made available in the implementation of the program. The training manual must clearly define the training objective which have to be met and at the same time provide a framework for the training staff to plan and design future programs which would cater to the growing needs of the institution.

Third, the group also suggested that behavioral social science subjects should be included in the training curriculum for custodial/security staff. The security personnel should not only be equipped with the skills in maintaining discipline and security requirements. They should also be familiar with the fundamental concepts of understanding human behavior, more specifically criminal behavior. The scientific knowledge that can be gained from these subjects can help the security personnel to objectively assess, evaluate, predict and ultimately control the offender's behavior.

Additionally, subjects which would tackle management techniques and public service ethics should also be included in the curriculum.

Fourth, the group acknowledges the importance of the trainers/teachers in the training program. As far as resources would permit, the training institutes should utilize the services of a considerable number of teachers/lecturers who can effectively teach the trainees. The instructors must have full knowledge in the various methodologies of teaching, in the presentation of the course

content and in the maintenance of a conducive atmosphere for the learning process. Since it is the practice in most countries to get the services of lecturers from within the institution, then these lecturers have to undergo trainers development courses first before they should be allowed to teach in the training institute.

Fifth, there is a recognized need for international training exchange and cooperation. This will enable correctional officers to see and compare existing conditions in other countries relative to penal administration. Modern correctional models and advanced prison management systems currently being applied in some countries can be observed and can provide substantive grounds for comparison with one's own system. Training of prison officers in other countries also allows for an exchange in experiences, ideas, theories and concepts in the use of advanced technological equipments in the management of correctional institutions.

Hopefully, modern and reliable models of prison management which suit the local condition will find adoption in one's country.

Attendance to international conferences, regional meetings and seminars can also widen one's practical and intellectual knowledge in the field of correctional management.

V. Other Related Issues regarding the Improvement of Corrections Administration

A. Protection of the Prisoner's Human Rights

Generally, in all countries, the constitutional law provides for the protection of human rights. In many penal institutions, there is also a growing consciousness to uphold the basic rights of an offender. However, it has been noted that the manner of interpretation of the law differs from one place to another. Understandably, the political and social situations of the country concerned, has to be taken into account.

For example, in some countries, conjugal visit is allowed, while in others this is not considered as the right of the offender and is therefore not permitted. Censorship of mail, without legitimate reasons, is generally viewed as an infringement of human rights. In many correctional establishments, this is performed in fulfillment of the security requirement of the institution. The group believes in respecting of the basic rights of an offender. This practice should be strictly regulated and should only be done under specified conditions.

The group unanimously agreed that the basic human rights of an offender should be protected by all means, but at the same time, the enforcement of the operating policies of the institution should not be undermined. It is the primary duty of the prison administration to see to it that the prisoner's basic rights are respected, concomitant with the observance of the prison rules and regulations.

B. Effectiveness of Institutional Correctional Treatment

From the discussion, the group concluded that it is not easy to measure or determine the effectiveness of the institutional rehabilitation program. This is so because, we are dealing with human beings, who are constantly changing and responding to the various environmental influence.

Although the rate of recidivism is used as a yardstick to determine to some extent the success of the institutional treatment, one however cannot make a conclusive opinion in this regard.

There are many factors which can affect the behavior of an offender. At the correctional institution, he is influenced by the attitude of the prison officers and by the rehabilitation programs and activities. When he is released, the family condition, employment opportunities and community assistance are just some of the things which can exert considerable influence upon the offender.

Inside the prisons, the institution is tasked to do everything within its means to provide

a wholesome treatment plan for the offender. A well-trained and an effectively managed correctional staff is considered as the moving force in the pursuit of the rehabilitation goals for the offender.

Outside the institution, the community-based treatment is viewed as an effective instrument to rehabilitate the offender. But it is believed that this will be applicable only to certain types of offenders (i.e. first offenders). Hardened criminals and repeat offenders will not benefit from this type of program. It is also necessary that the government provides support in the implementation of this endeavor in much the same way that the community's full assistance should be solicited.

Conclusion

The correctional institution performs the very important function of rehabilitating offenders. A most difficult task of influencing a prisoner to change, is laid on the shoulder of the prison personnel. In this regard, the prison management should provide the necessary preparation and assistance to the correctional staff to enable them to effectively perform their exacting work.

Staff training and development must occupy a priority status in the management objectives of the institution. This can be realized concretely by exposing the correctional personnel to a well-conceived and a carefully planned training programme. The prison staff must be well-acquainted with their specific duties and functions, and with the role they will play in the pursuit of the over-all organizational goals. Competence in fulfilling the security requirements of the institution, and skill in understanding and handling the offender, are a must for the correctional personnel, especially for the custodial staff.

Of equal necessity is the provision of a reasonable compensation package and other incentives, to fully motivate the personnel and enhance enthusiasm for work.

These were the salient points discussed by Group Four in the workshop sessions. Additionally, two issues were tackled by the members. One was the effectiveness of institutionalized treatment. In this connection, the group stated that there can be no definite instrument to accurately measure the effectiveness of this system, because the offender is a dynamic being who is constantly changing and is subjected to multiple factors in the environment. Also, the group stresses the importance of exploring the merits of community-based treatment, as a form of rehabilitative tools, as this scheme has gained considerable success in some countries.

Lastly Group Four expresses its conviction that the basic human rights of an offender should be respected and upheld, and that it should be a primary concern of all those working in the correctional institution.

PART III

Material Produced during Other UNAFEI Activities

Report of the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region

I. Organization of the Meeting

A. Background

1. General Assembly resolution 40/35 on the development of standards for the prevention of juvenile delinquency calls on the regional commissions and the United Nations regional institutes for the prevention of crime and the treatment of offenders to establish joint programmes in the field of juvenile justice and the prevention of juvenile delinquency. In particular, that resolution requests the regional commissions and regional institutes to devote special attention to: (a) studying the situation of juveniles at social risk and examining the relevant policies and practices of prevention within the context of socio-economic development and (b) intensifying efforts in training, research and advisory services for the prevention of juvenile delinquency.

2. In pursuance of the above directive, the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region was jointly organized by the Economic and Social Commission for Asia and the Pacific (ESCAP) and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) in co-operation with the Government of Japan. The Meeting was held at UNAFEI Headquarters, Fuchu, Tokyo, from 3 to 10 August 1989

3. The objective of the Meeting was to provide a forum for social development and criminal justice experts to discuss the following issues concerning adolescence and crime prevention in the ESCAP region: patterns of juvenile offence; effects of the social environment on juvenile offence; and juvenile justice administration. On the basis of its discussion of the foregoing issues, the Meeting was expected to formulate recommendations on the prevention of juvenile offence and the treatment of juvenile offenders. The Meeting was also intended to provide a regional contribution to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held at Havana in 1990, especially with regard to topic 4 of the Congress, namely "The prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions."

B. Attendance

4. The Meeting was attended by 21 experts from the following ESCAP members and associate members: Bangladesh, Fiji, Hong Kong, India, Japan, Malaysia, Nepal, Papua New Guinea, Philippines, Republic of Korea, Singapore, Sri Lanka and Thailand.

C. Opening of the Meeting

5. The Meeting was opened by the Honourable Mr. Yasutaka Okamura, Vice-Minister of Justice of Japan. In his inaugural address, the Vice-Minister stated that the nurture of youth, prevention of juvenile crime and delinquency, and strengthening of the juvenile justice system were important policy objectives of Governments throughout the Asian and Pacific region. He pointed to various socio-economic trends occurring in the region, such as the increase in the number of youth, the concentration of population in the urban areas and rapid industrialization. These trends had resulted in the breakdown

of the traditional family system as well as the weakening of community support systems. All these phenomena had contributed to increasing the incidence of juvenile crime and delinquency in the region. In closing, the Vice-Minister pointed to the need for the formulation and implementation of comprehensive programmes for the prevention of juvenile crime and for the nurture of young people.

6. The Executive Secretary of ESCAP, in his message to the Meeting, stated that the Asian and Pacific region over the last two decades had witnessed a pernicious increase in the incidence and gravity of youth crime and delinquency. Statistically, young people now constituted the most criminally active portion of the population. He noted that particularly alarming trends in the region were a discernible rise in the number of violent crimes committed by young people, an increase in drug-related crimes, a marked rise in female juvenile crime and delinquency, and an increasing incidence of youth crime in the urban environment.

7. The Executive Secretary emphasized that the prevalence of youth crime was to a large degree symptomatic of the socio-economic deprivation of young people in the ESCAP region. Lack of economic, social and political prospects was, in fact, the key factor attributable to the rising incidence of youth criminal offences. Destitution, inadequate housing, malnutrition, illiteracy and poor quality of education, unemployment and under-employment were manifestations of the marginalization of young people in many countries of the region. Those conditions had increased the likelihood of young people becoming victims of exploitation or of becoming involved in criminal and other deviant behaviour. Unless vigorous action were taken to ameliorate those socio-economic conditions, the current trend towards increased youth crime and deviance would continue in the Asian and Pacific region.

8. The Executive Secretary expressed gratitude to the Government of Japan for generously financing the Meeting. He also thanked UNAFEI for its excellent substantive and organizational support towards the convening of the Meeting.

9. The Director-General of the United Nations Bureau of the Ministry of Foreign Affairs of Japan, Mr. Minoru Endo, in his congratulatory address, expressed appreciation of the close collaboration between ESCAP and UNAFEI in promoting criminal justice and the prevention of crime in Asia and the Pacific. In his view, the prevention of juvenile delinquency was the most challenging issue being faced in that field. He therefore called on the Meeting to contribute to the innovation of correctional and rehabilitation programmes for young offenders to strengthen criminal justice administration and related policies affecting youth.

10. The Chairman of the United Nations Committee on Crime Prevention and Control, Mr. Minoru Shikita, in his congratulatory address, stated that the prevention of adolescent crime and delinquency had long been and would continue to be a major item of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Committee on Crime Prevention and Control, as the preparatory body for the Congresses, therefore welcomed the convening of the Meeting. He pointed out that the Committee had high expectations for the Meeting in view of its unique composition of experts from both the social development and criminal justice sectors. He expressed the hope that the outcome of the Meeting would constitute an important regional input to the forthcoming Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

11. The Director of UNAFEI, Mr. Hiroyasu Sugihara, in his welcoming address, remarked on the relatively low rate of criminality in Japan. He pointed out, however, that over 50 percent of all penal offences had been committed by those under 24 years of age. That pattern reflected a direct correla-

tion between juvenile delinquency and criminality in the context of industrialization and urbanization. There was a need to examine changes in family systems, the social roles of communities, and the quality of education and residential environments in terms of their impact on the character formation of young people. Noting the expertise of the participants in fields ranging from social development to law enforcement and urban development planning, he urged the Meeting to adopt an integrated approach in the formulation of prevention and rehabilitation measures concerning delinquency among adolescents.

12. The Chief of the Social Development Division of ESCAP, in his keynote address, emphasized that youth crime and juvenile delinquency constituted a serious and growing problem in developing countries throughout the ESCAP region. With that reality in mind, the task of the Meeting was to formulate practical recommendations for government and community-based action concerning both prevention and rehabilitation. Those recommendations would also serve to guide ESCAP and UNAFEI in their future work.

13. He focused on three major practical ends to which the Meeting should turn its attention. The first was the need to prepare a useful regional input to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, especially with regard to the expected discussion at that Congress concerning policies for delinquency prevention, juvenile justice and the protection of the young. The report of the Meeting could serve that purpose.

14. Second, he referred to the importance of the report of the Meeting as an input to the preparation by ESCAP of a regional social development strategy, which would be considered for adoption at the Fourth Ministerial Conference on Social Welfare and Social Development to be convened at Manila in November 1991. The Meeting was considered a particularly important preparatory activity for that Conference as it provided an opportunity to view social issues concerned with youth and crime from an interdisciplinary and multisectoral perspective.

15. Third, the Meeting could mark a major forward step in co-operation and collaboration between ESCAP and UNAFEI by providing recommendations concerning priority areas for regional support to national efforts for the prevention of juvenile delinquency and the rehabilitation of delinquents. It was observed that the complementarities between the respective strengths of ESCAP and UNAFEI provided a valuable opportunity for the Meeting to consider further joint activities as follow-up to the present Meeting.

16. In closing, the Division chief thanked UNAFEI for its excellent substantive and organizational support towards the convening of the present Meeting and expressed his hope that the outcome of the Meeting would provide a useful basis for policy makers in the ESCAP region to strengthen measures for the prevention of juvenile crime and delinquency.

D. Election of Officers

17. The Meeting elected Ms. Corazon Alma G. de Leon (Philippines), Chairman; Ms. Lalani Serasinghe Perera (Sri Lanka), Vice-Chairman, and Mr. Mohd. Ali Abu Bakar (Malaysia), Rapporteur.

E. Adoption of the Agenda

18. The Meeting adopted the following agenda:

1. Opening of the Meeting.
2. Election of officers.
3. Adoption of the agenda.
4. Patterns of juvenile offence.
5. Effects of the social environment on juvenile offence.
6. Juvenile justice administration.
7. Formulation of recommendations.
8. Adoption of the report.

II. Patterns of Juvenile Offence

19. The Meeting had before it document SD/EGM/ACP/1 entitled "Patterns of juvenile offence" prepared by Mr. Kunihiro Horiuchi of UNAFEI. In his presentation of the document, Mr. Horiuchi focused on types of juveniles and types of offences. In relation to delinquency, the presentation categorized juveniles as neglected, pre-delinquent and delinquent.

20. The presentation noted that street youth were often considered to be neglected in that they lacked proper support and guidance from their parents, families and communities. The problems associated with that group of juveniles were becoming increasingly serious in some countries in the ESCAP region. Pre-delinquent juveniles were those juveniles who showed strong tendencies toward committing offences, although they had not committed any. Delinquent juveniles were those who were over the minimum age of criminal responsibility and had committed offences.

21. It was pointed out that there were numerous intercountry differences in the legal definition of the juvenile age span, and in the minimum age of criminal responsibility. While some countries had no legal definition of minimum juvenile age or of the minimum age of criminal responsibility, in many countries the minimum age ranged from 7 to 14 years. The age threshold from juvenile to adult, on the other hand, ranged in many countries from 15 to 21 years.

22. There were also wide intercountry variations in the extent to which the treatment of juvenile offenders differed from that of adult offenders. Neglected young people and pre-delinquent juveniles were in some countries made the wards of welfare departments. In other countries, they were treated under the procedures of the criminal justice administration for juveniles.

23. Concerning types of offences the presentation noted that in Japan the most notable emerging trends in the pattern of juvenile offences were a rapid increase in drug-related crimes, a marked rise in female juvenile crime and delinquency, and an increase in crimes relating to automobile use. Among junior high school students, shoplifting was becoming a problem.

24. Perceptions of juvenile delinquency and crime were considered to be strongly influenced by the official statistics. Those statistics, in turn, were gathered in keeping with the norms of social behaviour as reflected in the law, the courts, the police, and the probation and correctional services. Discrepancies between the actual occurrence and reporting of offences were thus not easily detected, resulting in inaccuracies in the statistical reporting of patterns of juvenile offence. The presentation stressed the importance of discussing patterns of juvenile delinquency based on both the official statistics and practical experience.

25. In the discussion following the presentation, the Meeting noted the diverse trends in the rate of juvenile offences obtaining in the Asian and Pacific region. In consonance with earlier population increases, many countries of the region had reported an upward trend in juvenile offences. However, in some countries or areas, particularly Japan, the Republic of Korea and Thailand, that trend had reversed, while in others, such as Hong Kong, India and Sri Lanka, the general trend was reported to be relatively stable. Whether the perception of increase in other countries was associated with more effective enforcement of the juvenile laws or whether it reflected a real rise in the occurrence of juvenile delinquency remained unclear. The perception of increase or decrease of juvenile offence depended, *inter alia*, on the length of the period for measurement and reflected changes in reporting behaviour, the sophistication and vigilance of surveillance methods and the availability of outlets for expressing deviant behaviour. The age from which a juvenile was considered legally responsible for his/her behaviour, and the age up to which he/she was considered eligi-

ble for a differential approach, was a country-specific issue. The experts viewed that aspect as an important variable in the trends in juvenile offence in the region.

26. Concerning gender differences, the experts noted that in Hong Kong, Malaysia, Nepal, Papua New Guinea, the Republic of Korea and Singapore, juvenile offenders were predominantly male. Although offences by female juveniles were far less than those by male juveniles, the rate of increase of offences by females in many countries outpaced that for males. However, in the Republic of Korea, the rate of decrease of offences by juvenile females had been in the range of 30 percent over the past decade while male juvenile offences had increased by 30 percent in the same period. A common form of female juvenile offence in Hong Kong and Singapore was shoplifting. There was a low gender ratio for dangerous drug offences in Hong Kong, while a marked drop in female admissions to drug abuse rehabilitation centres had been reported in the Philippines.

27. Among the developing countries of the region, such as Bangladesh, Malaysia, the Republic of Korea and Sri Lanka, juvenile offence was observed to be largely an urban phenomenon. The same was true of Japan. Little information was available on its incidence in rural areas.

28. In reviewing socio-economic aspects of juvenile offence patterns in the region, the Meeting noted that, in most instances, the majority of juveniles who came into conflict with the law were from the low-income groups of urban areas. Attention was also drawn to a new phenomenon which correlated with affluence, i.e. a noteworthy increase of offences by juveniles from intact middle-class families with no apparent financial difficulty. Japan was cited as a country in which that phenomenon obtained. The experts remarked on the emergence of a similar pattern in some developing countries. Bangladesh, Malaysia and Nepal, where the majority of drug abusers were currently from middle- and upper-middle-class families, exemplified that trend.

29. Experts from Japan, the most affluent society in the region, described a new form of juvenile offence termed "play-type offence." Unlike conventional juvenile offences, no deep-rooted motivation could be ascertained for the commission of "play-type offences" except, perhaps, boredom and the search for "fun." Play-type offences ranged from shoplifting and solvent abuse (i.e., "glue-sniffing") to assault, murder and rape. The emergence of violent play-type offences in Japan was of particular concern given that, overall, juvenile offences in Japan were seen to be decreasing. It was pointed out that although the incidence of violent play-type offences was low, they were sensationalized in the mass media. The Meeting compared the patterns reported for Japan and the Republic of Korea. In contrast to the Korean pattern emphasizing physical injury, larceny and embezzlement were predominant forms of juvenile offence in Japan, with assault and bodily injury being no more than around 6 percent of offences. Both East Asian countries had registered an increase in traffic violations by juveniles and other forms of juvenile offence involving vehicles, such as "hot rodder" activities and motorcycle gangsterism.

30. Shoplifting was seen to be a prevalent form of juvenile offence in Fiji, Hong Kong, Japan and Singapore. In contrast, in Nepal and Sri Lanka, in the relative absence of department stores and larger shops, housebreaking, burglary and theft were more common. Theft was also reported to be the most common form of juvenile offence in India, the Philippines and Thailand.

31. The commission of offences, mainly theft and robbery, to support drug abuse habits was reported to be a characteristic feature in Bangladesh, Hong Kong, Malaysia and Nepal. It was observed that the employment of young persons from low-income groups by organized drug trafficking networks obtained in Hong Kong, Nepal and Sri Lanka,

where young drug addicts financed their habit by drug peddling. The experts noted that alcohol and narcotics use were integral aspects of the traditional culture of some ethnic groups in Nepal, and their abuse had earlier been virtually unknown. Such abuse had, however, since the mid-1970s become an alarming feature of juvenile offence in Nepal. Another expert stated that juvenile admissions to drug abuse rehabilitation centres in the Philippines had dropped steadily since 1983 and had increased slightly in 1987. The experts considered the involvement of increasingly younger age groups in drug-related crimes as a serious problem in Bangladesh, Hong Kong and Malaysia. The observation was also made that a low incidence of juvenile drug abuse obtained in Fiji and in the Republic of Korea; in the latter country there was also a very low incidence of alcohol abuse among juveniles.

32. The experts noted that some countries had reported an increase of violent crime involving young persons. Within the context of a relatively stable overall pattern of juvenile delinquency in Sri Lanka, organized violent crime was observed to be an emerging trend, reflective of the current situation in that country. A rapid rise in heinous crimes in the Republic of Korea was observed for the period from 1978 to 1981, but this had subsided by 1985. Overall, assault and battery made up approximately 40 to 50 percent of juvenile offences in the Republic of Korea. Violent crime involving young persons in Papua New Guinea took on a combination of offences, including abuse of alcohol, theft of vehicle and/or firearm, and armed robbery, often compounded by rape and murder. Those groups which engaged in hooliganism and vandalism in Papua New Guinea were termed "rascal gangs." They were predominantly an urban phenomenon and were composed mainly of unemployed migrants from the rural areas.

33. The participants noted that neglected young people covered by juvenile laws in various countries constituted specific categories of such young people. Those young people were often exploited for economic gain by adults, through such means as pornographic activities, sexual abuse, cheap labour in service and manufacturing sectors, begging and drug peddling. It was reported that in most countries of the region, neglected young people were dealt with separately from juvenile delinquents, through the intervention of community-based social welfare agencies.

34. Further, the participants recognized that street youth *per se* could not be considered synonymous with neglected youth under juvenile laws, as many of them led self-reliant, productive and law-abiding lives. It was emphasized that such young people also needed social support for their development.

III. Effects of the Social Environment on Juvenile Offence

35. The Meeting considered document SD/EGM/ACP/2 entitled "Effects of the social environment on juvenile offence" prepared by Mr. Hira Singh. Mr. Singh, in his presentation of the document, emphasized that consideration of the social environment was intrinsic to the study of juvenile delinquency as a behavioural phenomenon. He noted that the concept of juvenile delinquency varied among the countries of Asia and the Pacific and had changed over time. Though no single theoretical framework explained fully the genesis of delinquent behaviour, the definition and perception of, and societal responses to juvenile criminality were guided by complex processes inherent in the social environment of each country at a given point in time. Nevertheless, research on juvenile delinquency in different countries had established that, among other factors, a definite correlation existed between delinquent behaviour and family background, parental socio-economic status and education level, housing conditions, and the nature of peer group contact of the juveniles concerned.

36. The presentation stressed that industrialization processes had a direct bearing on rising rates of juvenile offence in many countries, particularly when the support functions of traditional social institutions had been disrupted without their replacement with adequate alternative systems. The heterogeneity, sense of flux and anonymity which characterized the urban social environment generated a climate that people from traditionally supportive and more structured social milieux found difficult to cope with. In developing countries, the large-scale migration of dispossessed persons from villages to cities, mainly in search of gainful employment, had led to large numbers struggling on the urban periphery. A new situation of social marginality had thus emerged in which the poor and the disadvantaged, including the juveniles among them, suffered various kinds of deprivation in the presence of urban abundance. Such socio-economic disparities in the face of limited legal employment opportunities predisposed the young to break the law in their struggle for survival.

37. Recognizing the growing sense of alienation, frustration and unrest among young people in many countries of the region, the presentation observed that while the gross national product and per capita income might statistically increase with industrial growth, such figures could not be simplistically equated with improvements in the quality of life of the general population. The presentation urged that early action should be taken to ensure equitable distribution of development benefits in order to pre-empt the serious consequences of a hiatus between rising aspirations and the limited means available for their fulfilment. The search for means of directing industrialization and technological progress towards the creation of social environments in which socio-economic justice prevailed and oppression, frustration and conflict were minimized was an issue of particular relevance to contemporary youth.

38. Concerning current trends in and dimensions of juvenile crime, it was noted that the situation was considered serious in many parts of the world. There were considerable lacunae of knowledge in this area. Although youth crime still constituted only a fraction of total criminality in most ESCAP countries, the emergence of its more volitional forms, such as violence, drug abuse, assault, robbery and sex-related crimes was alarming. The association between drug abuse and crime among youth was a matter of grave concern in several countries. Among the various social factors affecting juvenile crime, the availability of opportunity was central to the whole issue. The marginalization of juveniles in several countries had rendered them increasingly vulnerable to abuse and to their eventual induction into criminogenic subcultures. In many countries, denial of opportunities for the balanced development of the young, lack of social support and care facilities and declining employment prospects against the background of poverty, deprivation and backwardness, were among the other major factors affecting juvenile crime.

39. It was observed that the nature and pace of urban life exposed juveniles to a variety of pressures outside the home. While many interpersonal relationships outside the home might be useful in meeting the emotional and other needs of young people, there was also a danger that they could be victimized by organized criminal syndicates and used to perpetuate criminal activities, such as illicit trafficking in drugs and illegal political activities. A higher crime rate among minorities, such as foreign migrants and ethnic or religious groups, could also be related to various kinds of socio-cultural and economic disadvantages that such groups were particularly subjected to.

40. Many countries had formulated comprehensive social policies to deal with fundamental issues affecting juveniles, particularly social conditions conducive to juvenile deviance. Although the social attitude towards juvenile misbehaviour in most developing countries was one of tolerance, no society regarded delinquency as entirely

value-free. The resultant dilemma was addressed by a combination of criminal justice and social welfare procedures and activities. However, there was growing awareness that socio-economic development should be more carefully directed so as to enable the young to participate fully in and to contribute effectively to the advancement of society. In this connection, efforts were being undertaken in many countries to strengthen the functions of the family, the school, the community and other social mechanisms to help stabilize the social environment.

41. It was further stated that contemporary changes in the social environment in various countries had focused special attention on the role of the state in the design of juvenile justice policies, programmes and practices. In countries where rapid socio-economic change had led to a deterioration in the support and guidance provided to youth by the family and the community, the state would have to take on the role of surrogate parent.

42. Emphasizing that no formal system, however competent, could by itself remove the anomalies that existed in the wider social system, the presentation urged that strategies for delinquency prevention should extend beyond juvenile justice operations and be built into various sectors of development within the comprehensive framework of social policy. Such a social policy framework, it was suggested, should be based on: (a) social reconstruction through planned development, with an accent on the welfare of juveniles; (b) social reinforcement of such basic institutions of society as were directly concerned with the care, nurture and development of juveniles; and (c) social reintegration of socially deviant and at-risk juveniles through an enlightened system of juvenile justice.

43. In its discussion of the issues raised by the presentation, the Meeting considered the effects of rapid socio-economic change on juvenile crime in the Asian and Pacific region. The Meeting was of the view that certain socio-economic phenomena accompanying development were common precipitating factors in the rising incidence and increasing severity of juvenile crime and delinquency. These included rapid population growth, industrialization, urbanization, youth unemployment and underemployment, breakdown of the family unit, erosion of traditional values and internationalization of behaviour patterns, growing influence of the mass media, weakening of community support systems, inadequate provision of social services and inability of the education system to respond to new challenges in the socialization of young people.

44. The Meeting noted with concern that industrialization and modernization processes in countries of the region were subjecting the family to pressures that affected its traditional functions. It recognized that those processes had eroded the role of the family as an agent for imparting moral values and providing guidance on socially acceptable behaviour as well as in extending social services to its members. The Meeting pointed to the fact that young people who had been deprived of appropriate family support had become more vulnerable to induction into criminogenic culture. The Meeting, therefore, emphasized the need for national polices to support the capacity of the family to undertake its functions as a cohesive unit in society and at the same time called for programmes aimed at strengthening parental skills.

45. The Meeting noted that many traditional functions of the family in the socialization of young people had implicitly been transferred to education institutions. It observed that, in many countries, the formal education apparatus was ill prepared to assume those responsibilities on a full-scale basis. In that connection, one participant pointed to the correlation between the quality of education and the school drop-out rate. It was further mentioned that, in one country, juvenile offenders tended to have low levels of social skills and limited verbal ability. The Meeting also observed that the current informa-

tion boom, in the highly competitive context of many education systems in the region, overburdened both teachers and students with information and rote learning. Consequently, teachers were unable to fulfil their responsibilities adequately as advisors on ethical issues and to serve as behavioural role models. At the same time, students tended to view teachers as mere information technicians, and not as advisors and role models to be respected. Further, overworked or inadequately prepared teachers sometimes viewed young people with learning difficulties as disciplinary problems, neglecting to consider their social background and intellectual potential. This kind of approach further undermined those young people's ability to overcome their difficulties and even pushed them in the direction of delinquency by increasing their alienation and frustration. The Meeting, therefore, called for measures to enhance the quality of the education system, and in particular the teaching profession, to render it more responsive to the needs of young people.

46. The Meeting discussed the experience of the more developed countries of the region concerning the effects on students of excessive pressures imposed by highly competitive education systems. The primary focus on academic achievement in those countries, at the expense of balanced social development, was considered to have contributed to a growing sense of alienation among young people, particularly the large numbers who could not succeed in those systems. Experts from those countries were of the view that the rigidity of such education systems exacerbated school drop-out rates. The Meeting, therefore, underscored the need to restructure the education systems in those countries to accommodate the learning needs of all young people and attach priority to their balanced development.

47. Emphasis was placed on the increasingly negative influence of the mass media on behaviour patterns among young people. The glorification of crime and the sensationalization of instances of violent and destructive behaviour were seen to stimulate juvenile crime and delinquency. The popularization of culturally inappropriate role models and indifference to ethical issues perpetrated through commercial films had effects on young people which were particularly insidious in the vacuum created by inadequate socialization processes. The Meeting observed that the pressures of modern urban lifestyles rendered it increasingly difficult for both mothers and fathers to give due attention to building good relationships with their children. Television was a poor but common substitute for parental involvement with children. Consequently, television programmes served as a major input in the socialization of young people.

48. The Meeting also pointed to the strong tendency in the mass media, particularly television, to stress entertainment over education in programming. Recognizing the potential beneficial role of the mass media in guiding young people to be law-abiding citizens, the Meeting called for measures to revise the orientation of the mass media to assume a more responsible civic role.

49. Several experts from the more developed ESCAP countries referred to the so-called "boredom" or "fun" factor as a cause of juvenile crime and delinquency associated with affluence. Experts from various developing countries also noted similar patterns of behaviour among affluent young people in their societies. The frequent absence of parents and other adult family members, both physically and in a psychologically sense, meant that many young people in the urban milieu experienced an unprecedented degree of freedom from responsible adult care and guidance. Further, the weakening of community ties in the urban milieu meant that neighbours no longer extended mutual support in the care of young persons. In that situation, young persons often could not develop a sense of belonging to family and community. Many had, therefore, taken to the streets in search of companionship.

Moreover, those young people who faced difficulties at home and school were particularly susceptible to negative peer group influence which, in turn, increased the likelihood of their being trapped in criminogenic sub-cultures. The Meeting called for systematic efforts to create more avenues for positive peer group interaction among young people. It was suggested that information/counselling centres in locations frequented by young people (e.g., shopping complexes) should be established; recreational facilities should be provided in slum areas; and holiday camps, group excursions and socially constructive activities should be organized to involve large numbers of young people. The participants also underlined the need to create more opportunities for young people to play an active role in improving the social environment for their own well-being, such as through the development and management of youth organizations and community-oriented development activities.

IV. Juvenile Justice Administration

50. The Meeting reviewed selected juvenile justice administration systems in the Asia-Pacific region (see Annex V). In taking up the discussion on juvenile justice administration, the Chairperson invited five participating Japanese experts to describe the main features of the Japanese juvenile justice administration system as dealt with by the various government agencies concerned with the subject.

51. First, a Councillor attached to the Youth Affairs Administration Management and Coordination Agency reviewed the role of the police in dealing with juvenile delinquents and juveniles prone to commit offences. He stated that in Japan the police contacted the parents and teachers of such juveniles directly to provide them with necessary advice and guidance. Police officers were given specialized training to meaningfully discharge this function as a preventive measure to reduce delinquency among juveniles.

52. Another Japanese expert, a Public Prosecutor in the Tokyo Public Prosecutor's Office, reviewed the public prosecution system in Japan. He stated that public prosecutors in Japan were all trained lawyers and had the following main functions: to investigate all offences, including those committed by juveniles; to file for prosecution in the court, as no victim could directly file for court action; to be present in court to ensure the proper prosecution of cases; and to execute sentence as passed by the court. He pointed out that in Japan the public prosecutor enjoyed the discretionary power of dropping the prosecution of a case if he was satisfied that there was no *prima facie* evidence to prosecute the matter in court. This was a unique feature of the Japanese system and had proved the test of time, as it had been in force for nearly 100 years. previously, juvenile cases had been conducted identically with cases involving adults, but after the Second World War a different procedure had been introduced whereby the emphasis was on the rehabilitation rather than the punishment of the juvenile offender. Japan had become known as a peace-loving country, and the humanistically-oriented juvenile justice system had won great credibility among the public.

53. A third Japanese expert, a Family Court Probation Office, described the manner in which juvenile delinquents were dealt with in the family court system. Juveniles within the age group 14-19 came under the purview of the family courts. These cases were referred to the family court by the law enforcement agencies. In each family court, as soon as a juvenile case was filed, an "intake process" was initiated. The primary purpose of "intake" was to separate the defaulting juvenile at the very outset from the purview of the juvenile justice system to avoid the stigmatization of such juveniles. The task of judicial action was assigned to a family court probation officer at the direction of the judge in view of his special knowledge and experience in juvenile investigation. General-

ly speaking, 40 to 50 percent of juvenile cases were diverted and dismissed in this "intake process."

54. For cases in which the formal hearing was taken up before the family court, the judge after the hearing could place the delinquent under the "tentative supervision" of a family court probation officer, who would make every effort, in co-operation with the parents and others, to rehabilitate the juvenile. The family court could also place the juvenile in charge of a private institution or individual. In 1987, there were a total of 4,000 "tentative supervision" cases, which were nearly 2 percent of the total number of juvenile cases brought before the family court.

55. It was suggested that the family court system, having both judicial and social welfare functions, should develop more effective procedures to harmonize the two. In this regard, the family court probation officers, as legal practitioners, should be skilled in techniques of investigation of their charges' social background and psychological profile.

56. The fourth Japanese expert, the Chief Psychologist, Mito Juvenile Classification Home, pointed out that "juvenile classification homes" functioned under the control of the Correction Bureau and dealt with cases of delinquent juveniles. These institutions studied the behaviour patterns of delinquent juveniles and sent reports to the family courts which helped those courts in disposing of cases with a view to re-socializing juveniles into society. The expert pointed out that juvenile delinquents from middle-class families were on the increase and that, on account of growing laxity of family control, such juveniles indulged in acts of theft, sexual misbehaviour, rash motorcycle or automobile driving, etc. This group of juvenile delinquents required greater attention.

57. The fifth Japanese expert, a Probation Officer from the Tokyo Probation Office, touched upon the role of the probation officer. Apart from handling about 150 cases at a time on average, the probation officer usually had to take up a variety of other roles, such as training of volunteer probation officers, liaison with community groups, public education, etc.

58. The expert classified juvenile offences into three categories from the point of view of the probation officer: minor (like shoplifting, cycle thefts, etc.); in-between offences (which were neither serious nor minor); and heinous crimes. Disposition was generally decided according to the nature of the crime. For in-between offences, community care by way of education and social control was sought. Incarceration was resorted to only in the case of heinous crimes.

59. The Meeting reviewed the juvenile justice systems in various countries of the region.

60. The Children Act 1974 and rules framed thereunder were in operation in Bangladesh. One juvenile court, one remand home and one training institute had been established in the country. A large number of juveniles were being referred to the Upazilla and Sessions Courts, where juvenile delinquents were tried along with adult offenders. Under the rectification programmes established with the proclamation of the Offenders Ordinance, two projects had been taken up, viz., a probation of offenders project and an after-care services project. Recently, probation had been included in the Upazilla social service programme in 400 Upazilla offices of the Social Services Department, which took up probation cases for rectification and rehabilitation.

61. In Fiji, action against suspected or delinquent juveniles was taken under the Juvenile Act. Enquiry was conducted by the Juvenile Bureau. After the social investigation was done, the child was tried in the court, if necessary. If the court found the juvenile guilty, a further report from the Social Welfare Department was called for and, depending on that recommendation, the child was released or bound over. If recommended that the child be placed in a correction home, the Social Welfare Department took action in

this regard.

62. In Hong Kong, two Acts/Ordinances were in effect: Protection of Women and Juvenile Ordinance 1949, which was widely considered to be outmoded and in need of drastic change, and the Juvenile Offenders Ordinance, which had been reviewed in July 1989 and had had certain amendments effected and provision for education and training of inmates made. Services for juvenile offenders were run by three Departments, viz., the Police, Social Welfare and Correctional Services Departments. The probation officers were, however, overburdened and these services needed to be expanded.

63. In India, the Juvenile Justice Act 1986 had replaced the Children Acts formerly in operation in various states and the union territories, as it had come into force in 1987 on a uniform basis for the whole country. This was a comprehensive piece of legislation and provided for the care, protection, treatment, development and rehabilitation of neglected and delinquent children and for the adjudication of certain matters relating to the disposition of delinquent children. Under the act, a juvenile was defined as a boy under the age of 16 or a girl under the age of 18. It provided for the establishment and/or recognition of juvenile welfare boards, juvenile homes to look after neglected children and juvenile courts and special homes for juvenile delinquents. The Act also envisaged the establishment of observation homes for the temporary reception of erring juveniles during the enquiry stage and also after-care organizations for the benefit of delinquents released or granted on probation. Besides, fit persons or institutions could be appointed under the Act to take care of the juveniles entrusted to them. A Fund had been created under the Act to tap resources from the public and from government sources to promote various services under the Act. The new law not only filled the lacunae of the earlier enactments but also provided for a more comprehensive infrastructure to upgrade the level of services contemplated under the previous Act.

64. The Juvenile Court Act 1947 as revised in 1972 provided the legal basis for juvenile justice administration in Malaysia. Juvenile courts, places of detention, probation hostels and approved schools had been provided for efficient juvenile justice administration. There were a variety of options before the juvenile courts to deal with delinquents depending upon the nature of the offence, and imprisonment was ordered by the court only as a last resort. There were some bylaws under the 1947 Act which enabled the Government to provide for the care and protection of children and juveniles. Schools set up throughout the country took care of the education and training of young delinquents. A board of visitors was responsible for ensuring the efficient and purposeful functioning of these schools. These schools functioned under the administrative control of the Ministry of Social Welfare.

65. In Nepal, apart from the basic law, service organizations extended help on a voluntary basis in the treatment of cases of juveniles in conflict with the law.

66. In Papua New Guinea, the responsibilities for the management of juvenile institutions were spread among three agencies: the Department of Youth Affairs, the Department of Correctional Services and the Church Charity Organization. Prisoners were being trained; trained male and female prisoners were sent to elementary schools to educate children on the ill effects of a life of crime and to teach them to live honest and peaceful lives.

67. In the Philippines, the State Policy on Youth was clearly enunciated in Article II, Section 13 of the 1987 Philippine Constitution and in the Philippine Development Plan, which served as the framework for national development.

68. Recent proclamations and enactments had enhanced strategies for the protection of minors and enhancement of youth activities. A Presidential Council for Youth Affairs had been created in 1987. Proclamation 13 had

declared June 1986 to May 1987 as the Year for the Protection of Filipino Exploited Children. The Proclamation had also created a task force to develop a plan of action for that particular group of children, with the Council for the Welfare of Children co-ordinating the agenda set in this plan. These strategies had been designed to bolster the Judiciary Reorganization Act of 1980, as well as Articles 189 and 204 of the Child and Youth Welfare Code which provided relevant legal provisions for administering cases regarding juvenile delinquents.

69. In the Republic of Korea, all juvenile delinquents booked by the police were referred to the Public Prosecutor's Office. The Special Prosecutor designated to deal with juvenile cases looked after most of these cases. After investigation, the prosecutor decided either to indict or refer the juvenile to the juvenile court or drop the case conditionally, as appropriate. The Juvenile Guidance and Protection System developed in the Republic of Korea deserved special attention. Within this system a juvenile guidance member, selected from leading private citizens and appointed by the chief prosecutor, was put in charge of a juvenile offender when the public prosecutor dropped a case or released the offender. This system had become popular and successful. A Probation System Act had recently been enacted and the Juvenile Act had been amended. This had enhanced the discretionary powers of the judiciary, as the court could thereby allow the use of probation officers. The Act also allowed more job opportunities for the release or probation of juvenile offenders who were detained in juvenile training schools or juvenile correctional institutions. The amended Juvenile Act provided more restrictions on sentencing capital punishment or imprisonment for an indefinite period. Before amendment, such restrictions applied to juvenile delinquents under the age of 16, but it had recently been extended to cover those under the age of 18 years.

70. Under the Children and Young Persons Act in Singapore, the juvenile court judges had various alternatives before them and could order juvenile delinquents to be sent to approved schools or homes or place them under the supervision of probation officers for a specified period or commit them to the care of fit persons or parents deemed capable of proper care and guardianship. Under the Probation of Offenders Act, an offender was released to the care and supervision of a probation officer for a one to three year period. Under a recent amendment, the lower limit had been reduced to six months. The Department of Community Development, with the help of the Police and Prisons Departments, looked after the problems of juvenile delinquents. The Assessment and Review Committee reviewed the conduct of juveniles placed in Boys Homes. Under the Individual Care Plan, delinquents were guided through a treatment programme with realistic goals set for them. Repeated juvenile offenders who were inhalant abusers were sometimes referred by the Director of the Central Narcotics Bureau to an inhalant abuse centre for their care and treatment. As a preventive measure, two Advisory Councils had been set up in 1988, one to look into family and community life and the other on youth. Boys Clubs had been set up at the community level by the police in 1982 to cater for the recreational needs of youth.

71. A Children and Young Persons Ordinance and an Ordinance on Youthful Offenders (training schools), both enacted in 1939, provided the legal framework for dealing with young delinquents in Sri Lanka. Some progressive legislation, such as a composite law on children and young persons which would require the courts to commit young offenders to the Commissioner of Child Care for proper placement and would also require contributions by parents and guardians towards the maintenance of detained young offenders, was under active consideration for early enactment.

72. In Thailand, an act of 1951 had instituted juvenile courts. A police officer who ar-

rested a juvenile would notify the Observation and Protection Centre (OPC) with essential personal details about the juvenile concerned. The OPC conducted a pre-hearing investigation and the police officer would send the case to the prosecutor along with the investigation report. The prosecutor would take up the case in the juvenile court; otherwise, the case would be sent to the regular courts. The juvenile offender was admonished, penalized. placed on probation or sent to a training school or imprisoned, if not below age 14, depending on the nature and gravity of the offence committed.

V. Plan for Action

73. The Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region, organized by ESCAP and UNAFEI in co-operation with the Government of Japan and held at Fuchu, Tokyo, 3-10 August 1989,

Recalling General Assembly resolution 40/35 on the development of standards for the prevention of juvenile delinquency, which calls upon the regional commissions and the regional institutes for the prevention of crime and the treatment of offenders to establish joint programmes for the promotion of juvenile justice and the prevention of juvenile delinquency,

Further recalling the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), which constitute a vital contribution to the protection of young people's rights, and recognizing the need to strengthen implementation of the Beijing Rules in countries of the ESCAP region in the context of youth development,

Bearing in mind the recommendations of the ESCAP/UNAFEI Workshop on the Role of Youth Organizations in the Prevention of Crime Among Youth, held at Fuchu, Tokyo, 15 to 20 July 1985,

Recognizing the need to adopt an integrated approach to youth development and juvenile justice administration, as contained in the report of the above-mentioned ESCAP/UNAFEI Workshop,

Noting that adolescence is a transitional phase between the dependency of childhood and the responsibilities of adulthood and that the situation of rapid social and economic change prevailing in the ESCAP region exacerbates the difficulties experienced by young people in the process of their maturation to adulthood,

Expressing concern that the growing incidence and widening patterns of juvenile crime and delinquency in Asia and the Pacific are symptomatic of the functional failures of particular socio-economic systems, institutions and relations in the process of rapid development,

Recognizing that most juveniles who come into conflict with the law live in situations of deprivation and neglect and do not have equal access to socio-economic opportunities,

1. *Recommends* that the prevention of crime and the administration of juvenile justice should be pursued within a framework of integrated social development and that international efforts in this regard should be directed towards the establishment of a just economic order focusing on the well-being of the vulnerable and marginalized young members of society,

2. *Requests* UNAFEI, which had initiated the process for the formulation of the "Beijing Rules," to undertake, in co-operation with ESCAP, the formulation of standard minimum rules for the prevention of juvenile delinquency and youth crime, taking into account the recommendations of the present Expert Group meeting and other relevant United Nations guidelines,

3. *Calls upon* donor Governments, international funding agencies and other organizations to provide ESCAP with the requisite financial and staff resources to strengthen its provision of advisory services and technical assistance to members and associate mem-

bers of ESCAP in the prevention of juvenile delinquency and the administration of juvenile justice and, in this regard, to enhance linkages among all sectors within a broad social development framework,

4. *Calls upon* members and associate members of ESCAP to implement the following recommendations of the present Meeting, taking into consideration the situational context of each country.

Recommendations

A. Guiding Principles

1. An integrated approach to addressing broad socio-economic issues in the prevention of juvenile offence should be developed and implemented by all government agencies whose activities affect youth development, including those in the fields of education, employment, social services and juvenile justice administration.

2. Socio-economic development policies, particularly in relation to industrialization and urbanization, should be carefully planned and implemented with a view to causing minimum disruption of family cohesiveness and weakening of social relations in the community. In this regard, poverty alleviation policies should receive the highest priority in developing countries.

3. Systematic efforts should be made to expand and strengthen the capacity of the family and community to undertake the socialization of the young, to mobilize people's participation in the care and protection of the young and to prevent juvenile delinquency and youth crime.

4. Guidance, counselling and other supportive social services should be provided not only for young persons but also for their parents and other caretakers of youth to provide means for early intervention and to prevent the young from drifting into juvenile delinquency and youth crime.

5. Ethical conduct, respect for the law and the development of social skills should be incorporated, in an appropriate manner, into education curricula.

6. In the socialization of young people, increased emphasis should be placed on strengthening indigenous cultural values and a sense of pride in the cultural traditions of the countries in the region, as a crucial aspect of strengthening the sense of identity and belonging of young people in the context of rapid socio-economic change.

7. Young persons in conflict with the law should be provided full access to legal protection and legal services, with due care and attention to their long-term well-being. In this regard, differential treatment of juvenile offenders should be adopted. Further, special consideration should be given to the following characteristics of juvenile delinquents: chronological age, mental age, social background, nature of crime, motivation to commit crime and determination to be reformed. However, excessive tolerance of juvenile crime should not be encouraged.

8. Young persons in conflict with the law should be provided with appropriate opportunity to mature into responsible and productive citizens through education and rehabilitation programmes aimed at improving their social and vocational skills and strengthening their moral values and self-esteem.

9. Alternatives to detention of juvenile offenders should be considered. Detention and incarceration should be used as a last resort and, in that process, no minor or juvenile should be exposed to victimization and/or subjected to the negative influence of adult criminals.

10. Juveniles who are incarcerated in correctional institutions should be provided with academic education, vocational training, social skills training, recreation, religious guidance and other services necessary for the improvement of their character and social adaptiveness, while bearing in mind that the maintenance of positive contact with the family and community would facilitate their re-integration into society.

11. Non-institutional correctional measures

for delinquent adolescents should be fully utilized and should be expanded to the fullest extent possible so that incarceration in correctional institutions would be the last resort in the absence of other, more appropriate measures.

12. Community-based programmes established in lieu of the incarceration of juvenile delinquents should be structured by both government agencies and non-governmental organizations so as to include all sectors of the community in the effort to prevent juvenile delinquency and recidivism.

B. Preventive Social Measures

(a) Overall National Development Planning

1. Governments should, within the context of their overall national planning systems, adopt an integrated and intersectoral approach to youth development as a means of preventing juvenile delinquency and youth crime. In this connection, each country should institute a national co-ordinating body comprising the various concerned sectors dealing with youth-related issues, such as youth development, social services, employment, education, health, housing and justice. The co-ordinating body would be responsible for monitoring the youth development-related work of each concerned agency/sector to ensure a coherent approach to addressing youth concerns.

2. National development planning agencies should not only focus on direct investment in the economic sectors but should give due consideration to social investment in youth, particularly investment in young human resources and such aspects of their quality of life as health, education, social services, housing and culture. Such investments in youth would over the long run provide high social rates of return and contribute to economic growth and social development through their impact on the productivity of young human resources. Governments should, therefore, provide sufficient allocation of financial and other resources to ministries and agencies working in the social field, with particular attention to youth-related matters.

3. Policy makers and planners in the economic sector should take into consideration the social implications of economic programmes on young people. They should pay special attention to the effects on youth of economic adjustment policies, through those policies' effects on employment, prices, the balance of trade and the availability of such essential social services as education, health, shelter, minimum income maintenance and the like.

4. Non-governmental organizations should be given every opportunity to play an integral role in national policy-making and planning in the field of youth development. In this connection, government agencies and non-governmental organizations should co-operate in a concerted manner to promote the delivery of social services to young people. Further, Governments should provide institutional and other support to non-governmental organizations to ensure their continued viability as providers of social services to youth.

5. Youth development policies, plans and programmes should address the concerns of specific target groups of youth, including such disadvantaged and vulnerable groups as migrant youth, street children, school drop-outs, disabled youth, and youth in criminogenic situations such as drug abuse and prostitution.

6. Governments should strengthen their information and research systems capabilities in youth-related sectors so as to provide a sufficient body of information and analysis for effective policy-making and planning for youth development.

7. Adequate provision should be made by Governments to promote the preservation of indigenous values and traditions as a countermeasure against the negative effects of modernization on youth.

(b) Family

1. National policies and programmes should be instituted and strengthened to support the capacity of the family to fulfil its functions as a cohesive unit in society and as a provider of basic social services.

2. Programmes to strengthen parental skills should be consciously planned and implemented by national Governments.

3. Family life education should be incorporated in school curricula to prepare young people for adulthood. Such education programmes should focus on such issues as the changing role of men and women in society (including the sharing of parental and domestic responsibilities), sex education, family planning and family life.

4. Twenty-four-hour crisis care services should be established to provide information and assistance to family members, particularly young people who are victims of exploitation and abuse.

(c) Community

1. Governments should make adequate provision for the establishment of strong community-based social institutions run and organized by the community and its young people. These would include such institutions as community associations, youth and other recreational clubs, counselling centres and residential committees.

2. Policies favouring the decentralization of relevant industries and featuring the provision of training skills and credit facilities for the self-employment of young people should be devised in order to stem the tide of youth migration from rural to urban areas.

3. Effective training programmes for voluntary community workers and youth leaders should be implemented to ensure leadership continuity in community associations and youth clubs. This should help to ensure that community-level programmes and activities related to the needs of young people would be effectively implemented.

4. The private sector, particularly entrepreneurs, should be mobilized to provide guidance to young people on business management skills to ensure the successful implementation of self-employment projects by young people.

5. Outreach programmes should be established in receiving communities for new migrant youths to facilitate their assimilation in the new environment.

6. Structured programmes should be instituted in communities to guide refractory juveniles to become reintegrated in communities.

7. Efforts should be made to promote positive peer group influence within the community. In this connection, the formation of youth clubs managed by young people themselves should be encouraged so that positive peer group influence could be extended to involve youth in socially constructive activities.

(d) Education

1. The status of the teaching profession should be upgraded so as to attract into the education system additional well-qualified teachers who are highly responsive to the needs of young people.

2. Innovative alternatives to formal classroom education, such as "street educators," on-the-job education, apprenticeship education and education programmes through the mass media should be considered so as to extend education to all sectors of the community, including street children, young slum dwellers, working youth and others.

3. The education system should, aside from providing academic training, also provide avenues for vocational training to enable young people who are not academically inclined to obtain marketable skills.

4. Parent-teacher associations should be made an integral part of the school system to enable parents to play a greater role in the academic and social progress of their children.

5. The concept and practice of student counselling should be promoted in the education system.

6. Programmes should be undertaken by

schools and non-governmental organizations to promote non-sexist and non-violent behaviour among young people, particularly with a view to pre-empting sex-related crimes and other forms of violent behaviour.

7. Human rights awareness programmes should be introduced into the educational curricula to increase the social responsibility of youth.

8. In recognizing the potential beneficial role of the mass media in guiding young people to be law-abiding citizens, the mass media should be called upon to assume a more responsible civic role. In particular, television should incorporate positive social values in programming. At the same time, efforts should be made to minimize programmes that stimulate juvenile crime and delinquency, particularly those that glorify crime and sensationalize instances of violent and destructive behaviour.

C. Measures on Juvenile Justice Administration

1. Efficient juvenile justice administration should be promoted through the re-education and reorientation of the police personnel engaged in handling juvenile delinquents. Special juvenile justice bureaux should be set up and should be manned by personnel who are specially trained to deal with young offenders. Further, an integrated approach to training on broad socio-economic issues should be emphasized in juvenile justice administration.

2. Standard national guidelines should be evolved in line with the Beijing Rules to assist the prosecution agencies in investigating cases of juveniles in conflict with the law.

3. Frequent consultation between judges and personnel of other concerned agencies should be undertaken to promote better understanding of the social circumstances of juvenile offenders so as to enable all criminal justice personnel to adopt a more humane and realistic approach in the disposition of cases.

4. Efforts should be made to undertake a careful classification of juvenile offenders entrusted to the care of institutions, the community or fit persons, for the improved rehabilitation of those juveniles.

5. Measures should be undertaken to provide and strengthen after-care services to discharged juvenile offenders both by government agencies and non-governmental organizations, especially with a view to the prevention of recidivism.

6. Research and evaluation of institutional and community-based training and rehabilitation programmes should be undertaken with a view to strengthening the positive impact of such programmes on juvenile offenders.

7. Measures should be undertaken to enhance the role of community organizations in the rehabilitation of juvenile offenders and their reintegration into society.

8. The countries of the region should make special efforts to incorporate the "Beijing Rules" in their respective legal, administrative and social development frameworks.

D. Regional Co-operation

1. The "international year of the family," which is expected to be proclaimed by the United Nations General Assembly, should focus on the socialization of young persons as one of its main themes. The effectiveness of socialization would serve as a preventive measure against juvenile delinquency and youth crime.

2. The formulation by ESCAP of a regional social development strategy, mandated by the Commission in its resolution 45/1, should include measures dealing with crime prevention and criminal justice administration, taking into account the Beijing Rules and other relevant international instruments.

3. ESCAP and UNAFEI should take joint action to support national implementation of the Beijing Rules and the "Guidelines on Social Measures for the Prevention of Crime Among Youth and on Juvenile Justice" as well as follow-up of the recommendations of the present Meeting.

4. ESCAP and UNAFEI should periodically examine the efficacy of efforts concerning youth crime prevention and criminal justice administration of young offenders through the convening of regional meetings among social development and criminal justice personnel.

5. ESCAP and UNAFEI should jointly assist Governments in strengthening national co-ordinating bodies for youth development with a view to promoting an integrated approach to the prevention of crime among youth and the administration of criminal justice with particular reference to young persons. In this regard, assistance should be provided to national co-ordinating bodies to establish mutually supportive linkages with other concerned agencies in diverse sectors of national development.

6. ESCAP and UNAFEI should explore the possibility of forming mobile interdisciplinary training teams to provide technical support services at the national and subregional levels to formulate and implement strategies for the prevention of youth crime and the treatment of young offenders.

7. Efforts should be made by UNAFEI and ESCAP, in co-operation with government agencies in the field of social development and justice, to develop a standardized system for the collection and comparative analysis of information pertaining to the prevention of crime among youth and the administration of justice for young offenders.

VI. Closing of the Meeting

The Meeting adopted its report on 10 August 1989.

A closing address was delivered to the Meeting by Mr. Minoru Shikita, Chairman of the United Nations Committee on Crime Prevention and Control. Farewell statements were also made by the Director of UNAFEI and the Chief of the Social Development Division, ESCAP.

Mr. Minoru Shikita presented certificates of participation to each of the experts at the closing ceremony.

Annex I

List of Participants

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Mr. Norio Nishimura
Professor

Mr. Akio Yamaguchi
Professor

Mr. Shigemi Satoh
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Mr. Itsuo Nishimura
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Mr. Yutaka Nagashima
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Mr. Masakazu Nishikawa
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Mr. Fumio Saito
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Annex II

List of Documents

SD/EGM/ACP/L.1
Provisional agenda

SD/EGM/ACP/L.2
Annotated provisional agenda

SD/EGM/ACP/1
Patterns of juvenile offence*

SD/EGM/ACP/2
Effects of the social environment on juvenile offence**

SD/EGM/ACP/3
Guidelines for the formulation of recommendations

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* Prepared for the secretariat by Mr. Kunihiro Horiuchi, Deputy Director, UNAFEI.
** Prepared for the secretariat by Mr. Hira Singh, Director, National Institute of Social Defence; Ministry of Welfare, India.

Annex III

List of Reference Papers

1. United Nations, "Juvenile justice and the prevention of juvenile delinquency, including the principles, guidelines and priorities with respect to research on youth crime" (E/AC. 57/1988/11).

2. United Nations, "Discussion guide for the interregional and regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders" (A/CONF.

144/PM.1).

3. United Nations, "Report of the interregional preparatory meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic IV: Prevention of delinquency, juvenile justice and the protection of the young: Policy approaches and directions" (A/CONF. 144/IPM. 3).

4. United Nations, "United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)," Department of Public Information, 1986.

5. Hira Singh, *Contemporary trends in juvenile justice administration.*

6. John C. Freeman, *Alternatives to the prosecution of juveniles and the rights of children.*

Annex IV

List of Country Papers

Bangladesh
"Adolescence and crime prevention in Bangladesh," prepared by Ms. Salma Chowdhury, Deputy Director, Social Services Department, Dhaka

Hong Kong
"Adolescence and crime prevention in Hong Kong," prepared by Mr. Y.F. Hui, Director, Hong Kong Council of Social Service, Hong Kong

Hong Kong
"Adolescence and crime prevention in Hong Kong," prepared by Ms. Miranda Lai-foon Chung Chan, Superintendent, Ma Tau Wei Girls' Home, Social Welfare Department, Hong Kong

India
"Adolescence and crime prevention in India," prepared by Mr. J.S. Badhan, Joint Secretary, Department of Justice, Ministry of Home Affairs, New Delhi

Japan
"Juvenile probation and parole in Japan," prepared by Mr. Masatoshi Ebihara, Probation Officer, Tokyo Probation Office, Tokyo

Japan
"Recent trends of juvenile delinquency and its characteristic features," prepared by Mr. Takeo Momose, Public Prosecutor, Tokyo District Public Prosecutors' Office, Tokyo

Japan
"Juvenile classification home," prepared by Mr. Yutaka Sawata, Chief Psychologist, Mito Juvenile Classification Home, Mito-shi

Japan
"Type and the present state of juvenile delinquency in Japan," prepared by Mr. Jouji Yoshihara, Councillor, Youth Affairs Administration, Management and Co-ordination Agency, Prime Minister's Office, Tokyo

Japan
"Juvenile justice system in Japan—focused on the functions of the family court probation officer," prepared by Mr. Masato Yoshitake, Family Court Probation Officer, Yokohama Family Court, Yokohama

Malaysia

"Adolescence and crime prevention in Malaysia," prepared by Mr. Mohd. Ali Abu Bakar, Director-General of Youth, Ministry of Youth and Sports, Kuala Lumpur

Nepal

"Not legal provision alone: juvenile delinquencies—a multi-dimensional problem," prepared by Ms. Chandni Joshi, Chief, Women Development Programmes, Ministry of Panchayat and Local Development, Lalitpur

Papua New Guinea

"Adolescence and crime prevention in Papua New Guinea," prepared by Mr. Martin Balthasar, Assistant Commissioner, Division of Education and Training, Correctional Services Headquarters, Boroko

Philippines

"Adolescence and crime prevention in the Philippines," prepared by Ms. Corazon Alma G. de Leon, Undersecretary for Field Operations, Department of Social Welfare and Development, and Ms. Nenalyn Palma Defensor, Division Chief II, Probation Administration, Case Management and Records Division, Manila

Republic of Korea

"Trend in juvenile delinquency in Korea," prepared by Mr. Kie Bae Yi, Senior Public Prosecutor, Seoul District Public Prosecutors' Office, Seoul

Singapore

"Adolescence and crime prevention in Singapore," prepared by Ms. Tay Lu Ling, Principal Rehabilitation Officer, Prison Headquarters, Singapore

Sri Lanka

"Adolescence and crime prevention in Sri Lanka," prepared by Ms. Lalani S. Perera, Senior Assistant Secretary (Legal), Ministry of Justice and Parliamentary Affairs, Colombo

Thailand

"Juvenile offence in Thailand," prepared by Ms. Saisuree Chutikul, Secretary-General, National Youth Bureau, Office of the Prime Minister, and Mr. Siri Srisawasdi, Deputy Director-General, Department of Corrections, Ministry of Interior and Ms. Nathee Chitsawang, Chief, Research and Planning, Department of Corrections, Bangkok

Annex V

Summary of Selected Juvenile Justice Administration Systems in Asia and the Pacific

Country or area	Definition of juvenile*1	Fundamental law concerning juvenile delinquency	Is there an independent juvenile court?	Can a juvenile be sentenced to a penal institution?
Bangladesh	(1) 7 yrs (2) 16 yrs	Children Act, 1974	Yes	No
Fiji	(1) 10 yrs (2) 17 yrs	Juvenile Act, 1973	Yes	Yes
Japan	(1) 14 yrs (2) 20 yrs	Juvenile Law, 1948	Yes	Yes
Hong Kong	(1) 7 yrs (2) 16 yrs	Juvenile Offenders' Ordinance, 1975	Yes	Yes
India	(1) –*2 (2) M: 16 yrs F : 18 yrs	Juvenile Justice Act, 1986	Yes	No
Malaysia	(1) 7 yrs (2) 18 yrs	Juvenile Court Act, 1947; revised 1972 and 1975	Yes	No
Nepal	(1) 8 yrs (2) 16 yrs	Right of the Child Act, 1980	No	Yes
Papua New Guinea	(1) 8 yrs (2) 16 yrs	Child Welfare Act, 1983	Yes	No
Phlippines	(1) 9 yrs (2) 18 yrs*3	Child and Youth Welfare Code, 1974	No	Yes
Republic of Korea	(1) 14 yrs (2) 20 yrs	Juvenile Act, 1958	Yes	Yes
Singapore	(1) 7 yrs (2) 16 yrs	Children and Young Persons Act, Chap. 38, 1985	Yes	Yes
Sri Lanka	(1) 8 yrs (2) 16 yrs	Children and Young Persons Ordinance, 1939	Yes	Yes
Thailand	(1) 7 yrs (2) 18 yrs*4	Act Instituting Juvenile Courts, 1951; Juvenile Court Procedure Act, 1951	Yes	Yes

Notes: *1: (1) = minimum age, (2) = maximum age,
*2: juvenile defined as all persons below indicated maximum age, M: male, F: female,
*3: except for drug offenders,
*4: pertains to unmarried persons only.