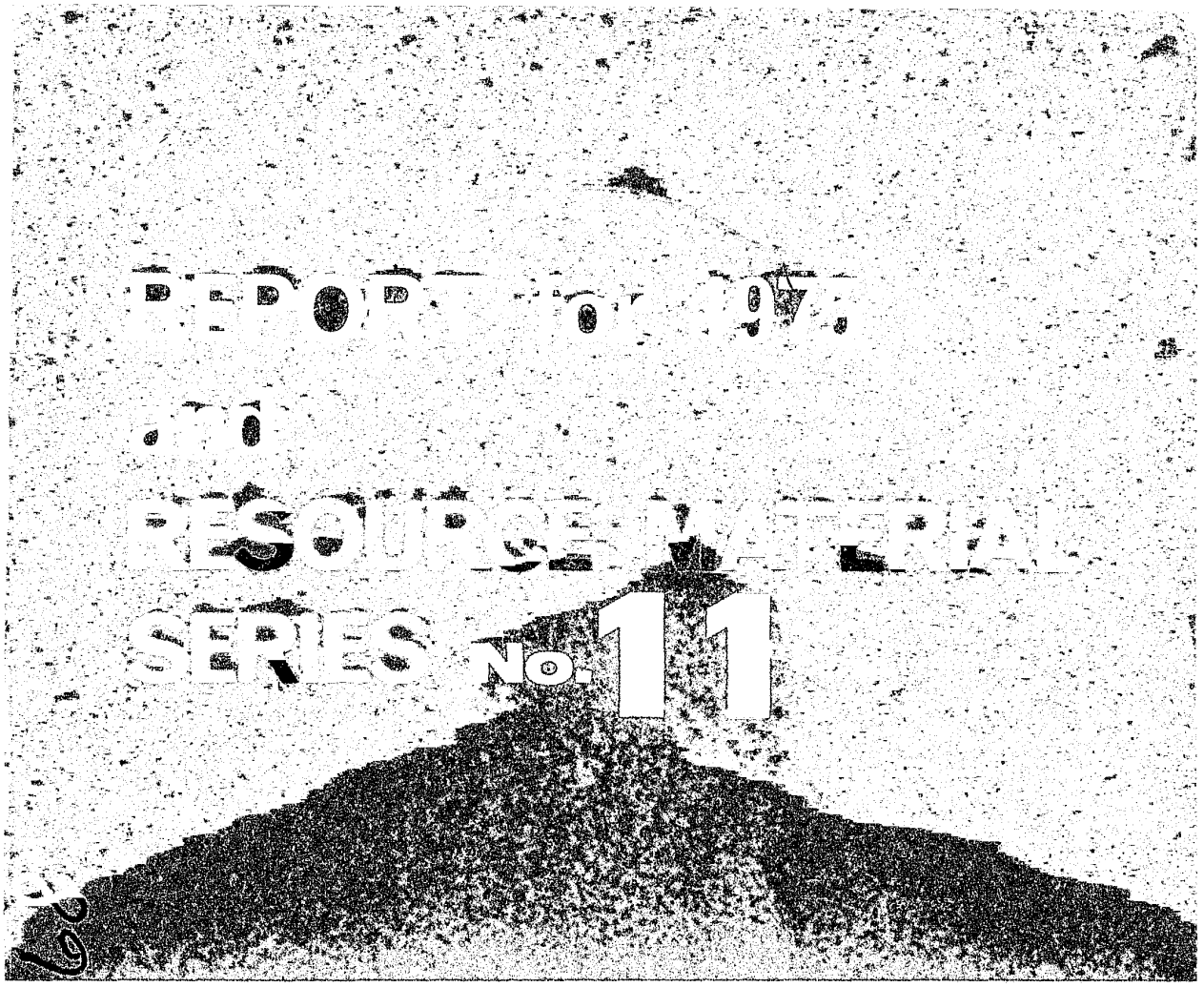




# UNAFEI



FUCHU, TOKYO, JAPAN

March / 1976

# REPORT for 1975
# and
# RESOURCE MATERIAL
# SERIES No. 11



UNAFEI
Fuchu, Tokyo, Japan March/1976

*Zen Tokoi*

Director

United Nations
Asia and Far East Institute
for
the Prevention of Crime
and
the Treatment of Offenders
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37161 (Entire Document)

# CONTENTS

# ANNUAL REPORT

# FOR

# 1975

UNAFEI

# I. Report of Main Activities and Events of the Year 1975

*Introduction*

During 1975, most countries in the region were still faced with serious problems in controlling the incidence of anti-social activities, an unwelcome byproduct of substantial social change, urbanization and industrialization. Although many Asian countries have made serious efforts to improve their crime control efforts, many problems remain. In light of these problems, UNAFEI organized three courses, —a seminar and two training programs—adapted to meet these challenging needs. The seminar was focused on the roles and functions of the police in a changing society. One training course was devoted to discussions of ways of achieving successful community re-integration of offenders and the other course explored ways and means of improving criminal justice systems so as to maximize their effectiveness. In addition, in 1975 the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in Geneva, Switzerland. UNAFEI, as a regional agency devoted to implementing relevant United Nations programs, assisted in developing appropriate agenda items for the Congress.

*Training Programs*

During 1975, UNAFEI conducted three regular international training courses or seminar (39th, 40th and 41st) in which a total of 63 criminal justice officials from 17 different countries in the region participated. By 1975, 864 persons in the world had attended training courses or seminars at UNAFEI. A breakdown of these participants, by country and professional background, is shown in Appendix I.

1. 39th International Seminar Course (12 February–15 March 1975)

This seminar was one of the short courses that the Institute annually organizes for senior officials and administrators in the criminal justice system. The subject was "The Roles and Functions of the Police in a Changing Society," and its purpose was to study and discuss various problems regarding police and other law enforcement agencies roles and functions in the light of emerging new conditions concomitant with social and economic changes. The Seminar explored means of improving the efficiency of law enforcement activities and of protecting the public through various preventive activities. One of its purposes was to find answers to the questions as to whether and to what extent law enforcement agencies should develop a wider range of social services and how they can establish proper and adequate relations between the police and the community. In addition, the Seminar served as a preparatory meeting for the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, particularly in relation to the agenda item, "Emerging Roles of the Police and Other Law Enforcement Agencies with Special Reference to Changing Expectation and Minimum Standards of Performance."

A total of nineteen participants took part in the Seminar, thirteen of whom came

**Table 1: Outline of the Program**

| Class Work | Hours |
|---|---|
| Orientation for the Course (Director and Staff) | 2 |
| Self-Introduction (Participants and Staff) | 2 |
| Introduction to the Japanese Criminal Justice System (*Mr. Kaneko* and Staff) | 4 |
| Staff and Visiting Experts' Presentation and Seminars | 18 |
| Participants' Presentation and Discussion | 24 |
| *Ad Hoc* Lectures (3 Lecturers) | 8 |
| Individual Study | 2 |
| Total Hours: | 60 |

| Visits and Others | Hours |
|---|---|
| Visits of Observation | 18 |
| Kansai Trip | 12 |
| Evaluation Session | 2 |
| Individual Interviews | 4 |
| Closing Ceremony | 2 |
| Total Hours: | 38 |
| Grand Total Hours: 98 (24 days, 5 weeks) | |

from twelve countries in the region, *i.e.*, Bangladesh, India (2), Indonesia, Iran, Iraq, Laos, Malaysia, Nepal, Pakistan, Philippines, Singapore, and Sri Lanka, with the remainder coming from Japan. The participants were composed of high, senior law enforcement officials who were responsible for the development of new policies and programs for law enforcement in their respective countries. The list of participants is reproduced in Appendix II–1.

The outline of the course program is shown in Table 1.

The important issues and topics which emerged in the presentations and discussions were as follows: (1) Exploration of ways and means of improving enforcement of criminal law and regulations and of protecting the public through various kinds of preventive activities of the police; (2) Development of a wider range of social services in order to enhance their functions and improve their public image; (3) Establishment of adequate and proper police-community relations; (4) Recruitment and training of police personnel; (5) Desirability of the setting forth a detailed standard of performance; and (6) Effective coordination among various law enforcement agencies.

At the end of the Course, the following conclusion was unanimously adopted: The roles of the police should be not merely that of an agency to enforce the law, but also that of a social agency which acts with and on behalf of the public to prevent crime and public disorder by mediation and advice, and that the police's

primary function should therefore revolve around the concept of crime prevention.

Details of the discussions and papers in this Course were reported in the Resource Material Series No. 10.

In conducting the Seminar, UNAFEI was fortunate to have the participation of three Visiting Experts, Dr. David Bayley, Professor of Graduate School of International Studies, University of Denver, U.S.A., Mr. Dean C. Smith, U.S. Attorney of Eastern District of Washington State, U.S.A., and Mr. Torsten Eriksson, former Director-General of the National Correctional Administration of Sweden and ex-United Nations Inter-Regional Adviser on Crime Prevention and Criminal Justice. Dr. Bayley conducted discussions on "A Comparative Analysis of Police Practices"; Mr. Smith lectured on "The Impact of the American Constitution on the Police Officer"; and Mr. Eriksson dealt with "The International Experience and Trends of Development in the Treatment of Offenders."

The agencies and institutions visited by the participants included the Research Institute of Police Science, Ministry of Justice, Third Mobile Unit of Tokyo Metropolitan Police Department, National Police Agency, Shinjuku Police Station, Shinjuku Police Box, Metropolitan Police Department, Fuchu Police Station, and the Kanto Regional Police School.

2. 40th International Training Course (15 April–5 July 1975)

The purpose of this Course was to study and discuss various problems in the treatment of offenders. The main focus was on how to maximize the rehabilitative efforts of institutional treatment so as to attain successful community re-integration of offenders, and how to enhance and expand community-based treatment programs and aftercare services to ensure such re-integration. Effective measures and related practical problems for mobilizing public support for these purposes were given particular attention. The Course also served as a preparatory meeting for the Fifth United Nations Congress, with particular reference to the agenda item, "The Treatment of Offenders in Custody or in the Community, with Special Reference to the Implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners."

A total of twenty-four participants representing thirteen countries in the region, *i.e.*, Afghanistan, Bangladesh, Hong Kong, India, Iran, Iraq, Korea, Nepal, Pakistan, Philippines, Sri Lanka (2), Thailand (2), and Japan (10), took part in the Course. This Course was attended by a director, two superintendents, and six senior officials of correctional institutions for juveniles, for adults and drug addict offenders; eleven chief administrators of rehabilitation and social welfare agencies; two judges; two public prosecutors; a police official; a director and two researchers at research institutes for criminology and police science. The list of participants is reproduced in Appendix II–2.

Two Visiting Experts took part in this Course, Mr. E. A. Missen, O.B.E., former Secretary for Justice New Zealand and Dr. J. J. Panakal, Head of Department of Criminology and Correctional Administration, Tata Institute of Social Science, India, each of whom gave a series of lectures and led discussions at various sessions. Mr. Missen lectured on "The Criminal Justice System in New Zealand," while Dr.

**Table 2: Outline of the Program**

| Class Work | Hours |
|---|---|
| Orientation for the Course (Director and Staff) | 2 |
| Self-Introduction (Participants and Staff) | 2 |
| Introduction to the Japanese Criminal Justice System (Staff) | 8 |
| Staff and Visiting Experts' Presentation and Seminars | 40 |
| Seminars on Specific Problems (Experts in the Field and Staff) | 12 |
| (1) Social Change and Correction | (4) |
| (2) Probationary Supervision | (4) |
| (3) Drug Abuse | (4) |
| *Ad Hoc* Lectures (11 Lecturers) | 26 |
| Comparative Study of Treatment Process of Offenders | 23 |
| Group Workshops on the Topics Selected by Participants | 33 |
| Individual Study | 20 |
| Total Hours: | 166 |

| Visits and Others | Hours |
|---|---|
| Visits of Observation | 34 |
| Kansai Trip | 16 |
| Excursion | 4 |
| Evaluation Session | 2 |
| Individual Interviews | 4 |
| Closing Ceremony | 2 |
| Total Hours: | 62 |

Grand Total Hours: 228 (57 days, 12 weeks)

Panakal's lecture dealt with "Problems of Providing Specialized Services for the Processing of Juvenile Delinquents in Developing Countries."

The outline of the program is shown in Table 2.

In the course, there were also three special seminars on Social Change and Correction, Probationary Supervision, and Drug Abuse conducted by experts from the related agencies and UNAFEI teaching Staff. Furthermore, the Course was enriched by *ad hoc* lecturers from various governmental agencies and academic institutions, including Mr. John Wallace, former Director of Probation, Office of Probation for the Courts of New York City, U.S.A.

A Comparative Study of Treatment Process of Offenders occupied 23 hours during the early part of the program. The comparative study sessions were divided into two stages: the initial presentations and discussion. In the initial stage, occupying 18 hours, each participant explained the main features and problems existing in his criminal justice system. In the discussion stage, for which five hours were

allocated, the participants discussed such important issues as the need for reducing recidivism, avoiding over-population of the correctional institutions, and the role of the public or volunteers in the treatment process, with a view to finding workable principles and useful practices adaptable to any given situation.

Group Workshop Sessions, another participant-centered program, were devoted to topics selected by the participants and occupied 33 hours during the latter part of the program. The participants were divided into four groups so as to give each one ample time to present papers on specific problems encountered in day-to-day work and to discuss them thoroughly with the members of their group as well as with the visiting experts and the teaching staff. After the completion of the group workshops, a summary of each group's discussions and conclusions was reported to the plenary sessions which lasted eight hours. The general theme of each group can be summarized as follows:

1) New Perspectives in Correctional Institutions;
2) Juvenile Delinquency and Related Problems;
3) Current Issues and Problems in Criminal Justice System;
4) Special Problems in Criminal Justice.

Details of this program were reported in the Resource Material Series No. 10.

The agencies and institutions visited by the participants were the Supreme Court, Ministry of Justice, Research and Training Institute of the Ministry of Justice, Yokohama Juvenile Classification House, Nakano Prison, Tokyo Probation Office, Zenrin-Kōseikai Rehabilitation Aid Hostel, Saishūkai Rehabilitation Aid Hostel, Musashino Child Education and Training Home, Tama Juvenile Training School, Tokyo Family Court, National Police Agency, Metropolitan Police Department, and the Fuchu Prison.

### 3. 41st International Training Course (17 September–6 December 1975)

The 41st International Training Course was organized to provide participants with an opportunity to study and discuss various problems in the administration of criminal justice. Accordingly, the Course explored ways and means of improving criminal justice systems so as to maximize the effectiveness of the total criminal justice process. Emphasis was placed on how to enhance the effectiveness of the criminal justice system through the improvement of procedural and evidentiary rules, diverting cases from the system by imaginative use of other measures for social control, and how to establish sound and effective policies for the imposition of criminal sanctions. In this connection, the need to reform or reorganize criminal laws and criminal justice systems so as to make them more appropriate and effective was given particular attention. The Course also served as a follow-up to the Fifth United Nations Congress by making particular reference to its deliberations and conclusions.

A total of twenty-one participants representing twelve countries in the region, *i.e.*, Afghanistan, India (2), Indonesia, Iran, Korea, Nepal, Pakistan, Philippines, Singapore, Sri Lanka (2), Thailand, and Japan (8), took part in the Course. The participants consisted of nine judges, six public prosecutors, three senior police

**Table 3: Outline of the Program**

| Class Work | Hours |
|---|---|
| Orientation for the Course (Director and Staff) | 2 |
| Self-Introduction (Participants and Staff) | 2 |
| Introduction to the Japanese Criminal Justice System (Staff) | 8 |
| Staff and Experts' Presentation and Seminars | 40 |
| Seminars on Specific Problems (Experts in the field and Staff) | 16 |
| (1) The Revision of the Penal Code | (4) |
| (2) Sentencing | (4) |
| (3) Speedy Trial | (4) |
| (4) Drug Abuse | (4) |
| *Ad Hoc* Lectures (7 Lecturers) | 14 |
| Comparative Study of the Principles and Practices in the Administration of Criminal Justice | 24 |
| Group Workshops on the Topics Selected by Participants | 33 |
| Individual Study | 19 |
| Total Hours: | 158 |

| Visits and Others | Hours |
|---|---|
| Visits of Observation | 30 |
| Kansai Trip | 16 |
| Excursion | 4 |
| Evaluation Session | 2 |
| Individual Interviews | 4 |
| Closing Ceremony | 2 |
| Total Hours: | 58 |

Grand Total Hours: 216 (54 days, 12 weeks)

officers, one senior correctional officer, and three probation officers. The list of participants is reproduced in Appendix II–3.

The outline of the program is shown in Table 3.

The Course was enriched by the informative presentations of the three Visiting Experts, Mr. I. J. "Cy" Shain, Director of Research, Judicial Council of California, U.S.A., Dr. Ahmed M. Khalifa, Chairman of the Board, the National Center for Social and Criminological Research, and former Minister of Social Affairs, Egypt, and Mr. T. G. P. Garner, J. P., Commissioner of Prisons, Hong Kong. Mr. Shain lectured on four topics namely, "The Concept of the Indeterminate Sentence: A Reexamination," etc. Dr. Khalifa's lectures dealt with "An Exercise in Social Control (Social Defense and Human Rights)," etc. Mr. Garner delivered lectures on "The Deliberations and Conclusions of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders," etc.

There were also four special seminars on the Revision of the Japanese Penal

Code, Sentencing, Speedy Trial, and Drug Abuse, conducted by experts from the courts, related agencies and UNAFEI teaching staff.

In addition, there were several *ad hoc* lecturers from various Japanese governmental and academic institutions who enriched the Course with very informative lectures.

A Comparative Study of the Principles and Practices of the Administration of the Criminal Justice System took twenty-four hours during the early part of the program. This session was also divided into two stages: initial presentations and discussion. In the initial stage, occupying eighteen hours, each participant explained the main features and problems existing in his criminal justice system. In the discussion stage, for which six hours were allocated, the participants were organized into two groups and selected "Future Trends in Criminal Justice" as the main theme of their discussions. One group dealt with crime and pretrial activities and another group discussed problems relating to the judiciary and corrections. The summaries of the discussions and the conclusions were reported to the plenary sessions by Rapporteurs selected by each group.

Group Workshop Sessions were devoted to topics selected by the participants and occupied thirty-three hours during the latter part of the program. The participants were divided into four groups so as to give each one ample time to present papers on specific developments and problems in their respective criminal justice systems and to discuss them thoroughly with the members of their group as well as with the visiting expert and teaching staff. Each group elected its own Chairman and Rapporteur. After discussing the papers presented by each of their members, a summary of each group's discussions and conclusions was reported to the plenary sessions which lasted eight hours. The general theme of each group can be summarized as follows:

1) Speedy Trial;
2) Crime Problems Resulting from Socio-Economic Development;
3) Diverse Problems in the Administration of Criminal Justice;
4) Problems of Judicial Procedures and Organization.

Details of the lectures and discussions of this session will be reported in the Resource Material Series No. 11.

The agencies and institutions visited by the participants included the Supreme Court, Ministry of Justice, Supreme Public Prosecutors' Office, Tokyo District Public Prosecutors' Office, National Police Agency, Metropolitan Police Department, National Research Institute of Police Science, Legal Training and Research Institute, Tokyo District Court, Tokyo Family Court, Fuchu Prison, Fuchu Police Station, and the Kanto Regional Police School.

4. *Ad Hoc* Lecturers, Materials Distributed, etc.

The course programs were enriched by lectures and seminars conducted by a number of *ad hoc* lecturers from governmental and academic institutions. The names of these *ad hoc* lecturers and the titles of the lectures are shown in Appendix III. Also, reference materials used in various class work sessions which were prepared by the Visiting Experts, UNAFEI teaching staff and *ad hoc* lecturers are listed in Appendix IV.

5. General Review on the Training Programs

The 39th International Seminar on the Roles and Functions of the Police in a Changing Society was unprecedented and unique in many ways. It was the first time that the overseas participants all constituted a homogeneous group from the same profession—the police, and this made the discussion comprehensive and profound. It was significant that the Seminar came out with the conclusion that the primary function of the police should revolve around the concept of crime prevention. The report of the Seminar drawn up by the UNAFEI teaching staff was submitted to the Fifth United Nations Congress.

The 40th International Training Course was one of the two regular three-month courses, the other being the 41st International Training Course. Particular emphasis was placed on the appropriate treatment measures for re-integrating offenders into the community in the 40th Course and on the exploration of ways and means of improving criminal justice systems in the 41st Course.

The basic pattern of training method was similar to that of previous years. The programs were composed of 1) lectures and seminars by the visiting experts, *ad hoc* lecturers and teaching staff, 2) participant-centered programs such as Comparative Study Sessions and Group Workshops, and 3) visits of observation. Emphasis was continuously placed on the participant-centered methods.

In the Comparative Study Sessions each participant was requested to present the main features and problems existing in his own country. After that, the participants were divided into small groups where they discussed selected problems they commonly faced.

For the Group Workshop, each participant was requested to prepare a paper on topics concerning specific problems he was facing in his work and on which he desired to exchange views and experience with other participants and staff. The results of discussions by the small groups were submitted by participants in final papers to the Institute.

In order to meet the needs of the times and the demands from countries in the region, special seminars or symposiums were organized on drug abuse and other important problems in the 40th and 41st Courses.

With a view to solving problems practically as well as theoretically, observation visits to institutions were considered important and highly appreciated by the participants.

The 39th and 40th Courses, which were held prior to the Fifth United Nations Congress, served as a series of preparatory meetings thereto in the region and the 41st Course included presentations on the deliberations and conclusions of the Congress. The Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations were frequently quoted and discussed in-depth at various occasions. In commemoration of the International Women's Year promoted by the United Nations, the subject of women was also taken up during the 40th Course and representatives of the Women's Christian Temperance Union participated in the relevant discussions.

Before closing this chapter, special mention must be made of the outstanding

contributions of the visiting experts to the success of the courses. Their names and titles are recorded with heartfelt appreciation and gratitude in Appendix V.

### *Other Activities and Events*

1. Compilation and Dissemination of Information

During 1975, two issues of the UNAFEI Resource Material Series, namely, Nos. 9 and 10, and three issues of the UNAFEI Newsletter, namely, Nos. 26, 27, and 28 were published and disseminated widely. They were sent to all alumni members, former Visiting Experts, governmental agencies concerned, related universities and institutes, etc. Thanks to the generous donations by the Governments in the region as well as thoughtful contributions by the participants, the stock of reference material relating to the criminality in the region has been steadily increasing.

2. Cooperation with the Related Institutes

Mrs. Kinko Satō, former Chief of Research Division, was invited to attend the Seminar of the Australian Institute of Criminology on "Women as the Victims of Crime" held from 16 to 19 April, 1975 in Canberra in commemoration of the International Women's Year. She presented a paper on "Women and Crime in Japan."

Mr. Minoru Shikita, former Deputy Director, attended the Fifth United Nations Congress. He submitted to the Congress the report of the 39th International Seminar Course on the Roles and Functions of the Police in a Changing Society.

3. Visits to Countries in the Region

Mrs. Kinko Satō, former Chief of Research Division, visited Hong Kong and Manila in order to meet alumni members, to visit social defence institutions, and to exchange views with the relevant authorities on the matters of mutual interest, on her way to and from Australia in April 1975.

Messrs. Takeo Ōsumi and Takuji Kawasaki visited Malaysia, Sri Lanka, India and Hong Kong from 1 to 24 December 1975. They observed the various practices in the treatment of offenders and met with alumni members in order to evaluate the training programs at UNAFEI.

4. Visitors

UNAFEI was honored by the visits of a number of distinguished persons from the United Nations and overseas countries. Their names and titles are given in Appendix VI with our heartful appreciation and gratitude for their interest and assistance to us.

5. Staff Change

During 1975, several faculty members left the Institute and were replaced by the new staff members. These changes as well as the list of faculty members and major staff as of 31 December 1975 are shown in Appendix VII.

## II. Prospect for the Year 1976

It is clear that most countries in the region, despite their efforts, still face the persistent problems of increasing recividism and of over-population of correctional institutions. In this regard, there has been a somewhat growing skepticism regarding the effectiveness of the rehabilitative approach to crime or delinquency. While subscribing to the goal of rehabilitation as an objective of the criminal justice, there are an increasing number of questions concerning whether committing the offenders to imprisonment is or can be effective in achieving that goal. It is therefore very important for all Asian countries to evaluate the principal objectives of sentencing as well as the effectiveness of correctional programs and thus make every effort to formulate a sound sentencing policy and to implement effective correctional programs. UNAFEI will place greater emphasis in its 1976 training programs to meeting these crucial problems and emerging needs.

The 42nd Seminar Course on the Formation of a Sound Sentencing Structure and Policy at the time of working was scheduled to take place at UNAFEI from 24 February to 27 March, 1976. The participants of the Seminar will be very senior judges or officials holding key positions in the development of sentencing policies in each country. The purpose of the Seminar is to study and discuss various problems involved in the sentencing process. The Seminar will explore ways and means of forming a sound sentencing structure and policy so as to maximize the effectiveness of the total criminal justice process. The program for the Seminar, published in the Information Brochure, is reproduced in Appendix VIII. The visiting experts for the Seminar will be Mr. I. J. "Cy" Shain, Director of Research, Judicial Council of California, U.S.A., and Mr. Gerhard O. W. Mueller, Assistant Director-in-Charge, Crime Prevention and Criminal Justice Section, United Nations.

The 43rd International Training Course on the Treatment of Offenders will be conducted from 20 April to 10 July, 1976. The participants of the Course are expected to be officials who hold relatively senior positions in a central bureau or department or field agency concerned with the correctional treatment of delinquents and adult offenders. The purpose of the Course is to provide participants with an opportunity to study and discuss various problems involved in the treatment of offenders. The Course will examine the effectiveness and limitation of current correctional programs and practices, and will explore more appropriate ways of rehabilitating offenders. The program for the Course, as contained in the Information Brochure, is reproduced in Appendix IX. The visiting experts for the Course will be Mr. Shain, previously introduced, and Mr. W. H. Pearce, Principal Probation Officer, Inner London Probation and After-care Service, England.

The 44th International Training Course will commence around the middle of September and end in early December, 1976. It will focus on the administration of criminal justice. Details of the program are being developed and the Information Brochure for this Course will be dispatched in April or May to the Governments in the region for fellowship applications.

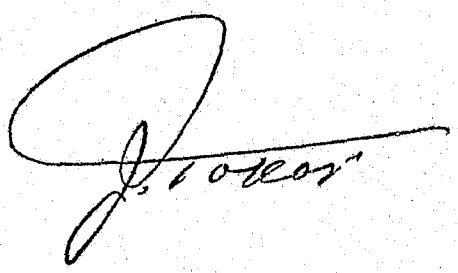
## III. Conclusion

It is very important for responsible criminal justice officials from Asian countries to be able to gather in one place and discuss common problems and objectives relating to the prevention of crime and improvement of the criminal justice system including treatment efforts. UNAFEI believes that it has provided such an opportunity over the years. The First International Training Course was commenced in September, 1962 and since then UNAFEI has completed thirteen years of its unique existence as a social defense training and research center for the region. Its graduates now number 864. We are pleased to note that thirteen national Alumni Associations have been established in the region. This wide range of Alumni Associations offers great potential resource for the future development and expansion of UNAFEI's activities.

In concluding this Report, UNAFEI wishes to express its appreciation for the considerable collaboration and helpful advice offered by the United Nations, respective Asian Governments, public and private agencies, and individuals. Without their involvement and cooperation, UNAFEI would not have been able to fulfill its mission in the year 1975. As a final note, the staff of UNAFEI will continue to dedicate its efforts to carrying out the challenging tasks of training and research, entrusted to it by the Governments of the region and by the United Nations. It hopes to continue to be able to make significant contributions to the countries in the Asian region in crime prevention and control. In this endeavor, it will rely heavily upon and seek the cooperation of relevant related agencies in the region as well as individuals, agencies and countries throughout the world.

This Report is respectfully submitted to the United Nations and the Government of Japan in compliance with Section 1 (a) of the letters exchanged between the two parties in March, 1970.

31 January 1976



Zen Tokoi
Director

## *Appendix I*

**Distribution of Professional Background by Country (1st–41st)**

| *Professions* | *Judicial and Other Administrators* | *Judges* | *Public Prosecutors* | *Police Officials* | *Correctional Officials (Adult)* | *Correctional Officials (Juvenile)* | *Probation, Parole Officers* | *Family Court Investigation Officers* | *Child Welfare Officers* | *Social Welfare Officers* | *Training & Research Officers* | *Others* | *Total* |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Afghanistan | 5 | 5 | 4 | 1 | | | | | | | | | 15 |
| Australia | | | 1 | | | | 1 | | | 1 | | | 3 |
| Bangladesh | 2 | 2 | | 2 | 3 | | 2 | | | 3 | | | 14 |
| Brunei | 1 | | | | | | | | | | | | 1 |
| Costa Rica | | | | | | | | | | | | 1 | 1 |
| Egypt | | | | | | | | | | | 1 | | 1 |
| Ethiopia | 1 | | | | | | | | | | | | 1 |
| Fiji | | | 1 | 1 | | | | | | | | | 2 |
| Ghana | | | | 1 | | | | | | | | | 1 |
| Hong Kong | 6 | | | | 4 | 2 | 3 | | | 3 | | | 18 |
| India | 8 | 2 | | 7 | 3 | 1 | 1 | | | 2 | 2 | | 26 |
| Indonesia | 5 | 10 | 2 | 12 | 5 | | 1 | | | 4 | | 1 | 40 |
| Iran | 3 | 7 | 4 | 6 | 5 | | | | | | 1 | | 26 |
| Iraq | 1 | | | 2 | | | | | | | | | 3 |
| Kenya | 1 | | | | | | | | | | | | 1 |
| Khmer | | 2 | 1 | 2 | 1 | | | | | | | | 6 |
| Korea | 6 | | 13 | 4 | 4 | 2 | | | | | 2 | | 31 |
| Laos | 3 | 4 | 3 | 9 | | | | | | | | | 19 |
| Malaysia | 6 | | | 7 | 13 | 5 | 2 | | 1 | 4 | 2 | | 40 |
| Mauritius | | 1 | | | | | | | | | | | 1 |
| Nepal | 5 | 5 | 1 | 11 | | | | | | | | 1 | 23 |
| New Zealand | | | | 1 | | | | | | | | | 1 |
| Pakistan | 6 | 2 | 1 | 3 | 2 | | 2 | | | | | | 16 |
| Peru | 1 | | | | | | | | | | | | 1 |
| Philippines | 8 | 4 | 6 | 4 | 5 | 2 | 2 | 2 | | 1 | | 3 | 37 |
| Singapore | 4 | 3 | | 6 | 6 | 1 | 2 | | | 2 | 1 | | 25 |
| Sri Lanka | 11 | 2 | 2 | 2 | 5 | | 7 | | | 2 | | | 31 |
| Sudan | 1 | | | | | | | | | | | | 1 |
| Taiwan | 12 | 4 | 2 | 2 | 1 | | | | | | | | 21 |
| Thailand | 7 | 4 | 5 | 6 | 7 | 5 | 3 | 1 | | 7 | 3 | 1 | 49 |
| USA (Hawaii) | | | | | | | | 1 | | | | | 1 |
| Viet Nam | 10 | 5 | 2 | 1 | | | | | | 4 | | | 22 |
| Zambia | | 1 | | | | | | | | | | | 1 |
| Japan | 48 | 30 | 76 | 31 | 23 | 23 | 66 | 34 | 30 | 2 | 18 | 4 | 385 |
| Total | 161 | 93 | 124 | 121 | 87 | 41 | 92 | 38 | 31 | 35 | 30 | 11 | 864 |

*Appendix II–1*

## List of Participants
## in
## the 39th International Seminar Course

*Abdur Raquib Khandaker*
Deputy Inspector General of Police, Headquarters, Bangladesh.
Home: 22/5, B., Babar Road, MohammadPur, Dacca, Bangladesh.

*Mahesh Dutta Dikshit*
Deputy Inspector General of Police, CID, Uttar Pradesh, India.
Home: 2, Vikramadity A Marg Lucknow, India.

*Natesan Krishnaswamy*
Deputy Inspector General of Police, Planning and Coordination, Tamil Nadu, India.
Home: 10, Tiruveedhia Amman St, Madras-600028, India.

*Mochammad Hindarto*
Professor, Police Science College, Indonesia.
Home: J1, Sungai Sambas IX/10 Kebayoran Baru, Jakarta, Indonesia.

*Masud Ansari*
Public Relation Advisor to the Chief of National Police of Iran, Iran.
Home: P.O. Box 230, Tehran, Iran.

*Ihsan Ali Al-Hermizi*
Director of Police Pension, Iraq Police H. Q., Iraq.
Home: No. 70-2-25, Dubbat St., Adamia, Baghdad, Iraq.

*Bounthanh Khounlavong*
Chief of Narcotic Bureau, Lao National Police, Laos.
Home: Ban Phonh Papao, Sisattanack, Vientiane, Laos.

*Thamby Thurai Rajasingam*
Commandant, Royal Malaysia Police College, Malaysia.
Home: c/o Police College, Kuala Rubu Bharu, Malaysia.

*Lab Kumar Shrestha*
Officer-in-Charge of Planning, Police Section, Home Ministry, Nepal.
Home: 13/113, Nardevi, Kathmandu, Nepal.

*Mir Bahadur Ali Khan*
Deputy Inspector General of Police, Administration, Special Police Establishment, Pakistan.
Home: 221, Khadim Hussain Road, Rawalpindi, Pakistan.

*Jose Escutin Salido*
Special Assistant to Secretary of National Defense and Special Assistant to the Chairman, National Police Commission, Philippines.
Home: 22, A. Quiogue, Villa Susana Pasig, Rizal, Philippines.

*Harbans Singh*
Officer-in-Charge of "RW" Division, Singapore Police Force, Singapore.
Home: No. 50, Namly Avenue, Singapore 10, Singapore.

*Rudra Rajashingham*
Deputy Inspector General of Police, Police Headquarters, Sri Lanka.
Home: Police Hq,, P.O. Box 517, Sri Lanka.

*Kōya Abe*
Deputy Director, Safety Division, National Police Agency, Japan
Home: 3-10-15-103, Kita-shinjuku, Shinjuku-ku, Tokyo, Japan.

*Kiyoshi Inoue*
Judge, Ōsaka District Court, Japan.
Home: 3-3, Minami-Dōshin-chō, Kita-ku, Ōsaka, Japan.

*Hideichi Nakazawa*
Director, Kinki Regional Narcotic Control Office, Japan
Home: No. 7, D14-201, 2 chōme, Momoyama-dai, Suita-shi, Ōsaka, Japan.

*Isao Okimoto*
Public Prosecutor, Hachiōji Branch, Tokyo District Public Prosecutors' Office, Japan
Home: 5-28-21, Tamagawa-Gakuen, Machida-shi, Tokyo, Japan.

*Yasutoshi Satō*
Assistant Director, Tokyo Regional Correction Headquarters, Japan
Home: 3-18, Higashi-Ikebukuro, Toshima-ku, Tokyo, Japan.

*Mitsuteru Takaki*
Deputy Director, Tokyo Probation Office, Japan
Home: 2-16-2-107, Higashiyama, Meguro-ku, Tokyo, Japan.

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*Appendix II–2*

## List of Participants in the 40th International Training Course

*Bahawuddin Rostai*
Judge of Commercial Court of Appeal, Afghanistan.
Home: c/o P.O. Box 166, Kabul, Afghanistan.

*Harun-ur-Rashid*
Assistant Director, Department of Social Welfare, Ministry of Labour and Social Welfare, Bangladesh.
Home: Village-Razashpur, P.O. Meah Bazar, P.S. Kotwali, Dist, Comilla, Bangladesh.

*Chun Chak-Lam*
Chief Officer,
Prisons Department Headquarters, Hong Kong.
Home: Flat No. 31, Officers' Married Quarters, Tai Tam Gap Training Center, Shek o Road, Hong Kong.

*Bijon Krishna Roy*
Director, Institute of Criminology and Forensic Science, India.
Home: Ministry of Home Affairs, Government of India, A2/19, Safdarjung Enclave, New Delhi-110016, India.

*Abdul Majid Salman El-Rahmani*
Assistant Director General of Prison Administration, Iraq.
Home: Prison Administration, Al-Kurrada, Baghdad, Iraq.

*Seung Gil Choi*
Chief of Education, Yeongdeungpo Correctional Institution, Korea.
Home: 105, Kochech-dong Yeongdeungpo, Seoul, Korea.

*Ram Kazee Bantawa*
Inspector, Office of Zonal Superintendent of Police, Bagmati Zone, Nepal.
Home: M. B. B. Niwas, Lazimpath, Kathmandu, Nepal.

*Riza Ali Akber*
Assistant Director, Reclamation and Probation Department, Baluchistan, Quetta, Pakistan.

## APPENDIX

Home: 2/1, Superintendent Colony, White Road, Quetta, Pakistan.

*(Mrs.) Josefina Montante Santos*
Senior Guidance Psychologist, Bureau of Prisons, Philippines.
Home: Bureau of Prisons, Muntinlupa, Rizal, Philippines.

*Alexis Leo De Silva*
Superintendent of Prisons, Negombo, Sri Lanka.
Home: 10, Circular Road, Negombo, Sri Lanka.

*Walter Wijayawardhena Nanayakkara*
Assistant Commissioner, Department of Probation and Child Care Services, Galle, Sri Lanka.
Home: "Nandana" Meepawala Poddala, Sri Lanka.

*Chua Patanacharoen*
Director of Rehabilitation Center for Narcotics Offenders, Thailand.
Home: 20/29, Bibulsonqkram, Nonthaburi, Thailand.

*Direk Tengchamroon*
Instructor, Thammasat University, Thailand.
Home: 300, Paklong, Pasricharoen, Bangkok, Thailand.

(Observer)
*Mansour Moharery*
Chief of Central Prison in Teheran, Iran.
Home: No. 12, Sadagat Street, Pahlavy Avenue, Teheran, Iran.

*Akio Aramaki*
Chief, Research and Guidance Unit, Musashino Gakuin National Child Education and Training Home, Japan.
Home: 1030, Daimon, Urawa-shi, Saitama-ken, Japan.

*Kenji Kiyonaga*
Research Officer, National Research Institute of Police Science, Japan.
Home: 3-7-10, Matsubara-cho, Akishima-shi, Tokyo, Japan.

*Yukio Machida*
Public Prosecutor, Sapporo District Public Prosecutors' Office, Japan.
Home: Kita 4-jō Nishi 18-chome, Chūō-ku, Sapporo-shi, Hokkaido, Japan.

*Yoshio Okada*
Probation Officer, Tokyo Probation Office, Japan.
Home: 3-63-3, Kōenji Minami, Suginami-ku, Tokyo, Japan.

*Yoshio Ōtani*
Assistant Judge, Osaka District Court, Japan.
Home: 1-31, Saibansho Shukusha, 20, Shiba Moto-cho, Matsugasaki, Sakyo-ku, Kyoto-shi, Japan.

*Tetsuya Ozaki*
Instructor, Councillor's Office, Correction Bureau, Ministry of Justice, Japan.
Home: 15-15, Kishi-machi, Urawa-shi, Saitama-ken, Japan.

*Kenji Shirakura*
Family Court Probation Officer, Suwa Branch, Nagano Family Court, Japan.
Home: 13212, Kami-Suwa, Suwa-shi, Nagano-ken, Japan.

*Hiroko Sogabe*
Probation Officer, Osaka Probation Office, Japan.
Home: 1-18, Tominosato-cho, Takatsuki-shi, Osaka, Japan.

*Keiichi Tadaki*
Public Prosecutor, Tokyo District Public Prosecutors' Office, Japan.
Home: 315-12, Ōaza Sunashinden, Kawagoe-shi, Saitama-ken, Japan.

*Terumitsu Takabayashi*
Chief, Security and Industry Division, Kurobane Prison, Japan.
Home: 1466-2, Samui, Kurobane-cho, Nasu-gun, Tochigi-ken, Japan.

*Appendix II–3*

## List of Participants in the 41st International Training Course

*Abdul Ahad Mujeeb*
President, Kandahar Commercial Court, Afghanistan.
Home: Jungalak-kabul, Afghanistan.

*Jagdish Chandra*
Additional District & Sessions Judge, Delhi, India.
Home: 10/12, Lucknow Road, Delhi-7, India.

*Ishwar Chandra Dwivedi*
Deputy Inspector General of Police, Central Bureau of Investigation, India.
Home: D-II/271, Vinay Marg Chanakyapuri, New Delhi 110021, India.

*Herdin Panggabean*
Member of the Staff for Experts to the Attorney-General, Indonesia.
Home: Jalan Patal Senayan 26, Jakarta, Indonesia.

*Gholam Reza-Shahri*
Chief of Criminal Court, Gilan Province, Iran.
Home: No. 33, Kuye Baiani, Rasht, Iran.

*Yong Whan Kim*
Public Prosecutor, Sung Dong Branch of Seoul District Prosecutors' Office, Korea.
Home: #16-4, 1 ka, Nam Sandong, Choongku, Seoul, Korea.

*Abhay Kant Jha*
Judge of the Zonal Court, Dang Tulashipur, Nepal.
Home: Village & Panchayat-Sakarpura, (P.O.) Saptary, Zone-Sagar Matha, Nepal.

*Shaikh Abdul Waheed*
District & Sessions Judge, Multan, Pakistan.
Home: Sessions House, 127 Bahawalpur Road, Multan, Pakistan.

*Candido P. Villanueva*
Senior State Prosecutor, Department of Justice, Philippines.
Home: 112, Castelar St., Cavite City, Philippines.

*Roderick Edward Martin*
Deputy Registrar & Magistrate, Subordinate Courts, Singapore.
Home: 143-E, Blk 3, Queen's Road, Singapore 10, Singapore.

*Denis Dhanesha Gunasekera*
Probation Officer, Department of Probation and Child Care Services, Kandy, Sri Lanka.
Home: Alut Walauwa, Tangalla, Sri Lanka.

*Ranjit Abeysuriya*
Additional Director of Public Prosecutions, Sri Lanka.
Home: 4, Srawasthi Place, Colombo 7, Sri Lanka.

*Pramarn Chansue*
Assistant Judge to the Supreme Court, Thailand.
Home: 278, Soi Sri Nakorm, Linchee Rd. Yannava, Bangkok, Thailand.

*Toshiaki Hiwatari*
Public Prosecutor, Utsunomiya District Public Prosecutors' Office, Japan.
Home: 2554, Nishihara, Utsunomiya-shi, Tochigi-ken, Japan.

*Yasutaka Kawamitsu*
Chief of Crime Prevention and Juvenile Section, Criminal Department, Gifu

Prefectural Police Headquarters, Japan.
Home: 487-1, Usakaiso, Gifu-shi, Gifu-ken, Japan.

*Masaru Kubota*

Chief of Research Section, Maritime Pollution Control Division, Guard and Rescue Department, Maritime Safety Agency, Japan.
Home: 2-60-3-104, Narashino-dai, Funabashi-shi, Chiba-ken, Japan.

*Kiyoshi Ogishima*

Chief of Medical Care Unit, Medical Care and Classification Division, Correction Bureau, Ministry of Justice, Japan.
Home: 3-18-2-101, Higashi-Ikebukuro, Toshima-ku, Tokyo, Japan.

*Hiroaki Ōhashi*

Assistant Judge, Osaka District Court, Japan.
Home: 1-5-31, Satsukigaoka, Ikeda-shi, Ōsaka, Japan.

*Shigeo Sasaki*

Public Prosecutor, Wakayama District Public Prosecutors' Office, Japan.
Home: 5-37 Sanban-cho, Wakayama-shi, Wakayama-ken, Japan.

*Yasuo Shiraishi*

Probation Officer, Niigata Probation Office, Japan.
Home: BB91 Gōdō-Shukusha, Kodo-Tei, Niigata-shi, Niigata-ken, Japan.

*Megumi Yamamuro*

Assistant Judge, Tokyo District Court, Japan.
Home: 5-6, Kasuya 4 chome, Setagaya-ku, Tokyo, Japan.

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## *Appendix III*

## List of the ad hoc Lecturers in 1975

1. Police

   1) *Mr. Atsuyuki Sassa,* Director, Security Division, Security Bureau, National Police Agency—"The Police Functions in the Field of Public Security"

   2) *Mr. Yoshiharu Suzuki,* Director, Crime Prevention and Juvenile Division, Safety Bureau, National Police Agency

      *Mr. Takashi Saitō,* Director, Patrol Division, Safety Bureau, National Police Agency—"Crime Prevention by the Police in Japan"

2. Prosecution and Judiciary

   1) *Judge Kazutatsu Susowake,* Director-General, Family Affairs Bureau, Supreme Court—"Family Court in Japan"

   2) *Judge Mamoru Urabe,* Tokyo High Court—"The Roles of Judge in Criminal Justice"

   3) *Judge Yasuo Kashiwai,* Tokyo High Court—"Appeal System in Japan"

   4) *Mr. Tatsusaburō Tsuji,* Assistant Prosecutor-General—"The Role of the Public Prosecutor in Criminal Justice System"

3. Correction, Rehabilitation and Social Welfare

1) *Mr. Kōtarō Kaneko,* Secretary-General, Kantō Regional Parole Board—"Parole and Rehabilitation"

2) *Prof. Tarō Ogawa,* Asian University—"Correction in Japan, the Past and the Present"

3) *Mr. John Wallace,* former Director of Probation, Office of Probation for the Courts of New York City—"Management of Probation System"

4) *Mr. Kenjirō Furukawa,* Director-General, Rehabilitation Bureau, Ministry of Justice—"Rehabilitation Services in Japan—Past and Future—"

5) *Mr. Takehiro Amino,* Child Welfare Bureau, Ministry of Health and Welfare—"Child Welfare System and Juvenile Delinquency"

4. Law, Criminology and Social Defence Policy in General

1) *Mrs. Kyōko Tsunekawa,* Assistant Director, Investigation and Liaison Division, Rehabilitation Bureau, Ministry of Justice—"The Research Study of the Differentiated Probationary Supervision"

2) *Prof. Kōichi Miyazawa,* Keiō University—"Victim Studies in Japan"

3) *Mr. Kyōichi Asakura,* Councillor, Correction Bureau, Ministry of Justice —"Problems of the Revision of Japanese Prison Laws"

4) *Prof. Hiroaki Iwai,* Taishō University—"Problems Concerning the Organized Crime in Japan"

5. Others

1) *Prof. Hitoshi Miyata,* Waseda University—"Japanese Language and Culture"

2) *Dr. Kihei Koizumi,* Chief Section for Educational Research Workshops in Asia, National Institute for Educational Research—"Development of Modern Education in Japan and its Current Problems"

3) *Prof. Toshio Kawatake,* Waseda University—"Japanese Classical Arts"

6. Seminars on Specific Problems

(1) Social Change and Correction
Advisers: *Mr. Yoshio Okusawa,* Chief Researcher, Research and Training Institute, Ministry of Justice
*Mr. Yoshihide Ono,* Warden, Kōfu Prison

(2) Probationary Supervision
Advisers: *Mr. Keisuke Iwai,* Chief, Supervision Section, Tokyo Probation Office
*Mr. Tarō Komazawa,* Professional Probation Officer, Tokyo Probation Office

*Mr. Bunji Yamamoto,* Volunteer Probation Officer, Tokyo Probation Office

(3) Drug Abuse
Adviser: *Mr. Akio Ishii,* Director, Narcotic Division, Pharmaceutical and Supply Bureau, Ministry of Health and Welfare

(4) The Revision of the Penal Code
Adviser: *Mr. Yoshio Suzuki,* Chief Councillor, Ministry of Justice

(5) Sentencing
Advisers: *Judge Tokio Matsumoto,* Tokyo District Court and Professor of the Legal Training and Research Institute
*Mr. Terumasa Ide,* Public Prosecutor, Deputy Chief of the Trial Department, Tokyo District Public Prosecutors' Office

(6) Speedy Trial
Advisers: *Judge Mitsunori Okada,* Tokyo District Court
*Judge Tadahiko Nagayama,* Tokyo District Court

(7) Drug Abuse
Advisers: *Mr. Naobumi Murakami,* Director, Youth and Juvenile Division, Criminal Affairs Bureau, Ministry of Justice
*Mr. Shōzō Shiraishi,* Director, Kantō and Shinetsu Regional Narcotic Control Office

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*Appendix IV*

## List of Reference Materials Distributed in 1975

1. Statutes of Japan
   1) The Constitution of Japan
   2) Criminal Statutes I & II
   3) The Police Law and the Police Duties Execution Law
   4) Court Organization Law and Public Prosecutors' Office Law
   5) Laws for Correction and Rehabilitation of Offenders
   6) Narcotic Control Law
   7) Opium Law
   8) Cannabis Control Law

2. Explanation of Some Aspects of Japanese Criminal Justice System
   1) Criminal Justice in Japan
   2) Summary of the White Paper on Crime, 1973
   3) Summary of the White Paper on Crime, 1974
   4) Non-Institutional Treatment of Offenders in Japan

5) Correctional Institutions in Japan
6) The Police of Japan
7) "Keishichō"-Metropolitan Police Department
8) A Brief Account of Drug Abuse and Counter-Measures in Japan
9) The Trends of Juvenile Delinquency and Procedures for Handling Delinquents in Japan
10) Bulletin of the Criminological Research Department, 1974
11) Outline of Criminal Justice in Japan, 1975

3. UNAFEI Publications

1) New Horizons in Social Defense Training and Research—A Survey of the First Eight Years' Work at UNAFEI
2) Report for 1973 and Resource Material Series No. 7, March 1974
3) Resource Material Series No. 8, October 1974
4) Report for 1974 and Resource Material Series No. 9, March 1975
5) Resource Material Series No. 10, October 1975
6) Newsletter No. 24, July 1974
7) Newsletter No. 25, November 1974
8) Newsletter No. 26, March 1975
9) Newsletter No. 27, July 1975
10) Newsletter No. 28, December 1975

4. Experts' Papers and Others

1) A Comparative Analysis of Police Practices *(David H. Bayley)*
2) International Experiences and Trends of Development in the Treatment of Offenders *(Torsten Eriksson)*
3) Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva, Switzerland *(T.G.P. Garner)*
4) Crime Problem in Hong Kong *(T.G.P. Garner)*
5) Suspension of Prosecution *(Katsuo Kawada)*
6) Development of Modern Education in Japan and its Current Problems *(Kihei Koizumi)*
7) Disciplinary Measures in Japanese Prisons *(Masako Kōno)*
8) Lawyers in Japan *(Masako Kōno)*
9) Crime in Japan: A Search for the Decrease in Criminality *(Teruo Matsushita)*
10) Youthful Extremism in Japan *(Teruo Matsushita)*
11) Victim Studies in Japan *(Kōichi Miyazawa)*
12) Correction in Japan, the Past and the Present *(Tarō Ogawa)*
13) Bail System in Japan *(Takeshi Satsumae)*
14) The Concept of the Indeterminate Sentence: A Reexamination *(I.J. "Cy" Shain)*
15) Plea Bargaining: An American Practice in Search of Legitimacy *(I.J. "Cy" Shain)*
16) The American Criminal Justice System in the 1980's: What lies Ahead *(I.J. "Cy" Shain)*

17) Research and Planning for Crime Prevention and Control *(Minoru Shikita)*
18) The Roles and Functions of the Police in a Changing Society—The Impact of the American Constitution on the Police Officer—*(Dean C. Smith)*
19) The Research Project of the Outcome of Differentiated Probationary Treatment *(Kyōko Tsunekawa)*

5. Material of Fifth United Nations Congress

Criminal Legislation, Judicial Procedures and Other Forms of Social Control in the Prevention of Crime

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*Appendix V*

## Names and Professions of the Visiting Experts

39th International Seminar Course

*Dr. David H. Bayley,* Professor, Graduate School of International Studies, University of Denver, U.S.A.

*Mr. Dean C. Smith,* United States Attorney for the Eastern District of Washington State, U.S.A.

*Mr. Torsten Eriksson,* former Director-General of the National Correctional Administration of Sweden and ex-United Nations Inter-Regional Adviser on Crime Prevention and Criminal Justice, Sweden

40th International Training Course

*Mr. E. A. Missen* (O.B.E.), former Secretary for Justice, New Zealand

*Dr. J. J. Panakal,* Head of Department of Criminology and Correctional Administration, Tata Institute of Social Sciences, India

41st International Training Course

*Mr. I. J. "Cy" Shain,* Director of Research, Judicial Council of California, U.S.A.

*Dr. Ahmed M. Khalifa,* Chairman of the Board, the National Center for Social and Criminological Research, and former Minister of Social Affairs, Egypt

*Mr. T. G. P. Garner,* J.P., Commissioner of Prisons, Hong Kong

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*Appendix VI*

## Visitors

29 January (Wed.)

*Colonel Darnsosugondo S. H.*, Indonesia

14 February (Fri.)

*Mr. Donald H. Goff*, Consultant on Criminal Justice Administration, New Jersey, U.S.A.

11 March (Tues.)

*Rev. Sister Bernard Vas*, Member of the Colombo sub-Committee of the Prisoner's Welfare Association

19 March (Wed.)

*Mr. Stern Heckscher*, Judge of High Court, Sweden

5 April (Mon.)

*Mr. Arkadij Nekprasov*, Assistant Secretary of Economic and Social Council, United Nations

7 June (Sat.)

*Mr. John Wallace*, UN Expert on Crime Prevention and Criminal Justice, U.S.A.

12 June (Thurs.)

*Mr. Lawrence Fenster*, Law School, University of Chicago, U.S.A.

3 July (Thurs.)

His Excellency the New Zealand Ambassador of Japan, *Mr. T. C. Larkin* and *Mrs. Larkin*

8 July (Tues.)

*Prof. Kim Ki Doo, Seoul University*, Korea

18 July (Fri.)

*Mr. Ouek Shi Lei*, Director of Prisons, Republic of Singapore

8 September (Mon.)

*Director V. Klochikov, Dr. Ratinov* and *Miss Manjossina*, Institute of Prevention of Crime, Moscow, U.S.S.R.

18 September (Thurs.)

*Mr. Roy Wood*, Secretary of the Crime Prevention Council, Australia
*Mr. William Clifford*, Director, the Australian Institute of Criminology, Australia

19 September (Fri.)

*Mr. Albietz*, Executive Officer of the Legal Division of Justice Department, Queensland, Australia

*Mr. Oemar Seno Adji,* Chief Justice of the Supreme Court, Indonesia

26 September (Fri.)
*Prof. Bron Mckillop,* former Visiting Expert, Australia

6 October (Mon.)
*General Cicero C. Campos,* Deputy Chief of Constabulary for Police Matters, Philippines
*General Vincente R. Raval,* Director of the Prison Bureau, Philippines
*General P. S. Magtibay,* Chief Secretariat, Peace and Order Coordinating Council, Office of the President, Philippines

27 October (Mon.)
*Mr. Silpa-Aran Chuvej,* Senior Public Prosecutor, Legal Advisory Division, Department of Public Prosecution, Thailand
*Mr. Thavisak Na Takua-Thung,* Assistant Public Prosecution, Bangkok Public Prosecution Office, Thailand

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## *Appendix VII*

### Changes of Faculty and Major Staff

*Mr. Saburō Miike,* who had served the Institute since September 1964, the last post being Chief of General Affairs Section was transferred on April 1 to the Tokyo District Public Prosecutors' Office where he serves as a chief investigation officer in Public Trial Division.

*Mr. Ri Takagi,* who was a chief investigation officer of the Tokyo District Public Prosecutors' Office, assumed the position as the Chief of General Affairs Section on April 1.

*Mr. Minoru Shikita,* who had been the Deputy Director since March 1973, was appointed the Deputy Chief of General Affairs Division, Tokyo District Public Prosecutors' Office on September 16. He was succeeded in his former position by Mr. Matsushita.

*Mrs. Kinko Satō,* who had been the Chief of Research Division since April 1972, was appointed the Chief Researcher of Criminological Research Division, the Research and Training Institute of the Ministry of Justice on August 15. She was succeeded in her former position by Mr. Kawahara.

*Mr. Takeshi Satsumae,* who was a public prosecutor of the Tokyo District Public Prosecutors' Office and a participant in the 13th International Training Course, joined the faculty on August 15 as the Chief of Training Division.

*Mr. Katsuo Kawada,* who was a public prosecutor of the Hakodate District Public Prosecutors' Office, also joined the faculty on August 15.

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## List of Faculty Members as of 31 December, 1975

| | |
|---|---|
| Director | *Mr. Zen Tokoi* |
| Deputy Director | *Mr. Teruo Matsushita* |
| Chief, Training Division | *Mr. Takeshi Satsumae* |
| Chief, Research Division | *Mr. Tomiyoshi Kawahara* |
| Chief, Information & Library Service | *Mr. Takuji Kawasaki* |
| Chief of Secretariat & Manager of Hostel | *Mr. Hisao Takiya* |
| Professor | *Mr. Takeo Ōsumi* |
| Professor | *Mr. Shōzō Tomita* |
| Professor | *Mr. Katsuo Kawada* |
| Associate Professor | *Miss Masako Kōno* |
| Officer-in-Charge of Library, Information and Reference Material Unit | *Mr. Toshihiro Okahara* |

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*Appendix VIII*

## Program

The Seminar will be organized mainly on the basis of discussion, with the knowledge and experience of the participants playing an important role in the program. There will be:

1. *Individual presentations:* The Formation of a Sound Sentencing Structure and Policy

Sentencing the convicted offender is a critically important nexus in the whole process of criminal justice administration. It must not only accurately reflect the community attitude towards the misconduct of the offender, but look to his rehabilitation as a responsible member of the society. However, it is becoming clearly evident to judges, public prosecutors, and other practitioners in all criminal justice systems that the most pervasive and complex issue is how to obtain a more efficient and just system and policy of sentencing. It will therefore become very important for all Asian countries to make every effort in forming a sound sentencing structure and policy.

Each one of the participants will be expected to make a presentation for about one hour, which will later serve as a basis for discussion. It has to be, first of all, a factual presentation of the actual situations in the sentencing structure and policy. It will then examine and discuss various problems relating to the subject. The main emphasis under the subject will be placed on: (a) evaluation of principal objectives of a sentencing policy and of methods towards the fullest possible achievement of those objectives; (b) development of more appropriate agency to determine the sentence or to share such determination; (c) identification of the

necessity for reforming current types of disposition to meet the variety of crimes and offenders involved; (d) establishment of effective measures for preventing disparities in sentences; (e) exploration of ways and means for obtaining sufficient information available to the court and for developing diagnostic and predictive techniques in sentencing process; (f) examination of possible infringement of fundamental rights guaranteed to offenders; and (g) improvements in special sentencing measures for juveniles, drug addicts, and mentally disordered offenders.

Since the initial presentation will be limited to one hour, it is desirous to discuss two or three issues in depth rather than to treat all of them.

2. *Seminar Discussions*

Seminar discussions on the various important issues mainly those raised by the participants by way of their presentations will be conducted under the guidance of the teaching staff as well as visiting experts. This will be supplemented by relevant lectures of visiting experts and other specialists, and by visits of observation to related agencies and institutions.

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*Appendix IX*

## Program

This Course will be organized mainly on the basis of seminars, group discussions and field-observations with supplementary lectures, thus utilizing to the fullest extent the knowledge and experience of the participants. The Course will concern itself with the following items:

1. *A Search for Effective Correctional Programs for the Rehabilitation of Offenders*

There has been a growing skepticism regarding the effectiveness of the rehabilitative approach to crime or delinquency. While subscribing to the goal of rehabilitation as an objective, there are an increasing number of questions concerning whether imprisonment is or can be effective in achieving that goal. One of the main objectives of corrections is to assist offenders so that they can become law-abiding citizens upon release from correctional institutions. To achieve that objective, the task of corrections is to attempt to help the offenders redirect his attitude concerning criminality as well as to assist him in reintegrating and strengthening his ties with the community. In either event, effective correctional programs need to be implemented.

During the Course, therefore, an effort will be made to evaluate current correctional programs, both traditional as well as newly-emerged, and to further search for effective ways of rehabilitating offenders, paying particular attention to maintaining secure custody and at the same time protecting the rights and welfare of offenders. The following items will be brought up for discussion:

(a) effectiveness of imprisonment in the reformation of offenders;

(b) role of vocational and other educational training in correctional programs;
(c) development of therapeutic milieu in diversified programs to meet the needs of offenders;
(d) increased use of community treatment; and
(e) training of correctional staff.

2. *Comparative Study of Correctional Systems and Programs*

The aim of this phase of the program is to compare correctional systems and services of the countries represented, with particular emphasis on those problems which impede effective correctional treatment. There will also be discussions of ways of improving correctional services in order to realize the goals of corrections with maximum efficiency and economy.

Each participant will be expected to contribute a one hour presentation on his country's correctional systems and programs, following which there will be provided ample opportunity for discussion by fellow participants.

3. *Group Workshops on Selected Topics*

Small group workshops will also be organized to discuss various problem areas identified by participants. Ample opportunity will be made available so that participants can exchange information and seek informed opinions on possible solutions to the various problems raised in the course of the discussions. Participants, therefore, are requested to prepare papers on appropriate topics, based upon specific problems encountered in their day to day work.

4. *In addition to the above-mentioned, there will be:*

(a) Supplementary lectures given by a variety of specialists who will cover various subjects relating to crime, crime prevention, and the treatment of offenders and such other subjects as may be of general interest;
(b) Visits to various institutions and agencies, some of which will be made more intensive and lengthy, according to the needs of participants;
(c) Cultural and other programs.

# RESOURCE MATERIAL SERIES

## No. 11

# Material Produced During The 41st Training Course On the Improvement in Criminal Justice System

UNAFEI

## Introductory Note

The Editor is pleased to present No. 11 of the Resource Material series with material produced during the 41st Training Course on the Improvement in Criminal Justice System, which was held from 17 September to 6 December, 1975.

Part I consists of two papers contributed by the Visiting Experts at this Course, one by Mr. I. J. "Cy" Shain, Director of Research, Judicial Council of California, U.S.A., and the other one by Mr. T. G. P. Garner, J.P., Commissioner of Prisons, Hong Kong. In his paper, "Future Trends in the American Criminal Justice System: A Look at What Lies Ahead," Mr. Shain analyzes the major features of the American criminal justice system and forecasts significant changes likely to take place in the future. In the paper, "Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva, Switzerland," Mr. Garner summarizes the deliberations and conclusions of the Congress, drawing special attention to discussions of the topics, Criminal Justice in Crisis, and Protection of All Detainees against Torture and Other Inhuman Treatment both of which were closely related to the program of the Course.

Part II contains the papers presented by the participants taking part in the Course.

The Editor deeply regrets that lack of space has precluded him from publishing all the papers submitted by the participants in the Course. However, all the papers are being retained in our Resource Material Center and will benefit the staff and future participants at UNAFEI. 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 asks for their indulgence for having had to do it this way since it was unavoidable under the circumstances.

In concluding the Introductory Note, the Editor would like to express his sincere appreciation to Mr. Shain for his assistance with the editorial work for this publication. In addition, the Editor wishes to express his gratitude to all who so willingly helped in the publication of this volume by attending to the typing, printing and proofreading, and by assisting in various other ways.

31 January, 1976

ZEN TOKOI
Director

37162

PART 1: EXPERTS' PAPERS

# Future Trends in the American Criminal Justice System: A Look at What Lies Ahead

*by I. J. "Cy" Shain**

I am pleased and honored to have this unique opportunity to share with my professional colleagues in Japan and throughout Asia some thoughts about the American criminal justice system and its emerging developments and future trends. It is especially gratifying for me because in the several months that I have been in this lovely country of Japan, I have been enormously impressed by its low crime rate, and by the efficiency of your police, courts, prosecutors and correctional services. Japan is one of the few if not the only nation that has been able to experience a significant growth in urbanization, and industrial development without an accompanying increase in anti-social behavior, and that speaks particularly well for your society and its culture, traditions and people.

In my own country, we are not as fortunate. Our crime rate is still growing and is much too high. As a result, we are undergoing an agonizing, but necessary, reappraisal of our efforts in the fields of crime prevention and control.

Let me first observe that the American criminal justice system is a massive, expensive and complex set of services distributed among numerous national, state and local units of government. In the judgment of many observers, and according to several recent intensive studies by national and state commissions, it is overburdened, somewhat inefficient and is not providing the public with the level of crime protection services it so urgently desires. Changes in the system are inevitable, if only to respond to mounting public pressure for more adequate personal protection.

## I. Factors Affecting Future Criminal Justice Developments

As the title of this paper suggests, I plan to offer some personal thoughts and conjectures about what lies ahead for the American criminal justice system. At the outset let me share with you both a sense of confidence and uneasiness about attempting to predict the shape and texture of America's criminal justice system of the future. As you can readily appreciate, the future is beclouded with considerable uncertainty because much will depend on a set of imponderables over which we have little or no control. In this regard, who can predict with accuracy the state of economic and social well-being of our society in the years ahead? Recent international developments in the field of energy resources have dramatically demonstrated the deleterious effect of unilateral economic action upon the economies of our respective countries. As a consequence, we have had inflation followed by increased unemployment and a recession which has further reduced the standard of living for all, but most particularly for the poor and the socially disadvantaged who are the main source of supply of our anti-social population. If past experience with previous recessions is any guide in forecasting the future, the setback in our economy will undoubtedly be reflected in increases in the incidence of crime.

Much will also depend upon the social consequences of the changing nature of the American family which traditionally has been the social institution upon whose shoulders have been placed the primary responsibility of transmitting affirmative

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* Research Director, Judicial Council of California. The text of these remarks were delivered in an address before the Ministry of Justice of Japan on December 12, 1975.

social values to children and to reinforcing patterns of constructive behavior. With a sizable increase in the number of broken homes and single parent families and with an appreciably higher proportion of working mothers, family stability and the parental role have been perceptibly weakened. The long range effect of reduced family stability on social deviancy may be extremely adverse and we may see increased rates of delinquency and crime as a result.

Furthermore, in America we are rapidly urbanizing as people flock to the cities in search of job opportunities. Not only is there a feeling of greater alienation in the cities but depersonalization as well as people crowd into metropolises and away from smaller communities where their behavior was more subject to the beneficial effects of community restraints and controls. As you are readily aware, the weakening of community restraints simultaneously tends to reflect itself in higher incidences of anti-social behavior, and needless to say that too is hardly an encouraging prospect for the future.

Another unpredictable variable is the political and social persuasion of those to whom we will extend the enormous responsibility of running our massive instruments of national, state and local government in the future. As experience has recently shown, our leaders can use this power for good or for evil. Likewise, they can use this temporary reign of power to improve the well-being of our people by pressing for needed social and economic changes in society or they can use this legacy to preserve the status quo and ignore pressing social problems and needs. As a general rule, the political figures we elect to office tend to reflect the dominant wishes of our people and therefore much will depend in the future upon our society's changing perceptions of appropriate social reforms and its priorities for implementing them.

## II. Distribution of Criminal Justice Responsibilities

Having stated some of the factors which conceivably could affect the criminal justice system of the future, let me set the stage for a more detailed discussion of potential institutional and legal reforms by outlining briefly the major features of our highly diverse American criminal justice system. You should understand that responsibility for apprehension, control, adjudication, and treatment of offenders is distributed widely among national, state and differing types of local government. Since our Federal Government was born out of the unification of our original 13 States, its powers consist of those which were delegated to it by the States. Accordingly, under our Federal Constitution, the States reserve for themselves the right of self-government, and this includes responsibility to provide their own criminal justice services. Furthermore, the States can organize these services in any manner which they see fit, so long as due process provisions or other essential constitutional guarantees are not infringed upon. As a result, we have a highly diverse, heterogeneous set of criminal justice systems in contrast to the more uniform national system which exists in Japan and in most Asian countries.

While each of our 50 American States provides basic police, prosecution, court and correctional services, the manner in which such services are organized and distributed between state and local governments differs considerably. This is true not only among States but frequently among local governmental units within the same State. Thus, some local governmental units attempt to loosely coordinate their services for law and justice, while others distribute these responsibilities among numerous independent and separate departments. Furthermore, while some local governments treat a major proportion of convicted offenders in their local jails, road camps and other rehabilitation facilities, others rely almost exclusively upon state penal institutions for such services.

Neither space nor time will permit a detailed description of the various permutations and combinations of organizational patterns in our criminal justice systems, for such an effort would fill many encyclopedic volumes. Instead, I intend to dwell briefly upon the major responsibilities which each unit of government undertakes, and the relationship between

federal, state and local criminal justice services. Finally, I will attempt to describe the criminal justice system in California, which not only is the most populous state, but which over the years, has initiated many innovative, unique American criminal justice services.

### III. Role of the Federal Government in Criminal Justice

Let me begin by describing the role and responsibility of the federal or national government. First, the United States Supreme Court is the final arbiter of the constitutionality of all statutes and procedures. In this role, it has a very significant impact on state criminal justice systems by enunciating due process requirements which affect court, corrections and police procedures. Second, the Federal Government has responsibility for the apprehension, prosecution and correction of offenders who violate federal statutes. Fundamentally, federal criminal jurisdiction extends over crimes which occur on Federal Government property, e.g., post offices, military bases, national parks and federal buildings; crimes which take place in more than one state, such as auto theft when the defendant drives across state lines; violations of the national income tax law; and crimes involving the national postal service, or federally insured banks, as well as smuggling, counterfeiting, violations of inter-state commerce, and other federal offences. In actuality, the total number of offenders tried in federal courts is small by comparison with the number adjudicated in state and local courts.

To legally process and treat such offenders, the Federal Government has numerous district courts, United States Attorney offices and correctional institutions located in various regions of the country as well as a variety of special federal law enforcement agencies.

Of greater importance, the Federal Government makes many contributions to state and local criminal justice agencies by providing technical assistance, training services and subventions and grants to finance improved criminal justice services. For example, the Federal Bureau of Investigation maintains a national register of fingerprint and criminal history files which are made available on request to local police, and also provides training services in the latest law enforcement techniques. They also will assist in the apprehension of offenders who may have violated federal as well as state statutes.

The Patty Hearst case comes quickly to mind because of its currency in the news. In that case, Miss Hearst and her accomplices were alleged to have robbed a bank, and to have held up a store. Thus, it appears that both state and federal offenses were committed and in all likelihood she will be tried for these separate offenses in the federal and state courts. But in less publicized cases, an agreement often will be reached between the two jurisdictions, and usually only one will prosecute the defendant. If one jurisdiction fails to obtain a conviction, and it is deemed in the public interest, then the other jurisdiction may decide to prosecute the case for violations of its Penal Code.

Another example of substantial federal assistance is the role played by the National Law Enforcement and Assistance Administration, a branch of the United States Department of Justice. That agency has distributed several billions of dollars to state and local governments to finance new, experimental and improved criminal justice services, including those provided by the police, the courts and corrections. Since standard setting is one of the responsibilities of such federal subvention agencies, potentially they are in a position to have a significant impact on local criminal justice services.

### IV. State and Local Criminal Justice Services

Let us turn now to the role of state and local governments upon which the major burden of the criminal justice system falls. In order to provide these diverse services, we have countless thousands of judges, courts, police, jails, probation officers and treatment institutions spread out across the width and breadth of the land.

For purposes of simplifying my description, I will focus upon California's criminal justice services and procedures. In addition to a central state government, we

have 58 counties whose populations vary from less than 1,000 persons to well over 7 million in Los Angeles, our largest county.* Each of the 58 counties, irrespective of size has, as a minimum, a sheriff's office for police protection services, a jail or other local detention facility, a probation department to provide correctional services, a public prosecutor's office, a court of general jurisdiction and at least one lower court to handle inferior criminal and civil matters. We also have over 350 cities which provide police services to municipalities which exist within these counties.

According to official figures, California annually spends over $2 billion for criminal justice services, excluding money allocated for capital outlay and construction. In terms of personnel, there are more than 100,000 persons employed in criminal justice activities, 68,000 of whom work in law enforcement agencies, 21,000 persons work in correctional agencies and services and 12,000 in court, prosecution and publicly financed legal defense activities. On a per capita basis, California annually spends about $100 for every man, woman and child to maintain its state and local criminal justice services.

## V. Responsibilities of California's Criminal Justice System Components

In order to gain a fuller appreciation of California's criminal justice system, a very brief description of the major responsibilities of the diverse governmental components in this field follows.

### *Law Enforcement and Police Services*

Law enforcement personnel, whether they are employed by one of the 350 municipal police departments, by one of the 58 sheriff's offices, or by a branch of the central state government, have essentially the same responsibilities as they do in Japan, namely they are charged with the prevention of crime by making crime a high risk undertaking, and if a crime is committed, they are responsible for the apprehension of offenders, gathering of evidence and the informal resolution of disputes. We also have a special police force which is charged with traffic safety and control on major state highways, called the California Highway Patrol, who are recruited, trained and employed by our State Government.

In some of the larger municipal departments and sheriff's offices, there is a fairly heavy emphasis placed on youth service activities, and community relations.

Sheriffs departments and city police departments also operate jails for the temporary confinement of persons awaiting trial and for those serving short sentences of less than one year.

As mentioned earlier, there are over 68,000 persons employed by law enforcement agencies and the total cost of such services in the 1974 fiscal year was over 1 billion dollars.

### *Trial Courts*

The trial courts of California are integrated so that there is no overlapping jurisdiction between different courts. A court of general jurisdiction, Superior Court, exists in each of our 58 counties, and their workload varies from as few as 10 cases per year to almost 200,000. Judges serving in courts with a very small workload are assigned by the Chief Justice of California's Supreme Court to aid courts which are overloaded with cases and, therefore, need additional judicial manpower.

Superior courts have jurisdiction in all felonies as well as civil matters in which the amount of the prayer is over $5,000. In addition they have jurisdiction in domestic relations cases, juvenile matters, probate, mental health commitments, appeals from rulings by the lower municipal or justice courts, habeas corpus, adoptions, guardianships, eminent domain and personal injury cases.

There were 503 Superior Court judges, as of September 1, 1975, and as a final note, last year, over 461,000 cases were disposed of in California Superior Courts, of which approximately 49,000 involved contested trials.

* About 80% of the people live in one of the six largest counties in the Los Angeles, San Francisco, San Diego and Southern California areas.

*Municipal Courts*

Two types of trial courts exist below the Superior Court in California, namely the municipal court, which serves judicial districts with populations exceeding 40,000, and justice courts, which exist in districts of 40,000 or less population. Municipal courts have jurisdiction in criminal misdemeanor cases (where the penalty is less than one year's confinement), civil cases in which the prayer is $5,000 or less and small claims cases not exceeding $500.

In addition, municipal court judges act as magistrates to conduct preliminary hearings in felony cases to determine whether there is reasonable or probable cause to hold a defendant for further proceedings in the superior court.

The major volume of business in municipal courts, and in justice courts, involves moving traffic violations. In fact, last year, municipal courts had almost 4 million traffic violations filed and an additional 7 million cases involving violations of parking regulations.

There are currently 81 municipal courts with 507 judges.

*Justice Courts*

Our final level of trial courts is the Justice Court which serves smaller districts, and which are profusely located in the less populated counties of California. There are currently 195 justice courts, and the only differences between their jurisdiction and that of the municipal court is that their civil cases cannot exceed $1,000, and they cannot hear criminal cases in which the fine exceeds $1,000.

We have recently had a major reorganization of the justice courts and some 30 full-time circuit judges have been appointed. This is in sharp contrast to previous years when most of the judges in justice courts served only on a part-time basis because of small caseloads. In the 1973-74 fiscal year, over 870,000 cases were filed in justice courts, and an additional 300,000 cases involving parking violations were also filed.

To summarize, as of September, 1975, there were 1,106 judges assigned to trial courts in California. These courts disposed of more than 12 million cases last year, only a small proportion of which involved contested trials. Most dispositions were by forfeiture of bail, settlements or by pleas of guilty. In addition, there were over 100 non-judicial officers who try cases as referees or court commissioners, mainly in the fields of domestic relations, traffic and juvenile matters.

Exclusive of capital outlay, the annual cost of the judicial system is about $200 million, of which less than $30 million is paid by the State Government and the remainder by local, county governments. Court revenues from fines, forfeitures, penalties and court fees approximately equal this cost and are distributed to the state, counties and cities.

*Prosecutors Offices and Legal Services for Indigents*

Each of the 58 counties assumes the costs of providing prosecutorial as well as legal defense services for indigent criminal defendants. More than $67 million was spent last year for prosecutorial services and about $30 million for the support of public defender offices. An additional, sizable amount was also spent to finance court appointed counsel for individual cases.

There were more than 4,300 persons employed in public prosecutors offices last year, of whom 1,671 were attorneys and another 655 were investigators assigned to assist them in collecting evidence.

In most of the larger counties, there is a staff of full time attorneys available to provide necessary legal services for indigent criminal defendants. They are called Public Defenders and such offices exist in 31 of the 58 counties, and they employ almost 1,000 attorneys on a full-time basis. There are also large number of attorneys appointed on a part-time basis to represent individual defendants in counties which do not have a Public Defender's office and in cases of conflict with codefendants where the Public Defender can't represent both clients. Eight counties contract with a law firm to provide representation of indigent defendants and in 19 counties, attorneys are court appointed on an individual case basis.

*Corrections*

The final major element in the triad of services which characterize our criminal justice system is the correctional component which probably has the most diverse organizational patterns of all the elements in the system.

Responsibility for detention, supervision, rehabilitation and enforcement of the laws involving the sentenced defendant is shared by 435 separate agencies — sheriff's and police departments, county probation, and state departments and boards. These state and local departments handle well over 1 million offenders annually.

Adult detention facilities are usually administered by the sheriff's department, although in seven counties, honor camps and other minimum security facilities are supervised by a separate corrections department or by the probation department. Many city police departments also operate jails. A few years ago there were 61 county jails in our 58 counties and 314 city jails.

Juvenile facilities are administered by county probation departments, and as recently as last year, there were 45 juvenile halls in California; however, 19 counties, mainly those with small populations had no such facility. In addition, 23 counties operated a total of 51 camps, ranches and boys' schools where juvenile offenders were confined. Juvenile halls had a total bed capacity for about 4,500 youngsters and the bed capacity of ranches, camps and small group homes was about 3,400. Finally, there were more than 68,000 juveniles under the supervision of probation departments last year.

Other correctional facilities are provided at the State level. The California Department of Corrections provides supervision, confinement and treatment of more than 41,000 convicted felons, of which slightly less than half, about 20,000, are confined in 12 state prisons and 26 conservation centers, the latter being devoted to forestry work. The remaining 21,000 felons are in the community under aftercare supervision provided by the Parole Division of the Department of Corrections.

The California Youth Authority, the state agency assigned responsibility for the care and treatment of youths committed to their jurisdiction, operates 11 institutions, three reception centers and four forestry camps. There are about 4,300 youths confined in Youth Authority institutions and almost 13,000 under parole supervision in aftercare.

Finally, let me indicate that there are over 21,000 persons employed in probation departments, and state and local correctional institutions. Of this number, more than 6,500 were probation officers assigned to either court related work or the supervision of probationers; another 10,800 were employed in state correctional institutions; and the remaining number were assigned to jails, local camps or other institutions. There were 435 separately operated correctional agencies.

The cost of providing correctional and probation services was well over $500 million last year. Of this sum, $167 million was spent on state youth and adult institutions, and $182 million was spent on probation services.

## VI. Basic Assumptions Concerning Future Incidence of Crime and Criminal Justice Services

At this time, I want to share with you several broad assumptions, or conclusions, which will serve as part of the underpinnings for my subsequent comments and predictions.

First, in the next few decades, I anticipate that there will be a large number of innovations, experimental programs and changes in the patterns of criminal justice services but with only a few exceptions, the amount of change in fundamental institutional terms will be quite modest. By that I mean that police agencies as they are organized and exist today, in all likelihood in the next decade or two, will institutionally resemble the police agencies of today. While they may be called upon to expand their crime prevention services and develop new means of broadening community participation, fundamentally most police departments will not change very substantially from their present models. A few law enforcement agencies, administered by the new breed of policeman, may develop experimental administrative models, but these will be isolated

efforts rather than broad trends.

I also anticipate that this will be true, to some extent, of local and state correctional agencies, although in this category of service, we will probably see more institutional change than in either the court or law enforcement components.

Neither do I anticipate that the courts will change significantly, except that in California we are undertaking a major revision of our lower court structure, and in the next 20 years, we may consolidate or unify our trial courts. In other states, some reorganization of court structures is likely to take place in order to overcome the gross inefficiency of existing institutional patterns. But these will be unique efforts rather than a widespread movement which sweeps across the country.

Now I have reached these conclusions because the historical record clearly demonstrates that relatively minor and painfully slow change characterizes the tempo of institutional reform. Certainly, this has been true as we look back over the past 35 to 50 years, and I doubt that the pace of institutional reform will quicken significantly in the forthcoming 10 to 20 years. As a general rule, we don't trade the certainty of institutional performance, no matter how dissatisfied or frustrated we may be with it, for the uncertainty implied by substantial change, and this fact, if no other, will govern the rate of change in the decade or two ahead.

I also have several other major expectations, the first of which is that the crime rate as measured in America will not be substantially reduced in the next 10 to 20 years. If we are fortunate we may be able to slow down the rate of growth. I have reached this conclusion for two reasons: first, we have not observed any significant reduction in the crime rate in the last 10 to 20 years despite the massive outpouring of fairly large amounts of federal, state and local funds for the agencies which serve the criminal justice system; and second, the factors generally agreed upon as contributing to anti-social behavior, namely the economic and social breeding grounds of crime and delinquency are not likely to be eradicated in the next two decades. The financial and social displacement costs required to eliminate the various social inequities in our society are so overwhelming that it is highly unlikely that fundamental changes will take place.

My second expectation may sound equally discouraging, namely that our rate of recidivism will not significantly decrease in the next 10 to 20 years. While I don't know anyone who necessarily wants this to occur, realistically speaking, our past performance in the field of behavior modification has not been encouraging. In making this observation, it is easy to be misunderstood. I don't mean to imply that all treatment efforts are futile or that treatment specialists are not helping individual clients and their families to cope with life better, but simply that taken as a larger group, the overall recidivism rate of prisoners has not significantly declined over the years. Like many other observors, I question whether we have the necessary treatment tools to accomplish this objective and well designed empirical research of the effectiveness of traditional and experimental treatment methods seems to bear out this gloomy conclusion.

On a more optimistic note, I anticipate that we will make significant advances in developing more sophisticated classification systems to enable judges, probation, parole and other officials to identify with greater precision which clients can respond to the full panoply of specified rehabilitation services and which can or should be given minimal attention as well as those likely to recidivate and those likely to succeed. Helpful research efforts of this nature have been going on for some time, and I anticipate that in this important area we will make even more significant strides in the future.

Along with these three basic conclusions, I foresee increasing public pressure in America to produce less costly, more efficient criminal justice services as governmental financing becomes increasingly burdensome to local taxpayers. If we have a long-term recession of any significant dimension, and unfortunately the signs of such an economic setback are already apparent, and if, at the same time, we are unable to significantly control unbridled inflation, then it should not come as too much of a surprise that there is likely to be a growing hue and cry for economy in government and some reduction in all public services, including those earmarked

for criminal justice clients. Since convicted offenders neither represent a popular constituency, nor do they have an effective voice in the legislature, costly criminal justice and rehabilitative services may be among the first to be affected by budgetary reductions.

### VII. Forces Acting to Revitalize Criminal Justice Services

I anticipate that in the years ahead we will have the same forces operating to revitalize the criminal justice system as in the past, namely, the frustration and dismay of the public over the escalating crime rate, dissatisfaction with undue delays in judicial disposition of cases, and disenchantment with the questionable effectiveness of police as well as treatment and rehabilitation services.

There will also be pressure for change generated by the outpouring of federal funds to underwrite needed services and experimental programs. In this regard, I anticipate that federal funding for criminal justice services will have an even greater than usual effect because it is being tied to the implementation of recently enunciated federal standards and goals.

The National Advisory Commission on Criminal Justice Standards and Goals, in 1973, produced a widespread series of proposals aimed at reducing crime in America. These ranged from proposals designed to improve community crime prevention to proposals to improve police services, corrections and the courts. In addition, the Commission urged that permanent penal code revision commissions be established, and urged nationwide action to control handguns and eliminate the dangers posed by their widespread possession.

Under ordinary circumstances, the reports and recommendations which were issued more than two years ago by the National Advisory Commission on Standards and Goals would have had the same fate as a long list of similar reports from earlier national and presidential commissions. Namely, after a brief splurge of publicity they would have been set aside and largely ignored as society and criminal justice officials proceeded merrily on their way doing the same old things in the same old way. But when the recommendations are tied into a funding process, so that state requests for federal funds and individual grants are approved or rejected on the basis of whether or not they further these enunciated standards and goals, then they become a much more relevant and significant force for reform.

If you need to be persuaded of the power of funding as an incentive for real change, reflect for a moment on the impact of California's probation subsidy on commitment rates to state institutions and upon probation services generally. This law which was enacted more than 10 years ago, offered a financial bonus to local county government to be spent on probation and treatment services, if their rates of commitment to state adult and youth correctional institutions were reduced. The impact has been substantial, and in my view, state probation subsidies have significantly changed the pattern of sentencing decisions by our courts. Not only have they substantially reduced commitments to state institutions, but these subsidies have been responsible for a host of experiments in probation caseload supervision and rehabilitative services to clients.

While I am impressed by what additional funds can do for the criminal justice system, I don't happen to believe that pouring more money into public programs is the sole cure of all that ails society. Interestingly enough, partially in response to pressures to reduce public expenditures, we have developed in California less costly programs which have proved as effective, if not more so, than those which are more liberally and handsomely funded. For example, among the programs which have emerged as a result of our efforts to reduce burdensome institutional costs are early prison release programs, work furlough, volunteer probation officers similar to those you have in Japan, diversion and community correctional services, all of which represent significant advances in correctional programming. And this is but a partial listing of currently offered community based alternatives to institutional confinement.

## VIII. Anticipated Changes in the Future

I noted earlier that in the years ahead we anticipated a number of changes in America's criminal justice system, and at this time, I want to enumerate and discuss some of the more significant developments, which, in my judgment, are likely to occur in the next few decades.

*Reform of Penal and Juvenile Codes*

1. I think we will see substantial changes in our indeterminate sentence laws in the next 10 years. The beginnings of that movement are already apparent with the chant being taken up by some of the more respected leaders in the correctional system. While the pressure to initiate changes in the indeterminate sentence laws initially emanated from inmates and graduates of our state penal institutions, we now hear a clarion cry for change from such distinguished correctional experts as Mr. Richard McGee, former Director of Corrections in California, who is considered by most observers to be the foremost penal administrator of the past 50 years, as well as from legislators, civil libertarians and renowned criminologists disenchanted with the ineffective results of the correctional system. In the judgment of many students of the field, the indeterminate sentence law, while theoretically appealing, has not lived up to its expectations. Instead of individualized sentences, we get inconsistent patterns of terms set for similar types of offenses, and more importantly these terms seem to be subject to the vacillating arbitrary whims and caprices of political pressure. In revising the indeterminate sentence law, we will probably impose reduced, fixed sentences for specific offenses based upon prior criminal history. We may also reduce sharply the authority of paroling boards. Finally some jurisdictions will probably provide a structured, institutionalized procedure to appeal sentences, other than by the traditional judicial process.

2. I anticipate a number of changes in our penal codes which will involve first the gradual removal of victimless crimes from our statutes, and the conversion of minor offenses to infractions. The beginning signs of change are apparent in the lax pattern of law enforcement of many victimless crimes, such as marijuana usage, consenting sexual conduct among adults, pornography, gambling, drunkenness and vagrancy. In addition, the California Legislature, reflecting changing public opinion, in 1975, took the first step to decriminalize marijuana usage by voting to reduce penalties for such offenses, an act which California's new Governor Edmond G. Brown, Jr. signed into law.

Another major step to decriminalize offenses was the removal of penal code sanctions against adults involved in consenting homosexual behavior this year in California. While this reform was bitterly opposed by some church groups, its sponsors nevertheless prevailed in their legislative efforts.

Morality is changing and as today's young people become the respected majority of tomorrow, I expect a significant shift in public attitude toward statutes governing acts of personal behavior which do not necessarily affect or weaken society or its moral fiber.

I want to mention one other thing about victimless crimes. As a result of the action taken several years ago in Hawaii, when that State to all intents and purposes removed most traditional victimless crimes from its penal code, we have a wonderful opportunity to study what are the social effects, if any, of such action. By rigorous follow-up studies, we can determine whether or not Hawaii's radical excision of victimless crimes from its statute books has created unusually severe or inordinate social problems. If I were to hazard a guess, I would venture to speculate that these reforms have not proven unusually damaging to Hawaiian society.

3. A recently enacted infraction statute in California has removed jail, as a potential sentence, for most minor moving traffic offenses. This concept probably will be expanded in the future and will probably include many minor criminal offenses for which judges, both in California and elsewhere, presently are not sentencing convicting offenders to serve jail terms.

4. In the juvenile justice field, there are increasing pressures to eliminate from the jurisdiction of the juvenile court, the vague legal category "delinquent tendencies" or "in danger of becoming a delin-

quent." In the next few decades I anticipate that we either will have a much more precise basis for judicially intervening with this group of misbehaving minors, or none will take place. Actually, in California when a minor is brought before the court on a petition of this nature, it is usually done on the basis of leniency because the dispositional consequences are much less severe than if the minor was charged with committing a crime. In some instances, however, it is used as a device to secure court wardship when there is an insufficient legal basis for assuming jurisdiction on the grounds that a criminal offense was committed. Delinquent tendencies, as a basis for jurisdiction has been attacked as vague, on legal grounds, and as ineffective, on treatment grounds, and in the future such cases probably will be diverted to social agencies.

5. The new legal protections which have been granted to juveniles by landmark decisions of the United States Supreme Court in the last ten years are here to stay. I don't think we have reached the limits of such developments and I can see the further accretion of legal protections in the years ahead, including the possible limited use of juries to determine the guilt or innocence for extremely serious offenses involving juveniles.

6. In the future, I believe that efforts to effectuate major revisions of the juvenile court law in many States will be successful. Such efforts were initiated in California this year and in the next decade or two, my guess is they will be even more widespread.

7. Most criminal codes are actually historical records of society's changing views concerning crime and its appropriate control. Accordingly, criminal statutes are the social and legal geology of society's various efforts, to respond to emerging criminal problems at different times in history. However, serving an interesting historical function does not necessarily enable these accumulated statutes to meet the changing needs of the times. Accordingly, many states have undertaken serious efforts to make major revisions of their penal codes in order to more realistically reflect the capabilities of current criminal justice systems as well as a more rational and contemporary assessment of current social practices. As you have discovered in Japan, progress in this field moves very slowly because criminal code revisions touch the very nerve center of a pluralistic society's competing social interests. However, looking to the future, I anticipate that major efforts to revise criminal codes will be initiated by many states, and that these efforts will meet with partial, if not total, success.

8. Despite the shocking and numbing effect upon American society of the senseless assassinations of President Kennedy, Robert Kennedy, and Martin Luther King, and the recent attempts on the lives of President Ford and other public figures, gun control legislation has been very difficult to enact on the national and state levels. In the opinion of most observers, such legislation is long overdue, and we anticipate in the next decade that selected gun control and registration laws will be enacted.

*Corrections and Probation Services*

1. The use of diversion, community corrections and early release programs are now ingrained in our correctional programs, and in the next few decades I believe there will be a further enlargement of such services. They have several advantages: They are less expensive than traditional services; they produce fairly good results; and they make good sense from a treatment standpoint. I think these innovative programs will expand and will continue to have public support in the decade ahead.

2. We have embarked upon a course which spells out greater legal rights for offenders in response to requirements mandated by the United States Supreme Court. While these new rights present many administrative problems and a great deal more work for correctional officials, I don't believe we will ever return to our former procedures wherein prisoners had virtually no legal protections.

3. I also believe there will be significant changes affecting local probation department structures. More specifically I believe that current probation services which are specifically provided for the courts, e.g., pre-sentence reports and investigations, will be under a separate department,

while probation department services which involve the implementation of court sentences, and which have a treatment component, will be administered by a separate agency. Each department will have its own director, one of whom will be responsible to the courts, and the other to county government.

4. In response to pressures for economy in government, I anticipate a greater sharing and pooling of correctional resources among several local units of government. For example, I can foresee the regional consolidation of correctional facilities, and several small counties pooling probation department services in order to reduce costs and upgrade current services. We currently have regional administration of parole services and I see no feasible reason why this regional pattern cannot be applied to local probation services.

5. Also for reasons of economy, I anticipate the increasing use of volunteer probation officers and indigenous offender personnel in the decade ahead. Not only are such services less costly, but given appropriate training and with careful selection, ex-offenders can be exceptionally effective in dealing with the newly released inmate. My impression is that while there have been problems with such experiments, on the whole, the experience has been quite satisfactory. This being the case, the logical next step is to expand these services.

6. I also see a shift taking place whereby local correctional institutions now being administered by elected officials, such as sheriffs, will be gradually placed under the direction of skilled, nonpolitical correctional administrators. This reform has been discussed for many years without having been adopted. What will likely make it a reality is greater state financing of local correctional services. If this takes place we will have a gradual shift in responsibility from local to state government with a consolidation of such services under regional or statewide patterns.

7. Several states have taken the first step to gradually abandon large, security conscious institutions, replacing them with smaller facilities. These smaller institutions usually share a common administration and central housekeeping and food services, thereby making for better management. In additional, because of the use of smaller institutions, there is greater communication between staff and inmates. The costs of running large San Quentin type institutions are excessive, and the administrative and treatment problems they present are sizable. Accordingly, in the future we will see the eventual demolition of these historic grey walled monuments to ancient penology and the construction of smaller institutions for incarcerating the more serious offenders.

8. Another major recent development is the increasing reliance on community correctional facilities for treating offenders, and less dependence upon state institutions which are often located miles away from the inmate's home. California has had an incentive program to financially reward local governments which reduce their commitment rates to state prisons and reformatories, and as mentioned earlier, it has had a significant effect. This trend is only in its embryonic stages and in the next few decades it will gain wider acceptance throughout the United States because of the twin benefits of reducing costs and improving treatment effectiveness.

*Courts and Criminal Procedures*

1. As you know, in America most judges are either appointed on the basis of their financial and political contributions to the party in power or are elected to office. This system is admittedly imperfect, and the men, therefore, who are either appointed as judges by Governors or are elected to office, vary widely in ability and competence. If a Governor is conscientious about upgrading the courts, he will appoint the most competent person available, irrespective of party affiliation. However, few governors do so and therefore, citizen groups, reformers and state bar associations have attempted, from time to time, to introduce a merit selection system for appointing judges to fill vacancies on the bench. In a modified form, such a method exists in Missouri and in a few other states, but those are the exception rather than the rule. With greater public interest in the courts, growing pressure will be generated to appoint more people of high caliber to the bench,

and in the next decade or two, I believe such efforts will bear fruit.

2. As important as it is to develop a bona fide method for selecting able lawyers to serve as judges is enactment of a fair procedure for the removal of judges who are either incompetent, mentally or physically ill, or who commit criminal offenses. California initiated such a procedure in 1961 by the creation of a Judicial Qualifications Commission, and its success these past 14 years has created considerable interest throughout America. In the future, therefore, I believe that many more states will establish commissions of this nature to monitor, discipline and remove judges for reasons of health, ability or moral turpitude.

3. The courts traditionally have been the institution most resistant to change but we are likely to see two developments: first, we will probably consolidate the various levels of trial courts into one court and provide for the absorption of the part-time justice of the peace courts into the new unified structure. In my state, the California Supreme Court's recent decision in *Gordon vs. Justice Court* (1974) 12 Cal. 3d 323, spells the elimination of lay, nonlawyer justice court judges. In the future, California's small justice court districts will probably be consolidated into larger county-wide courts, and eventually they will be absorbed into one trial court which will handle everything from misdemeanors to felonies as well as minor and major civil cases.

4. In an effort to upgrade the administration of court services, we have had a significant growth in the number of court administrators. These nonjudicial officers handle calendaring of cases, jury recruitment, and administrative matters involving budget, personnel and governmental relations. However, policy decisions remain in the hands of the judges. This development has had two advantages: first, it has freed judges from time consuming nonjudicial administrative matters, and second, it has improved the administration of nonjudicial services. In my judgment, the role of court administrator will be expanded in the years ahead, and additional courts throughout the country will employ such nonjudicial executives.

5. From time to time, as one element in our efforts to reduce delay and costs, there have been attempts made to reduce the size of juries and or eliminate them from certain categories of offenses. Experiments along this line have started, and a system for allowing both parties to stipulate to smaller juries in criminal cases as well as civil cases, which now exist in a few states, will probably be more widely enacted. However, the concept of trial by a jury is deeply embedded in the tradition of American jurisprudence and in my judgment, unlike Japan and other Asian countries, it will never be eliminated.

6. Plea bargaining, as it is currently practiced, will probably change in the future. In actuality, it is not a single uniform set of procedures but a conglomeration of diverse practices. For example, concensus is lacking as to the appropriate role of the judge in the process, i.e., whether he should actively participate in the process to urge agreement among opposing counsel or whether he should wait until counsel for the opposing parties have resolved the sentence bargain among themselves before he acts. Nor is their agreement whether the interested parties, namely the victim, probation or law enforcement personnel have any legitimate role in the process. The National Advisory Commission on Standards and Goals recently urged that we forbid plea bargaining but that is not likely to happen in the United States because its implementation would require many additional courts, judges, prosecutors, public defenders, court attaches and other personnel and other facilities. What is likely to happen in the next ten years is the development of a more formalized set of procedures for plea bargaining in which the respective roles of the principals will be better defined and outlined. The American Bar Association has urged such action, and in ten years, I anticipate that there will be substantial reform in plea bargaining practices along these lines.

7. I also anticipate that in the future we will further reduce court delay, provide speedier trials and significantly lessen frivolous criminal appeals by requiring appellate screening procedures.

8. Finally, I believe we will reduce disparity in sentences through devices such as sentencing councils and training pro-

grams as well as by revising indeterminate sentence laws referred to earlier.

*Law Enforcement and Police Procedures*

1. In the future, we will have greater accountability of police services. By this I mean there will be more intensive efforts to determine whether particular services are socially and financially cost effective, such as whether foot patrol policemen serve law enforcement better than those in patrol cars, and questions of a similar nature. To date, the law enforcement component of the criminal justice system has been most successful in expanding their budgets usually on the grounds that more manpower is needed because of increases in the incidence of crime. This unquestioning public attitude is beginning to change and with increasing stringency in public expenditures, in the next decade we can expect much closer scrutiny and accountability of police efforts.

2. We may observe greater humanization of police services as an increasing number of new policemen are college graduates. With employment opportunities restricted in many fields, many college graduates are turning to alternative fields for employment. Law enforcement is one of these fields, and their impact will be felt in the years ahead. Traditional methods of police protection and community relations are being questioned by the newer, better educated law enforcement officers and I expect them to exert internal pressure to expand citizen-police cooperative efforts and more police community services.

3. We have had a series of strikes by policemen in the past year, including one which took place in my own city, San Francisco. Public reaction to those strikes has been decidedly adverse, and new legislation has been enacted to ban such work stoppages in the future. I believe we will see an increasing number of such laws enacted in the years ahead to prevent the disruption of vital police protection services.

4. With the increasing sophistication of technology, and the growing use of computers, the effectiveness of law enforcement efforts has been vastly improved. Advancements in the technological field will far outstrip organizational developments, and greater information systems, communication devices, as well as more sophisticated detection devices are likely to result.

## IX. Conclusion

Heretofore, the public's involvement in the criminal justice process has been minimal. It has largely consisted of approving financial requests for criminal justice services, and sometimes even this was done with great reluctance. Experienced and skilled administrators, as well as judges and criminal justice officials are acutely aware of the importance of involving the public more intimately in the entire criminal justice process. The reasoning is that if the public is aware of the complexity of the problems which the various elements of the system are trying to resolve, there will be greater public understanding, sympathy and support.

Crime prevention and crime control cannot be the exclusive responsibility of law enforcement, judicial, prosecutorial and correctional officials. It is, in essence, everyone's business.

Many informed people believe that the only ways to achieve a reduction in crime are first, to secure more active involvement by the members of the community, and, second, on a broader, and perhaps more important scale, to implement, fundamental changes in our social structure and institutions so they can serve more people with greater equitability.

Society traditionally has attempted to eliminate crime by imposing heavier penalties for offenses or by enacting new laws. Such efforts may be necessary to express society's will and frustration with lawlessness, but in and of themselves, they are not enough. Imposing heavier penalties sometimes creates a statistical illusion of effectiveness whereas the actual number of such offenses has not been reduced. This masking effect occurs because prosecutors realize that the severe penalties required by the law are inappropriate in individual cases, and therefore defendants are often charged with a lesser included offense.

I believe we in America have much to

learn from Japan and its very low crime rate. True crime control, as has been amply demonstrated over the years in your country, depends upon society's ability to transmit and reinforce positive moral codes to children and other members of society. The people of America have an almost desperate yearning to achieve that goal. Whether we have the necessary social engineering skills to achieve it for as diverse and heterogeneous a society as ours is a question which remains to be answered. My hope is that in the next several decades, out of public frustration with crime and the crises facing our criminal justice system, will arise an understanding that the true path of reform must rest, in the final analysis, upon an improved moral and institutional structure for American society and its people.

# Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders Held at Geneva, Switzerland (1st to 12th September, 1975)

*compiled by T.G.P. Garner**

Summaries of Discussions on the Following Points:

1. Criminality Associated With Alcoholism and Drug Abuse.
2. Criminal Justice System in Crisis.
3. The Treatment of Offenders in Custody or in the Community, With Special Reference to the Implementation of Standard Minimum Rules for the Treatment of Prisoners Adopted by the United Nations.
4. Protection of All Detainees Against Torture and Other Inhuman Treatment.

*Introduction*

The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was organised in accordance with paragraph D of the annexe to General Assembly Resolution 415(V) of 1st December, 1950 which provides for the convening of an international congress to discuss related matters every five years.

The First Congress[1] was held at the European Office of the United Nations at Geneva, Switzerland, in 1955; the Second Congress[2] with the Government of the United Kingdom of Great Britain and Northern Ireland acting as host, at London, in 1960; the Third Congress[3] with the Government of Sweden acting as host, at Stockholm, in 1965; and the Fourth Congress[4] with the Government of Japan acting as host, at Kyoto, in 1970.

The Fifth Congress was originally scheduled to convene at Toronto, with the Government of Canada acting as host, from 1st to 12th September, 1975. However, acting on a request by the Government of Canada for a postponement of the Congress for one year, the Committee on Conferences of the General Assembly of the United Nations decided in July of 1975 against postponement and recommended the convening of the Congress as scheduled (1st–12th September, 1975) at the Palais des Nations, Geneva, Switzerland.

*Preparatory Meetings*

In preparation for the Fifth Congress, the U.N. Secretariat, under an Executive Secretary, arranged preparatory regional meetings, at Tokyo, with the Government of Japan acting as host, from 12th to 21st July, 1973; at Brasilia with the Government of Brazil acting as host, from 5th to 10th November, 1973; at Budapest, with the Government of Hungary acting as host, from 28th to 31st May, 1975; and at Lusaka with the Government of Zambia acting as host, from 17th to 23rd March, 1975.

The Government of Denmark hosted a special preparatory meeting for European countries on 17th August, 1973. The League of Arab States and the Government of Egypt held a special preparatory meeting for Arab States in Cairo from 23rd to 27th November, 1974, Representa-

* J.P., Commissioner of Prisons, Hong Kong.

1. Report of the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No.: 56.IV.4).
2. Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No.: 61.IV.3).
3. Third United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No.: 67.IV.1).
4. Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No.: 71.IV.8).

tives of the United Nations Secretariat attended these meetings as resource persons.

At its second session held in May 1975 at Headquarters of the United Nations, the Committee on Crime Prevention and Control considered, inter alia, the preparations for the Fifth United Nations Congress and approved the substantive items to be included in the Congress Agenda. The latter were reviewed and finalised at a third session of the Committee held in Geneva from 23rd September to 3rd October, 1974.

*Participation*

Participants included the following categories of persons and organisations: experts designated by Governments invited to participate in the Congress; representatives of the specialised agencies of the United Nations, of the Palestine Liberation Organisation and liberation movements recognised by the Organisation of African Unity, of inter-governmental organisations and non-governmental organisations in consultative status with the Economic and Social Council and interested in, or concerned with, crime prevention and the treatment of offenders; and qualified individuals.

*Agenda*

The general theme of the Congress was "Crime Prevention and Control—the Challenge of the Last Quarter of the Century." The programme was comprised of the following items:

(1) Changes in forms and dimensions of criminality — Transnational and National;
(2) Criminal legislation, judicial procedures and other forms of social control in the prevention of crime;
(3) The emerging roles of the police and other law enforcement agencies, with special reference to changing expectations and minimum standards of performance;
(4) The treatment of offenders, in custody or in the community, with special reference to the implementation of the Standard Minimum Rules for the treatment of prisoners, adopted by the United Nations;
(5) Economic and social consequences of crime, new challenges for research and planning.

The Congress was requested by the General Assembly of the United Nations under Agenda Item 3 to give urgent attention to the question of development of an international code of ethics for police and related law enforcement agencies, and under Agenda Item 4 to include, in the elaboration of the Standard Minimum Rules for the treatment of prisoners, rules for the protection of all persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment and to report thereon to the General Assembly at its 30th Session.

*Opening Ceremony*

Mrs. Helvi Sipila, Assistant Secretary-General, Centre for Social Development and Humanitarian Affairs, United Nations, opened the Fifth United Nations Congress and welcomed the more than 1,000 participants representing some 90 countries.

In her opening address Mrs. Sipila included the following extracts: "I would like to express my sincere hope that this Congress should mark a turning point in the history of the world community's efforts to conquer the cancer of crime. The time has come to put the full spotlight of our attention on the question of how to deal with those who will not or cannot live by the rules of their own countries or of the world community. Of course we must note well that the fault may sometimes lie with the rules themselves or with those who make or enforce them. Be that as it may, it is no longer possible to postpone earnest work for crime prevention with the excuse that we are overwhelmed by other pressing problems. Crime is exacting too great a toll on national economies. It affects too many lives, it burdens all of us, its social and economic cost have become intolerable for most nations to bear."

She went on to add "Many nations of this world are saddled with criminal codes designed somewhere between the ages of chivalry and of colonial expansion. The

systems of procedure were designed for offender types who—if they ever existed —certainly do not appear before the courts of most countries today. The solutions which these codes envisaged are far removed from the problems of today. Worse yet, many nations of the world, who acquired their national sovereignty once since the birth of the United Nations, have inherited systems designed for different people, at different times, in different climes."

She continued by saying "Experts tell us that the crime prevention methods of the past and present are incapable of dealing with crime as it exists today and, unless we act, it will exist tomorrow. The judgements of courts do not deter and the prisons do not rehabilitate perpetrators. What is worse, it now becomes clear that while so many criminals are organised and commit their international offences with business-like efficacy, our criminal justice agencies lack organisation and efficiency. Above all, crime prevention efforts lack in spirit or, if you will, in a coherent philosophy.

"There was a time when penologists thought that only hurt inflicted upon those who hurt society could even the score. The evidence of the failure of this philosophy is all around us. Hurt upon hurt multiplies hurt, but return of those to society who separated themselves from it will benefit society. This return can only be accomplished with patience and understanding and a willingness to suffer losses while trying. Ideally, by concerted effort, we shall attack the root causes of crime; realistically, we must try to remove the temptation and opportunity in the mass of cases which now lead to crime.

"Such a strategy imposes grave professional burdens on all of you who are directly and professionally concerned with the prevention of crime. It is your duty to minimise the opportunity for crime and to avoid its occurrence, for such is the expectation of the citizens of your countries. But you are bound to do so subject to the constitutional mandate of your States and the basic human rights guarantees of the United Nations. This is a formidable task indeed. Yes, I sympathise with the police officer who is under public pressure to solve a specific crime fast yet humanly, the court which must dispense justice humanly yet which must also placate the victims of a heinous deed, the warden who must safely yet humanly keep a dangerous prisoner. All of them must do their duty while adhering to the basic standards of decency and humanity to which the world community has agreed. ....."

Following the opening ceremony, it was announced that Mrs. Inkeri Anttila, Head of the Delegation from Finland, had been elected President of the Congress.

The following summaries of discussions on a number of matters are but a few of the total subjects which were discussed at the Congress under the Agenda shown on page 47.

### Criminality Associated With Alcoholism and Drug Abuse

It was agreed that alcohol is a drug and alcoholism is a major aspect of drug abuse. Although the criminality associated with these two factors may have much in common, there are other, and perhaps more significant, factors which separate them.

First, the use of alcohol is institutionalised, and its problems have long been known, though they may be increasing, whereas the introduction of narcotics and psychotropic drugs into many countries represents a relatively new intrusion into and disruption of their cultures.

Secondly, because alcohol is usually legitimately available, criminality occurs mostly because of the effect of consumption, in that it lowers self-control and a sense of responsibility and leads to accidents. Only rarely do alcoholics commit crimes in order to obtain this drug, or money to buy it, and such criminality is of a low level. The possession of narcotics and psychotropic drugs, however, is usually illicit and especially the trafficking in them is nearly always so. Therefore, the criminality associated with them is concerned more with the movement of them and attempts to obtain them, than with acts committed under their influence.

Thus, criminality connected with alcoholism is different from that connected with most drug abuse. In its violent mani-

festation, it is a result of the depressant effect of the drug on the normal mechanism of self-control. There was a general feeling that it is an increasing problem, but one requiring action by agencies within a social policy framework, rather than by criminal justice agencies, to effect anything other than a superficial change in the situation.

It was noted that the international control system of narcotic drugs is predominantly based on the Single Convention of Narcotic Drugs, 1961 to which most governments represented at the Congress are Parties. It had been amended by the 1972 Protocol which had come into force very recently. The Convention on Psychotropic Substances of 1971, providing a similar international control system, was still waiting for its entry into force. The goals of these treaties had to be implemented by national governments being Parties to them, and the present international control system was functioning well and had achieved considerable results in controlling the drug problem by its obligatory control provisions. It was also the legal basis for all forms of international cooperation, particularly for the fight against illicit traffic. This system thus contributed to the prevention of and fight against crimes related to drugs—especially recently, by highly improved extradition provisions in the 1972 Protocol—and to coping with the drug abuse problem.

These treaties in no way insisted exclusively on harsh national sanctions, and were much more subtle and flexible than was sometimes interpreted and applied; the penal provisions of the treaties distinguished between offences as such and serious offences and provided that only the latter ones should be liable to adequate punishment, particularly by penalties of deprivation of liberty. They envisaged, primarily, all activities forming part of the illicit traffic in drugs. Illicit personal "use" is not included in the penal provisions so that Parties need not consider it a punishable offence. Equally, illicit "possession" of drugs for personal consumption need not be considered a punishable offence. Governments going beyond the requirements of the treaties, and considering illicit possession and even use as punishable offences, could provide fines, censure or other measures. At any rate, a distinction must be made between legal intervention against illicit producers, manufacturers and traffickers, and illicit possessor-consumers, for whom non-penal forms of social control might sometimes be more appropriate and effective.

If properly implemented at the national level, in cooperation between governments and with the international organs, in particular with the United Nations Commission on Narcotic Drugs and the International Narcotics Control Board, the present framework of the drug treaties would fully achieve the primary goals of international drug control, to limit all activities in this field exclusively to medical and scientific purposes. Increased efforts in all sectors were needed both on the national and international level.

Many countries agreed that there was a world wide problem of criminality particularly associated with drug abuse revolving mainly around trafficking in dangerous drugs. However, the problem in each country differs through cultural, social and economic factors. Indications were that the problem was an increasing one with very few countries indicating a decrease in the level of alcoholism and drug abuse. Most encouraging, however, was the evident desire displayed by many countries to tackle the problem on a basis of international cooperation.

From the discussion it became apparent that the most important areas in which action should be considered were:

*Illicit Traffic*

(a) To consider the drafting of an international convention on judicial assistance and to improve extradition procedures both on the bilateral and the multilateral level, by reviewing and amending existing extradition treaties or concluding new ones, to include drug offences as extraditable offences; drug offences should be recognised by all governments as extraditable offences, and consideration might also be given to the elaboration of an international convention by the United Nations Secretariat;

(b) To consider the illicit traffic in drugs as a transnational crime to be included in a list of transnational crimes to

be prepared by the United Nations;

(c) To ensure in conformity with one's country's national legislation that drug offenders, having been convicted in one country but having escaped, serve the sentence in the country in which they have taken refuge or are found, if extradition is not feasible;

(d) To share all knowledge in the law enforcement field, and exchange constantly relevant information, in particular concerning new methods and routes used by illicit traffickers;

(e) To improve the mechanisms for expeditiously disseminating and receiving evidence concerning drug offenders;

(f) To strengthen all forms of border control;

(g) To ensure, by whatever means possible, that convicted traffickers might not take refuge in other countries;

(h) To consider whether it is not desirable to increase penalties for illicit traffickers and to decrease penalties for users or possessors of small quantities of drugs for personal use if a government considers use/possession as punishable offences;

(i) To possibly destroy seized drugs and relevant material connected with illicit activities and not needed for legitimate purposes under strict supervision; and

(j) To ensure that any national drug policy—e.g., decriminalisation of activities concerning cannabis—does not affect adversely the drug control situation in neighbouring countries and at the international level.

*Drug Abuse*

(a) As drug abuse forms part of the general public health problem, preference should be given to measures of treatment, and social reintegration of drug abusers and addicts. Penal measures, if not to be excluded, should in no way prevent the application of these measures, and should be restricted to ensuring their application, if appropriate;

(b) Governments should follow the provisions of the 1972 Protocol and of the Convention on Psychotropic Substances of 1971, and provide for effective treatment measures. They should also provide, either as an alternative or in addition to conviction or punishment, that drug addicts and drug abusers, where appropriate, should undergo measures of treatment. It was generally accepted, however, that as yet very little evidence on treatment success is available.

*Preventive Measures*

In general, preference should be given to preventive measures, particularly by providing meaningful and appropriate information to such members of society responsible for dealing with those most at risk. All educational programmes should include some information on the drug problem and the dangers of drug abuse. It was noted, however, that the experience in some countries had shown some of these programmes to be counterproductive. Special programmes for leisure time of juveniles should be encouraged.

*Different Situations in Different Countries*

Because of the differences which necessarily stem from the social, economic and political situations in different countries, distinctions have to be made in the approaches to the drug and drug control situations in the various countries, taking into account their stage of development and political system. A similar distinction appears to be valid with regard to the relation between drug abuse and criminality. A policy of decriminalisation of, e.g., consumption and possession of certain substances in highly industrialised countries could have effects or side effects on the relationship between developed and developing countries with regard to economic, social and cultural aspects. Moreover, the distinction between drug abusers and traffickers is not easily drawn. Combating drug abuse itself might sometimes require changes in the social, economic and cultural structure of a country in order to remove abuses and reasons for abusing drugs. The responsibilities in the fight against drug abuse, including the financial costs involved, should be shared by all governments concerned.

*International Drug Control*

Governments are called upon, if they

have not yet done so, to adhere to:

(a) the Single Convention on Narcotic Drugs, 1961, and the 1972 Protocol amending that Convention;

(b) the Convention on Psychotropic Substances of 1971; and

(c) to cooperate with the United Nations Fund for Drug Abuse Control, in order to enable the United Nations to provide technical and financial assistance to governments requiring such assistance, in particular to governments of those countries in which raw materials for narcotic drugs are produced, in order to enable them to carry out the provisions of the international drug control treaties and to fight effectively against the drug abuse problem and its related criminality.

**Criminal Justice System in Crisis**

The working paper prepared by the Secretariat indicated that the criminal justice system has been seriously challenged in many countries. It alleged that although countries in all regions were highly concerned with their domestic situation, it appeared that in countries with a relatively lenient penal system and with a political system and climate offering fairly wide protection to defendants, criticism of the penal law is more widespread than in countries with more repressive and more traditional approaches.

The paper went on to state that there is a growing credibility gap between the public and the criminal justice system. In some countries, only a minute fraction of the persons initially arrested were ultimately convicted, and in most instances, no data is available on the disposition of the remainder of the cases. In the course of the regional preparatory meetings for the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders it was found that many countries in Asia were having problems in adjusting to the Criminal Codes that had been imposed upon them by colonial administrations. Several Asian representatives drew attention to the need for local boards, councils or tribunals in their countries and for flexibility in the local application of the absolute or technical requirements of the criminal justice administration.

In the ensuing discussions following the introduction of this Item, most participants disagreed with the view that the criminal justice system within their country was in crisis. In fact, some countries disassociated themselves from the statement altogether. (In the writer's opinion, it was unfortunate that the word 'crisis' was used. It is possible that some measure of agreement would have been reached if a less harsh descriptive term had been used, for instance, if the terminology had indicated that there was in some countries an indication of growing dissatisfaction with the criminal justice system or that there was disenchantment with the criminal justice system as it existed at the present time.)

The capacity of the criminal justice system to respond to the demands made upon it, the capacity of the courts and the capacity of prisons were considered prime factors by some. Non-conventional criminality was on the increase while in some countries social and economic factors hinder progress in implementation of full rehabilitation programmes for offenders.

One view was that new challenges to the criminal justice system was partly the result of rising expectations and rapid but not very well thought out town planning was also a factor in the problem of criminality.

Under this heading Corruption was also discussed, it was introduced with a view to illustrating that corruption like organised crime blocks the effective functioning of the criminal justice system.

Other matters discussed in this Section dealt with the criminal justice system as a factual phenomenon. Negative effects of the criminal justice system and who controls it. The question of reform and change coupled with the need for feedback was also discussed.

Under the heading of changes in criminal legislation and judicial procedure, the question of decriminalisation and depenalisation was discussed at great length, with most countries agreed on the need for action in both areas. Many countries indicated that some progress was being made towards decriminalisation of certain offences and depenalisation. It was generally agreed that depenalisation and decriminalisation was possible in the areas

of victimless crimes, offences such as public intoxication, vagrancy, gambling, pornography, prostitution, were cited as being some areas where progress could be, or had been made.

Diversion programmes were also discussed, this touched on pre-trial diversion through settlement or mediation procedures, screening and alternatives to imprisonment, increasing the use of such alternatives as fines, suspended sentences, probation, community service, etc.

Other forms of social control in the prevention of crime also came up for discussion including public participation and traditional controls in developing countries.

### The Treatment of Offenders in Custody or in the Community, With Special Reference to the Implementation of Standard Minimum Rules for the Treatment of Prisoners Adopted by the United Nations

The present Standard Minimum Rules for the treatment of prisoners were discussed at great length and all speakers indicated that progress had been made towards the implementation and adoption wholly or partially. Many participants including those from a number of the developing countries indicated that the lack of financial resources prevented their immediate full implementation. (Copy of the rules is attached at Appendix A.)

The Congress took note of the fact that the present Standard Minimum Rules were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders 20 years ago, and the question concerning the need for the revision of rules had been studied by the Fourth United Nations Congress held at Kyoto, Japan. In the five years since that Congress, there have been two meetings of a working group of experts appointed by the Secretary-General in response to its recommendations. The questions discussed in the Section related to the following issues:

(a) the need for amendments to the existing Rules;
(b) the proposal that a commentary on the Rules be prepared as well as an easily understandable brochure;
(c) the recommendation that a new set of Rules be drafted relating to persons in non-custodial forms of treatment;
(d) the formulation of policies and practices to facilitate the return to their domicile of persons serving sentences in foreign countries;
(e) the need for special analytical studies to be undertaken under United Nations auspices to assess the effectiveness of various forms of imprisonment; and
(f) that the United Nations, through appropriate bodies and agencies, strongly encourage the full implementation of the Standard Minimum Rules throughout the world and offer assistance to those countries requesting assistance in this regard.

It was noted that the Standard Minimum Rules were a vital document. The failure in many regions to implement the rules resulted from economic constraint, from the overcrowding of institutions, and from the lack of availability of trained staff. The point was made that the prison system would have to be seen in relation to the whole social situation within a country. It was also noted that cultural difference among the regions of the world posed some difficulties.

A remark was made that at the time of the adoption of the Rules in 1955 there were only 50 member states, whilst the total today was nearly 150. Thus, all current member states did not have the opportunity to collaborate in the formulation of the Rules. There was a general consensus that the Rules should not be substantively revised. The view was expressed that to do so would tend to reduce their influence in bringing about necessary changes in prison administration in some parts of the world.

Whilst strong reservations were expressed about amendments to the Rules some participants urged that consideration be given by the United Nations to the need for revising specific rules to ensure that they would not be in conflict with newly developed policies and practices. Specific reference was made to the need to re-examine the Rules relating to the employment of women in male correc-

tional institutions and the experimental development in some countries of co-educational correctional institutions. The individual accommodation system for offenders on trial was advocated by one participant, but it was also pointed out that there were cases where offenders preferred to be housed in association. The need to strengthen inmate grievance procedures was mentioned and it was urged that provision be made for prisoners to have recourse to an independent authority such as an ombudsman. Special emphasis was placed upon the inclusion of the Standard Minimum Rules in educational material used in training of professional workers in the field as well as material used for staff training and development. A suggestion was made that serious consideration be given to the designation of the year 1980 as the year for the protection of the civil and human rights of detainees and prisoners.

The proposal that the United Nations be authorised to develop new rules for the treatment of offenders in the community received approval in principle. It was observed, however, that the task of preparing such rules was an extremely complicated and difficult one and should be approached with caution with a view to providing maximum flexibility with respect to substantive matters. It was strongly suggested that the development of the new rules might be undertaken in two phases—the first would concern itself with the articulation of principles and standards which concern programmes that are alternatives to imprisonment, whilst the second might begin to address itself to guidelines concerning the content of the programmes.

Considerable attention was attracted by the proposal to begin work on the development of methods to facilitate the international exchange of prisoners. It was suggested that bilateral arrangements could be employed to test the effectiveness of such procedures. It was noted by some participants, however, that the laws of their countries might not permit such undertakings. Some other participants observed that reciprocal exchanges of parolees and probationers might possibly be the point at which a beginning might be made.

**Protection of All Detainees Against Torture and Other Inhuman Treatment**

In responding to the request in General Assembly Resolution 3218 (XXIX) of 6th November, 1974, the participants took into account the points made by the Director of the Human Rights Division of the United Nations, and by the representative of the World Health Organisation. Full consideration was given to a report of the informal intersessional working group authorised by the Steering Committee of the Congress which submitted a proposed declaration on torture to the Section for the adoption by the General Assembly.

In introducing the report of the intersessional working party, it was reported that the proposed declaration which had been initiated by the delegations of the Netherlands and Sweden had been exhaustively reviewed by an informal group which had thereafter formulated the draft placed before the meeting. Attention was drawn to the fact that the draft declaration had set out what should be deemed to be the broad principles relating to the problem of torture, and was not intended to be a juridical document capable of strict legal interpretation nationally or internationally.

Unanimous support was expressed for the draft declaration, in principle. A number of participants, however, proposed amendments to specific articles contained in the draft. Several participants expressed the view that the definition of torture contained in article 1 should be modified. It was proposed that the word "severe" be struck off from the definition, and that it be made clear that the article would not apply to a penalty or punishment imposed by a judicial tribunal in accordance with law or to a disciplinary administrative action taken under the provisions of the law and in accordance with the provisions of the Standard Minimum Rules. It was also proposed that the definition include reference to the arbitrary detention and sentencing of innocent persons; that the phrase "by or at the instigation of public officials" be eliminated, and that the definition embrace "physical, mental, moral, or other suffering."

It was further proposed that the language of article 2 be modified to show that the United Nations 'condemns' torture. Some participants recommended the elimination from article 3 of the second sentence, which refers to "exceptional circumstances" which should not be invoked as a justification for torture, but there did not appear to be a consensus on this point. A number of comments were made concerning the reference to "the training of police" in article 5, and it was proposed that the article be revised to include all law enforcement personnel responsible for the arrest, detention or imprisonment of persons for whatever cause. One participant recommended that article 6 be amended by the inclusion of the term "practices" in addition to "methods of interrogation." Concern was expressed by one participant over the problems relating to the implementation of articles 8, 9 and 10. He suggested the revision of articles 8 and 9 in such a way as to include the points contained in article 10.

With respect to article 12, some participants suggested that it be amended to reflect the fact that statements made as the result of torture, or other cruel, inhuman or degrading punishment should not be used as evidence against a victim of torture or "any other person."

The deliberations of the Section clearly demonstrated that the practice of torture and other cruel, inhuman or degrading treatment or punishment was abhorrent to the society of nations. Many participants reported the steps which had already been taken to protect human rights within the context of national laws. It was noted, however, that the need for international action was also urgently needed to assure the more effective protection of all people. The draft declaration represented but an initial step in this direction. There clearly remained the need to move towards more effective, international procedures to implement this declaration. The ultimate objective would, of course, be the development of an international convention ratified by all nations. Through such measures the desire for the protection of human beings from abuse might be assured and the reduction of crime achieved.

It was therefore recommended, in the light of the foregoing, that the following amended draft declaration be approved by the Congress and brought to the attention of the General Assembly of the United Nations for its further consideration:

The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

*Supporting* the rejection by the General Assembly, in its resolutions 3059 (XXVIII) of 2nd November, 1973 and 3218 (XXIX) of 6th November, 1974, of torture and other cruel, inhuman or degrading treatment or punishment,

*Sharing* the conviction of the General Assembly that, because of the increase in the number of alarming reports that torture is being practised in many countries of the world, further and sustained efforts are necessary to protect under all circumstances the basic human right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment,

*Noting* the decision of the General Assembly to consider at its thirtieth session the question of torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment,

*Recommends* that the General Assembly adopt the following Declaration on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment:

"The General Assembly,

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the egual and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

*Considering* that these rights derive from the inherent dignity of the human person,

*Considering* also the obligation of States under the Charter of the United Nations, in particular Article 55, to promote universal respect, for, and observance of, human rights and fundamental freedoms,

*Having regard to* Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or cruel, inhuman or degrading treatment or punishment,

*Adopts* this Declaration on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment as a guideline for all States and other entities exercising effective power."

Article 1

For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation or a public official on a person, for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to lawful deprivation of liberty to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 2

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations and as a violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Article 3

No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4

Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 5

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

Article 6

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

Each State shall ensure that all acts of torture as defined in Article 1 are offences under its criminal law. The same shall apply in regard to acts which constitutes participation in, complicity in, incitement to or an attempt to, commit torture.

Article 8

Any person who alleges he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9

Whether there is reasonable ground to believe that an act of torture as defined in Article 1 has been committed, the competent authorities of the State concerned shall

promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under Article 8 or Article 9 establishes that an act of torture as defined in Article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well-founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed, by or at the instigation of a public official, the victim shall be afforded redress and compensation, in accordance with national law.

Article 12

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

* * *

NOTE: In compiling this paper, liberal use has been made of the appropriate documents and papers made available during the Congress.

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*APPENDIX A*

## STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS AND RELATED RECOMMENDATIONS

### A. Standard Minimum Rules for the Treatment of Prisoners

### Resolution adopted on 30 August 1955

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Having adopted the Standard Minimum Rules for the Treatment of Prisoners annexed to the present Resolution,

1. Requests the Secretary-General, in accordance with paragraph (d) of the annex to resolution 415(V) of the General Assembly of the United Nations, to submit these rules to the Social Commission of the Economic and Social Council for approval;

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By resolution 663 C (XXIV) of 31st July 1957, the Economic and Social Council approved the *Standard Minimum Rules for the Treatment of Prisoners* (p. 1) and endorsed *inter alia* the *Recommendations on the Selection and Training of Personnel for Penal and Correctional Institutions* (p. 7) and the *Recommendations on Open Penal and Correctional Institutions* (p. 10), as adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955. According to this resolution, Governments were invited, among other things, to give favourable consideration to the adoption and application of the *Standard Minimum Rules*, and to take the other two groups of recommendations as fully as possible into account in their administration of penal and correctional institutions. The following texts are reproduced from the Report on the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No.: 1956.IV.4).

United Nations, Department of Economic and Social Affairs, New York, 1958.

2. Expresses the hope that these rules be approved by the Economic and Social Council and, if deemed appropriate by the Council, by the General Assembly, and that they be transmitted to governments with the recommendation (a) that favourable consideration be given to their adoption and application in the administration of penal institutions, and (b) that the Secretary-General be informed every three years of the progress made with regard to their application;

3. Expresses the wish that, in order to allow governments to keep themselves informed of the progress made in this respect, the Secretary-General be requested to publish in the International Review of Criminal Policy the information sent by governments in pursuance of paragraph 2, and that he be authorized to ask for supplementary information if necessary;

4. Expresses also the wish that the Secretary-General be requested to arrange that the widest possible publicity be given to these rules.

## Annex

## STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

### PRELIMINARY OBSERVATIONS

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

4. (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.

(2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under Section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in Sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

5. (1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general Part I would be equally applicable in such institutions.

(2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

## PART I. RULES OF GENERAL APPLICATION

### Basic principle

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

### Register

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

(a) Information concerning his identity;
(b) The reasons for his commitment and the authority therefor;
(c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

### Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
(b) Untried prisoners shall be kept separate from convicted prisoners;
(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
(d) Young prisoners shall be kept separate from adults.

### Accommodation

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to

comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

### Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

### Clothing and bedding

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

### Food

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

### Exercise and sport

21. (1) Every prisoner who is not employed in out-door work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

### Medical services

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical

services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitably trained officers.

(3) The services of a qualified dental officer shall be available to every prisoners.

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. (1) The medical officer shall regularly inspect and advise the director upon:

(a) The quantity, quality, preparation and service of food;
(b) The hygiene and cleanliness of the institution and the prisoners;
(c) The sanitation, heating, lighting and ventilation of the institution;
(d) The suitability and cleanliness of the prisoners' clothing and bedding;
(e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25(2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

## Discipline and punishment

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

(a) Conduct constituting a disciplinary offence;
(b) The types and duration of punishment which may be inflicted;
(c) The authority competent to impose such punishment.

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

### Instruments of restraint

33. Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
(b) On medical grounds by direction of the medical officer;
(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer than is strictly necessary.

### Information to and complaints by prisoners

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institutions, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

36. (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.

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

Retention of prisoners' property

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which

under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.

(2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

(3) Any money or effects received for a prisoner from outside shall be treated in the same way.

(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

### Notification of death, illness, transfer, etc.

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

### Removal of prisoners

45. (1) When prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

### Institutional personnel

46. (1) 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 institutions depends.

(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil services status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall 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.

47. (1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service

training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their examples and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.

(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.

(3) He shall reside on the premises of the institution or in its immediate vicinity.

(4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

### Inspection

55. There shall be a 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.

## PART II. RULES APPLICABLE TO SPECIAL CATEGORIES

### A. PRISONERS UNDER SENTENCE

#### Guiding principles

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.

57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connexion with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

63. (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical

security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

### Treatment

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

### Classification and individualization

67. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

### Privileges

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and co-operation of the prisoners in their treatment.

## Work

71. (1) Prison labour must not be of an afflictive nature.

(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

(4) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.

(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.

(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

74. (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.

(2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.

75. (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.

(2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

76. (1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

## Education and recreation

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the

educational system of the country so that after their release they may continue their education without difficulty.

78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

### Social relations and after-care

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.

## B. INSANE AND MENTALLY ABNORMAL PRISONERS

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

## C. PRISONERS UNDER ARREST OR AWAITING TRIAL

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custodial (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

### D. CIVIL PRISONERS

94. In countries where the law permits imprisonment for debt or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

## B. Selection and Training of Personnel for Penal and Correctional Institutions Resolution adopted on 1 September 1955

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Having adopted recommendations, annexed to the present resolution, on the question of the selection and training of personnel for penal and correctional institutions,

1. Requests the Secretary-General, in accordance with paragraph (d) of the annex to resolution 415(V) of the General Assembly of the United Nations, to submit these recommendations to the Social Commission of the Economic and Social Council for approval;

2. Expresses the hope that the Economic and Social Council will endorse these recommendations and draw them to the attention of governments, recommending that governments take them as fully as possible into account in their practice and when considering legislative and administrative reforms;

3. Expresses also the wish that the Economic and Social Council request the Secretary-General to give the widest publicity to these recommendations and authorize him to collect periodically information on the matter from the various countries, and to publish such information.

## Annex

## RECOMMENDATIONS ON THE SELECTION AND TRAINING OF PERSONNEL FOR PENAL AND CORRECTIONAL INSTITUTIONS

### A. MODERN CONCEPTION OF PRISON SERVICE

I. Prison service in the nature of a social service

(1) Attention is drawn to the change in the nature of prison staffs which results from the development in the conception of their duty from that of guards to that of members of an important social service demanding ability, appropriate training and good team work on the part of every member.

(2) An effort should be made to arouse and keep alive in the minds both of the public and of the staff an understanding of the nature of modern prison service. For this purpose all appropriate means of informing the public should be used.

II. Specialization of functions

(1) This new conception is reflected in the tendency to add to the staff an increasing number of specialists, such as doctors, psychiatrists, psychologists, social workers, teachers, technical instructors.

(2) This is a healthy tendency and it is recommended that it should be favourably considered by governments even though additional expense would be involved.

III. Co-ordination

(1) The increasing specialization may, however, hamper an integrated approach to the treatment of prisoners and present problems in the co-ordination of the work of the various types of specialized staff.

(2) Consequently, in the treatment of prisoners, it is necessary to ensure that all the specialists concerned work together as a team.

(3) It is also considered necessary to ensure, by the appointment of a co-ordinating committee or otherwise, that all the specialized services follow a uniform approach. In this way the members of the staff will also have the advantage of gaining a clearer insight into the various aspects of the problems involved.

### B. STATUS OF STAFF AND CONDITIONS OF SERVICE

IV. Civil service status

Full-time prison staff should have the status of civil servants, that is, they should:

(a) Be employed by the government of the country or State and hence be governed by civil service rules;

(b) Be recruited according to certain rules of selection such as competitive exami-

nation;

(c) Have security of tenure subject only to good conduct, efficiency and physical fitness;

(d) Have permanent status and be entitled to the advantages of a civil service career in such matters as promotion, social security, allowances, and retirement or pension benefits.

V. Full-time employment

(1) Prison staff, with the exception of certain professional and technical grades, should devote their entire time to their duties and therefore be appointed on a full-time basis.

(2) In particular, the post of director of an institution must not be a part-time appointment.

(3) The services of social workers, teachers and trade instructors should be secured on a permanent basis, without thereby excluding part-time workers.

VI. Conditions of service in general

(1) The conditions of service of institutional staff should be sufficient to attract and retain the best qualified persons.

(2) Salaries and other employment benefits should not be arbitrarily tied to those of other public servants but should be related to the work to be performed in a modern prison system, which is complex and arduous and is in the nature of an important social service.

(3) Sufficient and suitable living quarters should be provided for the prison staff in the vicinity of the institution.

VII. Non-military organization of the staff

(1) Prison staff should be organized on civilian lines with a division into ranks or grades as this type of administration requires.

(2) Custodial staff should be organized in accordance with the disciplinary rules of the penal institution in order to maintain the necessary grade distinctions and order.

(3) Staff should be specially recruited and not seconded from the armed forces or police or other public services.

VIII. Carrying of arms

(1) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed.

(2) Staff should in no circumstances be provided with arms unless they have been trained in their use.

(3) It is desirable that prison staff should be responsible for guarding the enclosure of the institution.

## C. RECRUITMENT OF STAFF

IX. Competent authority and general administrative methods

(1) As far as possible recruitment should be centralized, in conformity with the structure of each State, and be under the direction of the superior or central prison administration.

(2) Where other State bodies such as a civil service commission are responsible for recruitment, the prison administration should not be required to accept a candidate whom they do not regard as suitable.

(3) Provision should be made to exclude political influence in appointments to the staff of the prison service.

X. General conditions of recruitment

(1) The prison administration should be particularly careful in the recruitment of staff, selecting only persons having the requisite qualities of integrity, humanitarian approach, competence and physical fitness.

(2) Members of the staff should be able to speak the language of the greatest number of prisoners or a language understood by the greatest number of them.

XI. Custodial staff

(1) The educational standards and intelligence of this staff should be sufficient to enable them to carry out their duties effectively and to profit by whatever in-service training courses are provided.

(2) Suitable intelligence, vocational and physical tests for the scientific evaluation of the candidates' capacities are recommended in addition to the relevant competitive examinations.

(3) Candidates who have been admitted should serve a probationary period to allow the competent authorities to form an opinion of their personality, character and ability.

XII. Higher administration

Special care should be taken in the appointment of persons who are to fill posts in the higher administration of the prison services; only persons who are suitably trained and have sufficient knowledge and experience should be considered.

XIII. Directors or executive staff

(1) The directors or assistant directors of institutions should be adequately qualified for their functions by reason of their character, administrative ability, training and experience.

(2) They should have a good educational background and a vocation for the work. The administration should endeavour to attract persons with specialized training which offers adequate preparation for prison service.

XIV. Specialized and administrative staff

(1) The staff performing specialized functions, including administrative functions, should possess the professional or technical qualifications required for each of the various functions in question.

(2) The recruitment of specialized staff should therefore be based on the professional training diplomas or university degrees evidencing their special training.

(3) It is recommended that preference should be given to candidates who, in addition to such professional qualifications, have a second degree or qualification, or specialized experience in prison work.

XV. Staff of women's institutions

The staff of women's institutions should consist of women. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women. Female staff, whether lay or religious, should, as far as possible, possess the same qualifications as those required for appointment to institutions for men.

## D. PROFESSIONAL TRAINING

XVI. Training prior to final appointment

Before entering on duty, staff should be given a course of training in their general duties, with a view particularly to social problems, and in their specific duties and be required to pass theoretical and practical examinations.

XVII. Custodial staff

(1) A programme of intensive professional training for custodial staff is recommended. The following might serve as an example for the organization of such training in three stages:

(2) The first stage should take place in a penal institution, its aim being to familiarize the candidate with the special problems of the profession and at the same time to ascertain whether he possesses the necessary qualities. During this initial phase,

the candidate should not be given any responsibility, and his work should be constantly supervised by a member of the regular staff. The director should arrange an elementary course in practical subjects for the candidates.

(3) During the second stage, the candidate should attend a school or course organized by the superior or central prison administration, which should be responsible for the theoretical and practical training of officers in professional subjects. Special attention should be paid to the technique of relations with the prisoners, based on the elementary principles of psychology and criminology. The training courses should moreover comprise lessons on the elements of penology, prison administration, penal law and related matters.

(4) It is desirable that during the first two stages candidates should be admitted and trained in groups, so as to obviate the possibility of their being prematurely employed in the service and to facilitate the organization of courses of training.

(5) The third stage, intended for candidates who have satisfactorily completed the first two and shown the greatest interest and a vocation for the service, should consist of actual service during which they will be expected to show that they possess all the requisite qualifications. They should also be offered an opportunity to attend more advanced training courses in psychology, criminology, penal law, penology and related subjects.

XVIII. Directors or executive staff

(1) As methods vary greatly from country to country at the present time, the necessity for adequate training, which directors and assistant directors should have received prior to their appointment in conformity with paragraph XIII above, should be recognized as a general rule.

(2) Where persons from the outside with no previous experience of the work but with proved experience in similar fields are recruited as directors or assistant directors, they should, before taking up their duties, receive theoretical training and gain practical experience of prison work for a reasonable period, it being understood that a diploma granted by a specialized vocational school or a university degree in a relevant subject may be considered as sufficient theoretical training.

XIX. Specialized staff

The initial training to be required from specialized staff is determined by the conditions of recruitment, as described in paragraph XIV above.

XX. Regional training institutes for prison personnel

The establishment of regional institutes for the training of the staff of penal and correctional institutions should be encouraged.

XXI. Physical training and instruction in the use of arms

(1) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners by the means prescribed by the authorities in accordance with the relevant rules and regulations.

(2) Officers who are provided with arms shall be trained in their use and instructed in the regulations governing their use.

XXII. In-service training

(1) After taking up their duties and during their career, staff should maintain and improve their knowledge and professional capacity by attending advanced courses of in-service training which are to be organized periodically.

(2) The in-service training of custodial staff should be concerned with questions of principle and technique rather than solely with rules and regulations.

(3) Whenever any type of special training is required it should be at the expense of the State and those undergoing training should receive the pay and allowances of their grade. Supplementary training to fit the officer for promotion may be at the expense of the officer and in his own time.

XXIII. Discussion groups, visits to institutions, seminars for senior personnel

(1) For senior staff, group discussions are recommended on matters of practical interest rather than on academic subjects, combined with visits to different types of institutions, including those outside the penal system. It would be desirable to invite specialists from other countries to participate in such meetings.

(2) It is also recommended that exchanges be organized between various countries in order to allow senior personnel to obtain practical experience in institutions of other countries.

XXIV. Joint consultation, visits and meetings for all grades of staff

(1) Methods of joint consultation should be established to enable all grades of prison personnel to express their opinion on the methods used in the treatment of prisoners. Moreover, lectures, visits to other institutions and, if possible, regular seminars should be organized for all categories of staff.

(2) It is also recommended that meetings should be arranged at which the staff may exchange information and discuss questions of professional interest.

## C. Open Penal and Correctional Institutions
## Resolution adopted on 29 August 1955

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Having adopted recommendations, annexed to the present resolution on the question of open penal and correctional institutions,

1. Requests the Secretary-General, in accordance with paragraph (d) of the annex to resolution 415(V) of the General Assembly of the United Nations, to submit these recommendations to the Social Commission of the Economic and Social Council for approval;

2. Expresses the hope that the Economic and Social Council will endorse these recommendations and draw them to the attention of governments, recommending that governments take them as fully as possible into account in their practice and when considering legislative and administrative reforms;

3. Expresses also the wish that the Economic and Social Council request the Secretary-General to give the widest publicity to these recommendations and authorize him to collect periodically information on the matter from the various countries, and to publish such information.

### Annex

### RECOMMENDATIONS ON OPEN PENAL AND CORRECTIONAL INSTITUTIONS

I. An open institution is characterized by the absence of material or physical precautions against escape (such as walls, locks, bars, armed or other special security guards), and by a system based on self-discipline and the inmate's sense of responsibility towards the group in which he lives. This system encourages the inmate to use the freedom accorded to him without abusing it. It is these characteristics which distinguish the open institution from other types of institutions, some of which are run on the same principles without, however, realizing them to the full.

II. The open institution ought, in principle, to be an independent establishment; it may, however, where necessary, form a separate annex to an institution of another type.

III. In accordance with each country's prison system, prisoners may be sent to such an institution either at the beginning of their sentence or after they have served part of it in an institution of a different type.

IV. The criterion governing the selection of prisoners for admission to an open institution should be, not the particular penal or correctional category to which the offender belongs, nor the length of his sentence, but his suitability for admission to an open institution and the fact that his social readjustment is more likely to be achieved by such a system than by treatment under other forms of detention. The selection should, as far as possible, be made on the basis of a medico-psychological examination and a social investigation.

V. Any inmate found incapable of adapting himself to treatment in an open institution or whose conduct is seriously detrimental to the proper control of the institution or has an unfortunate effect on the behaviour of other inmates should be transferred to an institution of a different type.

VI. The success of an open institution depends on the fulfilment of the following conditions in particular:

(a) If the institution is situated in the country, it should not be so isolated as to obstruct the purpose of the institution or to cause excessive inconvenience to the staff.

(b) With a view to their social rehabilitation, prisoners should be employed in work which will prepare them for useful and remunerative employment after release. While the provision of agricultural work is an advantage, it is desirable also to provide workshops in which the prisoners can receive vocational and industrial training.

(c) If the process of social readjustment is to take place in an atmosphere of trust, it is essential that the members of the staff should be acquainted with and understand the character and special needs of each prisoner and that they should be capable of exerting a wholesome moral influence. The selection of the staff should be governed by these considerations.

(d) For the same reason, the number of inmates should remain within such bounds as to enable the director and senior officers of the staff to become thoroughly acquainted with each prisoner.

(e) It is necessary to obtain the effective co-operation of the public in general and of the surrounding community in particular for the operation of open institutions. For this purpose it is therefore, among other things, necessary to inform the public of the aims and methods of each open institution, and also of the fact that the system applied in it requires a considerable moral effort on the part of the prisoner. In this connexion, local and national media of information may play a valuable part.

VII. In applying the system of open institutions each country, with due regard for its particular social, economic and cultural conditions, should be guided by the following observations:

(a) Countries which are experimenting with the open system for the first time should refrain from laying down rigid and detailed regulations in advance for the operation of open institutions;

(b) During the experimental stage they should be guided by the methods of organization and the procedure already found to be effective in countries which are more advanced in this respect.

VIII. While in the open institution the risk of escape and the danger that the inmate may make improper use of his contacts with the outside world are admittedly greater than in other types of penal institutions, these disadvantages are amply outweighed by the following advantages, which make the open institution superior to the other types of institution:

(a) The open institution is more favourable to the social readjustment of the prisoners and at the same time more conductive to their physical and mental health.

(b) The flexibility inherent in the open system is expressed in a liberalization of the regulations; the tensions of prison life are relieved and discipline consequently improves. Moreover, the absence of material and physical constraint and the relations of greater confidence between prisoners and staff tend to create in the prisoners a genuine desire for social readjustment.

(c) The conditions of life in open institutions resemble more closely those of normal life. Consequently, desirable contacts can more easily be arranged with the outside world and the inmate can thus be brought to realize that he has not severed all links with society; in this connexion it might perhaps be possible to arrange, for instance, group talks, sporting competitions with outside teams, and even individual leave of absence, particularly for the purpose of preserving family ties.

(d) The same measure is less costly if applied in an open institution than in an institution of another type, in particular because of lower building costs and, in the case of an agricultural institution, the higher income obtained from cultivation, if cultivation is organized in a rational manner.

IX. In conclusion, the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

(a) Considers that the open institution marks an important step in the development of modern prison systems and represents one of the most successful applications of the principle of the individualization of penalties with a view to social readjustment;

(b) Believes that the system of open institutions could contribute to decreasing the disadvantages of short term sentences of imprisonment;

(c) Consequently recommends the extension of the open system to the largest possible number of prisoners, subject to the fulfilment of the conditions set forth in the foregoing recommendations;

(d) Recommends the compilation of statistics supplemented by follow-up studies conducted, in so far as possible, with the help of independent scientific authorities, which will make it possible to assess, from the point of view of recidivism and social rehabilitation, the results of treatment in open institutions.

# PART 2: GROUP WORKSHOP

## Workshop I: Speedy Trial

### Summary Report of the Rapporteur

*Chairman:* *Mr. Shaikh Abdul Waheed*
*Advisers:* *Mr. Takeshi Satsumae and Mr. Katsuo Kawada*
*Rapporteur:* *Mr. Candido P. Villanueva*

#### Titles of the Papers Presented

1. Delays in Criminal Courts
   *by Mr. Shaikh Abdul Waheed (Pakistan)*
2. Delays in Preliminary Investigation and Trial in the Philippines—A Study of Their Causes and Proposed Solutions
   *by Mr. Candido P. Villanueva (Philippines)*
3. Speedy Trial
   *by Mr. Herdin Panggabean (Indonesia)*
4. Delay in the Process of Administration of Criminal Justice
   *by Mr. Abhay Kant Jha (Nepal)*
5. Delay in Criminal Proceedings
   *by Mr. Megumi Yamamuro (Japan)*

#### Introduction

The group consisted of a district and session judge; a judge of the zonal court; an assistant judge of the district court; a special staff to the attorney general; and a senior state prosecutor. All the papers prepared by them apparently dealt with the common problem — speedy trial — which is of serious concern not only in Asian and Far Eastern countries but also in countries of other hemispheres. Though each participant's country has a different legal system based on its unique history and culture, the group felt that it could thresh out the root causes of delay in the administration of criminal justice and could find appropriate solutions on common bases.

#### Concept of Speedy Trial

The right of an accused to have a speedy and fair trial is generally guaranteed in every written constitution. It can even be said that it is inherent in every civilized state to afford such right to every accused. It implies the duty of the state to render justice expeditiously so that while it should see to it that the guilty do not go unpunished, it should likewise ensure that the innocent do not suffer. Needless to say, until the conclusion of the proceedings and until the contrary is proved, an accused shall be presumed innocent, and any unjustified delay in the proceedings unduly punishes him before he is even found guilty.

One of the aims of the criminal law is to punish the offender and prevent others from committing a crime. However, when criminal justice is not swift, it is difficult to maximize the deterrent effect of prosecution and conviction and to avoid, in some cases, extended freedom by the accused during which time he may flee, commit other crimes, or intimidate witnesses. Moreover, people lose respect for the courts if they believe that nothing will come of their complaints and if vindication of their grievances comes too late. So perhaps there are some grains of truth in the statement that "Justice delayed is justice denied." Hence, the absolute need for speedy trial and speedy dispensation of justice.

The immediate filing of a criminal case in court not only prevents the statute of limitations to set in but it also enables the court to immediately try and hear the case. An expeditious trial of the case en-

ables the court to hear witnesses while they are still available and while their memories of the events and the facts of the case and, more significantly, of the identity of the accused are still fresh. At the same time, vital real evidence is preserved and can be properly presented and appraised in court. And since the purpose of a trial is to find the truth and to determine whether an accused is guilty or not, such a serious task would be easier to accomplish when the trial is held without delay and the case decided immediately thereafter.

Finally, it may be stressed that while the right to a speedy trial is a right guaranteed to an accused, it remains the bound duty of the court to see to it that there is no unnecessary delay in the trial of a case because the court is the guardian not only of the rights of an accused but also of the rights of the people as a whole.

### Causes of Delay

The first paper presented for discussion was that of Mr. Waheed, a district and sessions judge from Pakistan. He emphasized that in spite of the efforts being exerted in every country to evolve ways and means for speedy dispensation of justice, it has not been possible to achieve the objective. He mentioned that in his country, the total number of cases pending in the trial courts on the 30th June, 1968, was 460,804, which included 7,893 cases pending for more than one year and 30,338 cases pending for more than six months. In Punjab, the biggest of the four provinces of Pakistan, the cases pending on the 30th June, 1975, included 29,772 cases pending for more than one year and 37,655 cases pending for more than six months.

He classified the causes of delay in his country into the following two categories: (a) those arising from, and inherent in prescribed procedures; and (b) those generally arising out of administrative, social and economic factors and attitudes connected with the working of the criminal courts.

As regards the procedures, delay occurs mainly in enquiry proceedings which are taken by magistrates in all cases such as: murder and culpable homicide not amounting to murder which are exclusively triable by courts of sessions; in the disposal of summary cases; in the *de novo* trial of cases on their transfer from one court to another; and in procuring the attendance of expert witnesses and some other matters. However, he pointed out that his government, on the recommendations of their Law Reform Commission, has already effected several amendments in their procedures including abolishing the enquiry proceedings, envisaging a system of pre-trial summons for offenses under the traffic laws, municipal laws, pure food laws and other special laws, taking away the option of the accused to demand a *de novo* trial of his case on its transfer, making reports of the experts *per se* admissible in evidence in certain circumstances and several other modifications. He informed the group that these amendments are likely to be enforced in the near future.

He also attributed the causes of delay to the following: (i) delay in investigation, (ii) non-attendance of witnesses, (iii) non-attendance of the accused, (iv) dilatory tactics of the defense lawyers, (v) increase in the volume of work and shortage of courts, (vi) frequent adjournments, (vii) stay of proceedings and non-receipt of record, and (viii) lack of proper working conditions.

He explained that in cognizable cases the machinery of law is put into motion in his country through a report to the police, commonly known as the "first information report," and once this report has been recorded, the investigation is expected to proceed expeditiously, but unfortunately, the actual situation is far from satisfactory because some cases have remained under investigation not only for months but years. Right from the inception of the case delay creeps in, providing a fertile ground for corruption, involving the possibility of either implicating innocent persons or letting the guilty escape. This initial setback adversely affects the timely collection of evidence and immediate arrest of criminals. Disinterested witnesses do not come forward to speak the truth, while at times perjured witnesses are brought forth by unscrupulous complainants. This further protracts the

investigation. Mr. Waheed further attributed delay at this early stage of the investigation to the inadequate number of investigating officers, lack of transportation and other necessary facilities, delay in obtaining expert opinion, non-availability of modern means of communication, like wireless, and lack of public cooperation, among many others.

Regarding the non-attendance of witnesses in courts, he attributed it to unsatisfactory service of processes upon them on account of shortage of process-serving personnel and the absence of transportation facilities for them. Sometimes the witnesses themselves avoid attendance in courts due to various reasons, among which are that they have to wait for long hours outside the court before the case is called; there is no proper seating arrangement for them either in the courtroom or outside; they are generally treated with lack of courtesy and sometimes with rudeness by the counsel for the opposing party during the course of cross-examination in which all sorts of personal and embarrassing questions are put to them; the travel allowance and diet money paid to them is quite inadequate; and, last but not least, sometimes they are suborned by the opposing party. In quite a large number of cases the delay occurs on account of the non-attendance of witnesses who are government officials. They are either investigating officers, medical officers and magistrates, who by the time the case is heard have been transferred to other stations and summons for their appearance are sometimes not returned to the courts on time or they are not served.

So far as the non-attendance of the accused is concerned, it was explained that in a criminal trial in Pakistan the personal appearance of the accused is a legal requirement unless the court has dispensed with his attendance on account of his being unable to appear before it, such as, for instance, due to illness. Accordingly, the non-attendance of the accused necessarily leads to the postponement of the case. The accused may fail to attend court for various reasons. Sometimes, the absence may be intentional or wilful in order to gain time to win over the prosecution witnesses or to cause harassment to the complainant. On the other hand, the absence may be due to circumstances beyond his control such as illness or when he is in custody, and jail authorities failed to take necessary steps to produce him in court on the date of hearing.

In some cases, Mr. Waheed said, the delay occurs due to the dilatory tactics of defense lawyers who embark upon unnecessary lengthy cross-examination of the prosecution witnesses or challenge the admissibility of evidence on every conceivable ground or, if all else fails, move an application for the transfer of the case in which event the magistrate is bound to adjourn the trial. He also pointed out that the concentration of cases with a few prestigious lawyers further tends to aggravate the problem as backlogs with these lawyers create backlogs in courts.

Mr. Waheed stressed that the main factor which is impeding the speedy dispensation of justice is the increase in the volume of work without a corresponding increase in the number of courts. While giving statistics of the pending cases, he elaborated that the deluge of cases is reflected in every aspect of the court's work, from overcrowded corridors and courtrooms to the long calendars that do not allow more than cursory consideration of individual cases. Sheer numbers produce a pressure for speed which allows little time to sift facts, safeguard rights or identify the budding recidivist and the abnormal offender who presents a continuing danger and whose case calls for special attention. The heavier the volume, the greater the delay in the disposal of a case which undoubtedly diminishes the deterrent effect of the criminal process. It can cause the collapse of the prosecutor's case as witnesses tire and fail to appear and as memories fade. He pointed out other consequences of the volume problem. In the lower courts, the administrative agencies sometimes become so preoccupied simply with moving the cases and clearing the dockets that cases are dismissed, guilty pleas entered, and bargains are struck.

The second paper which came up for discussion was that of Mr. Villanueva, senior state prosecutor, Philippines. He cited the result of the official survey conducted by the Office of the President of the Philippines based on actual statistics of pending cases in all prosecutors' offices

and in all courts showing that "backlogs and delays are still the major constraints that impede the efficient administration of justice" in his country.

He first spoke of the preliminary investigation which the public prosecutors are empowered to conduct. While preliminary investigation is not technically part of the trial, nevertheless its purpose is to determine whether the suspect is probably guilty of the offense charged so as to warrant the filing of the case in court and the desirability of expeditious disposition of the case at this stage cannot be over-emphasized. A good preliminary investigation will identify the accused who must stand trial and exonerate those against whom no sufficient evidence exists, thereby saving the State the expense of useless litigation and relieving the innocent from the rigors of criminal prosecution. He attributed the causes of delay at this stage to: the increase in the number of cases being filed in various public prosecutors' offices throughout the country brought about by the increase in population and changes in social and economic conditions without a corresponding increase in the number of prosecutors; delays in service of subpoenas or processes to respondents and other witnesses; and, inefficiency of some prosecutors.

Regarding the trial of cases in different courts, he pointed out that the causes of delays could be attributed to the following: (a) crimes have increased and the number of cases filed has likewise increased, while the number of branches of courts has not been increased and many branches of the courts have not been filled up; (b) some branches of the courts are situated in different, far away places; (c) failure of some of the judges to comply with the legal requirement that "the number of hours that the court shall be in session per day shall be not less than five"; (d) too much leniency of some of the judges in granting requests for postponements; (e) inefficiency of some of the judges; (f) deliberate absences or jumping bail of some of the accused; (g) delay in the service of subpoenas to witnesses; and (h) delay in the transcription of stenographic notes taken down during the trial of the case.

The next paper was presented by Mr. Panggabean, Attorney General's staff, Indonesia. At the very outset, he emphasized that his country's basic judiciary law provides that the accused must be afforded a fair and speedy trial, with the least expense. He pointed out basic problems and causes of delay resulting in the people's loss of trust in law. Rendering justice is indeed a difficult task and therefore in his country, he stated, there is more emphasis on the choice of the right personnel and judges to preside over the courts and to administer justice. He asserted that judges must not only be well-trained and experienced but also honest and dedicated. This is the reason, according to him, why in his country people are more in favor of appointing mature men to the judiciary.

He said that the delay in the process of justice in Indonesia occurs not only in the court trial itself but also during the early preliminary proceedings, and the causes thereof may be traced to: the uncertainty or ambiguity of some of the provisions of the Code of Criminal Procedure which are treated by some as mere rules of guidance thereby rendering the same ineffective; changes in forms and dimensions of crimes; and unsatisfactory working conditions in courts and law-enforcement agencies. He also cited that difficulties in communications such as lack of transportation facilities especially in provinces outside Java, and the transfers of government witnesses and their consequent absences at the time when they are needed in court as among the obstacles in the speedy disposition of cases.

The fourth paper discussed was that of Mr. Jha, judge of the zonal court, Nepal. He stated that the cause of delay in the administration of criminal justice depends upon the system prevailing in the country concerned. As in other countries already referred to, he said that delay in criminal proceedings in his country takes place during the process of investigation as well as in the trial itself. According to him, one of the main causes of delay is the poor means of communication largely on account of the geographical condition of Nepal situated as it is along the vast and steep mountainous ranges of the Himalayas. Moreover, sometimes inevitable delay occurs in the finalization of investiga-

tion on account of the considerable length of time it takes in obtaining expert opinions on questioned documents or results of examination by serologists and other medico-legal experts from foreign countries since these facilities are not available in his country.

The last paper thoroughly discussed was that of Mr. Yamamuro of Japan. By way of introduction, he cited the cases against certain ultra-leftist students which he heard as an assistant judge of the Tokyo District Court. These cases have been prosecuted since as far back as the end of 1969, but, sad to say, have not yet entered the stage of examination of the evidence. The great number of students involved in these cases pose serious problems on the question of whether their cases should be consolidated or whether they should be tried separately, not to mention the problem of maintaining order and some semblance of decorum inside the courtroom. Particularly in these cases has there been serious delay in the proceedings, although there has also been noticeable delay in fraud cases, bodily injury cases, violations of tax laws, death or bodily injury through negligence, and violations of election laws. One is happy to note, however, that the method of so-called "concentrated hearings" has been adopted since 1955, and that about 75% of all the cases in the district courts are being disposed of in about six months or less after three to four hearings.

Mr. Yamamuro classified the delayed cases mentioned by him into two types: first, those in which the trial courts cannot proceed because the accused have escaped, or are missing, ill or insane, etc., and second, those which are really very complicated. He gave statistics on the causes of delay under the second type. The records show that at the end of 1973, 946 cases were still pending in the district courts for over three years. The three most important reasons for delay in these cases were as follows:

(a) The difficulty of fixing definite dates for public trial, and frequent postponements or changes in the scheduled dates of trial. Mr. Yamamuro pointed out that in almost 90% of the delayed cases mentioned above only 4.5 hearings per year were held, and that if the dates had been fixed at least twice a month, those cases could have been disposed of in less than two years. He also noted that defense lawyers assert that the public prosecutor is usually not swift in instituting prosecutions subsequent to the original prosecution and therefore it is difficult to fix the first date of public trial early enough to prepare their cases. Mr. Yamamuro, however, explained that while this assertion may be partly true, it is really a minor cause of delay when all causes are considered. It is noteworthy, according to him, that the dates of trial were changed or postponements had to be made usually at the instance of the defense counsel. As to this point, he observed that nearly all practicing lawyers in Japan are so busy with civil cases that they cannot afford to give enough time to handle criminal cases.

(b) Discussions taking place at the very start of the proceedings in which the defense counsel almost always accuse the public prosecutor of abuse of discretion in the matter of institution of prosecution or otherwise and controversy over discovery of evidence. These discussions very often cause delay in hearing evidence in the trial.

(c) Last, but not least, was the long-continued examination of witnesses. Mr. Yamamuro observed that not a few public prosecutors and defense lawyers attend trials often without fully preparing their cases and accordingly fail in proper and effective examination of witnesses. This is likely to result in time-consuming hearings which, in some cases, require many dates.

### Proposed Solutions

Mr. Waheed, after analyzing the causes of delay in criminal proceedings in his country, observed that the fault seems to lie with the administrative machinery and the facilities provided for working the existing procedure for the trial of cases. Despite the various causes which contribute to the delay, he maintained that expeditious disposal of cases can still be achieved if the judges who preside over various courts act efficiently and strictly in accordance with law and the comprehensive instructions and guidelines issued

by the high courts from time to time. He explained that the main reason for the failure on the part of his government to provide the requisite facilities for working the procedure satisfactorily has been the financial stringency and its preoccupation with the execution of development projects. However, with the growth of the country's economy, the government is taking various measures and earmarking substantial amount of money every year to overcome the handicaps and improve the present situation.

Mr. Villanueva, on the other hand, recommended the increase in the number of public prosecutors and the increase and standardization of their salaries in order to keep and attract better and capable men in the prosecution service. He also suggested that not only should the number of judges, particularly in the courts of first instance, be increased, but also that all the existing vacancies be filled up. Happily, recent new reports indicated that the President of the Philippines had started appointing new judges to fill the existing vacancies mostly from the prosecution branch of the government. Incidentally, Mr. Panggabean in his paper similarly advocated enhancing the salaries of judges adding that they deserve higher and better pay so as to protect them from outside corrupting influences. Moreover, it will enable them to maintain their status in society and command the respect of their people. As regards the procedure on preliminary investigation, Mr. Villanueva was of the opinion that strict adherence to the new circular issued by the Philippine Secretary of Justice implementing the new law on this stage of criminal prosecution and limiting the time for the conduct of preliminary investigation including the issuance of the resolution of the case to less than a month in all, will greatly help in expediting the dispensation of criminal justice.

Regarding the solution of the delay in the trial, he shared the opinion of all the participants that much of the problem can be solved by the judges themselves by strictly observing the legal or constitutional requirements. In order to avoid delay caused by non-transcription of stenographic notes, he believed that the system in Pakistan whereby the proceedings are typed out simultaneously with the examination of a witness was good. He, however, questioned whether the typists fast enough to type the testimony simultaneously may be available. Nevertheless, everyone conceded the advisability of making the transcript of the proceedings available to the courts and the parties immediately at the trial.

The point on which there appeared a strong consensus among all the participants is that courts must recognize their responsibility to make an independent determination as to whether there is in fact good cause for the postponements or adjournments and be strict in granting a postponement only for so long as is necessary under the circumstances, since much of the delay is caused by too much leniency on the part of some judges.

The participants found merit in the Philippine constitutional provision envisaging that "After arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified" (Section 19, Art. IV, New Constitution of the Philippines). Mr. Yamamuro while agreeing with this provision suggested, however, that before proceeding with the trial in the absence of the accused, the public prosecutor establish and the court be fully satisfied that the absence of the accused is wilful. Mr. Panggabean cautioned that our desire to have a speedy trial must not sacrifice the accused's right to a fair trial.

With respect to delay caused by unnecessary lengthy cross-examination of witnesses, Mr. Villanueva submitted for the serious consideration of all a particular provision of the rules of court in his country empowering the court to stop admitting further evidence. It states, "The court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive" (Section 6, Rule 133, Revised Rules of Court in the Philippines).

In the course of the lively discussions one idea helpful in preventing delay in the trial is to give public prosecutors greater power, as in Japan, in the matter of screening cases which ought to be filed in

court. That way, the court will not be unnecessarily saddled with cases of doubtful merits.

As to current problems in Indonesia, Mr. Panggabean summed up the possible remedies as follows: (1) the need for enacting a new National Code of Criminal Procedure; (2) the need for a law clearly regulating the positions, functions and powers of judges, public prosecutors, police officers and advocates; (3) increase in the annual budget for the courts and law-enforcement agencies, including higher salaries, and better living and social welfare standards; (4) improvements in the manner of recruiting or selecting judges, pointing out that actual experience must be a prerequisite to any appointment, be it in the judiciary or in the prosecution service. He stressed the need for a careful consideration of judicial expertise, personality and morality; (5) regular refresher and upgrading courses; and (6) supervision and control of judges and prosecutors to ensure strict compliance with regulations and rules of conduct prescribed in the Code of Criminal Procedure.

To remedy the delay in the criminal process in Nepal, Mr. Jha pointed out that the government is now establishing its own criminal investigation office and training medico-legal and other experts so that it will no longer have to rely upon the assistance of other countries in the investigation and trial of cases. According to him, his government is also conducting in-service training for its police officers to improve their efficiency, and is augmenting forensic facilities. Besides, public prosecutors are also undergoing training in continuing legal programs and seminars.

Mr. Jha invited attention to his country's statistics showing a considerable improvement in the disposal of cases since 1974 which resulted from the recent adoption of new summary procedures for the trial of criminal cases and streamlining of court procedures. An act was passed recently by his country's highest legislature which defines which evidence would be admissible or inadmissible and which is relevant or irrelevant. Also, the setting up of regional courts to which the parties can prefer appeals from judgements rendered by the district courts in cases where the imposable penalty is more than three years has facilitated the final disposition of criminal cases. He pointed out that an appeal can be preferred to the zonal court in cases in which the imposable penalty is less than three years. Only constitutional matters and questions of law involving matters of great public importance may go to the Supreme Court on a certificate of leave from the regional courts. An appeal in murder cases from a previous appeal judgement rendered by the regional courts also lies with the Supreme Court.

By way of countermeasures to eliminate the causes of delay in Japan, Mr. Yamamuro offered the following suggestions:

(a) Regarding the difficulty in fixing dates for public trial, he emphasized the necessity of holding a pre-trial conference between the public prosecutor and the defense counsel, to enable them to have a correct assessment of the cases and to enable the court to fix the dates for the public trial. Though he deplored the extreme difficulty in getting the cooperation of defense lawyers in certain cases, such as those against the radical students, he stressed that this problem will be solved if the close ties and the confidence between prosecutor and defense counsel could be deepened. He emphasized on the other hand that the court should note in fixing the dates for trial that a requirement of unreasonable speed could have a rather deleterious effect upon the interest or ability of both the parties, particularly that of the accused;

(b) To obviate any disagreement or prolonged discussions which could hamper the progress of the proceedings, he suggested the result of the pre-trial conference be utilized as much as possible by both the public prosecutor and the defense counsel specifying the counts or issues which are in dispute. Thus, only those matters would have to be established at the trial. He observed that a judge's presiding over a hearing should adopt a more strict attitude; and

(c) In connection with prolonged examination of witnesses, he suggested that the cross-examiner should take note of the disputed facts. On the other hand, the

public prosecutor should select only the best witnesses to prove the case, and then the court must not allow obviously irrelevant, repetitious or overlapping questions.

There was unanimity among the participants on the adoption, with certain modifications, of the practice in Japan of holding pre-trial conferences contemplated by Article 178-10 of Japan's Rules of Criminal Procedure which states as follows: "Court may, when it deems appropriate, convene a public prosecutor and defense counsel prior to the first date for public trial, and hold conference on fixing the date for public trial and other measures necessary for the trial. However, matters which may tend to cause to frame a conclusion as to the case in advance shall not be discussed." Usually this conference between the public prosecutor and the defense counsel is held only in the presence of the clerk of court. During the pre-trial conference, both parties are allowed to inspect the documentary and other real evidence in the possession of each other to find out which evidence one may not admit, and they likewise furnish each other lists of witnesses whom they intend to produce. In so doing, the issues on which there appears to be no real dispute are known beforehand, thereby limiting the trial only to issues which are disputed. More significantly, the public prosecutor and the defense counsel during such pre-trial conferences are able to agree on and fix the dates for public trial as continuously or consecutively as possible. This is what has been referred to earlier in Mr. Yamamuro's paper as "concentrated hearings" which, more than any other factor, according to him, accounts for the disposition in six months or less of about 75% of all the cases in the various district courts of Japan.

It was, however, considered that if the stipulation of facts or admission by both the public prosecutor and the defense counsel could be reduced to writing and signed by them, it would afford more efficiency. In this regard, Mr. Villanueva invited attention to a related provision in his country's rules of court insofar as pre-trial conference results in civil cases are concerned which requires that "After the pre-trial conference the court shall make an order which recites the action taken at the conference.... Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered controls the subsequent course of the action, unless modified before trial to prevent manifest injustice" (Section 4, Rule 20, Revised Rules of Court in the Philippines). In that way, none of the parties can back out on what has been previously agreed upon, and it also is more convenient for the appellate court to see the results of the pre-trial conference between the public prosecutor and the defense counsel.

As to the remedy for the accused in a delayed trial, Mr. Yamamuro suggested that barring the subsequent proceedings in the case could be afforded in Japan to enforce the speedy trial guarantee. A recent holding of the Supreme Court in Takada Case of 1972 that Section 1, Article 37 of the Constitution guarantees the accused of a right to speedy trial and requires that an emergency measure be taken to acquit the accused from the charge (*menso*-acquittal), even though there is no express provision providing such a measure, if there has been an unreasonable delay and the reason for which cannot be attributable to the accused. He explained that such a drastic measure could be taken only in such exceptional cases as Takada Case where almost 15 years had elapsed with the case untried, and pointed out that it might be difficult to flatly define or fix a certain period in the Code of Criminal Procedure what is an unreasonable or unnecessary delay.

Finally, the group felt that many of the causes of delays in the disposal of cases would disappear if proper arrangements were made to hold continuing seminars or in-service training for judges and prosecutors alike. A large number of judicial officers are either not conversant with case law or are unable and reluctant to apply the same for want of proper training. Some judicial officers are unable to plan and organize their court work along proper lines. Such judicial officers contribute to the inefficiency and delays in the administration of criminal justice. This malady can be solved or alleviated by providing intensive training to judicial officers.

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# Delays in Criminal Courts

*by Shaikh Abdul Waheed**

## Introduction

There is an old well-known maxim that delay defeats justice. While protracted litigation in civil matters may prove ruinous for the parties, delay in criminal trials causes great hardship, both physical and mental. In every civilized society, there has been a constant process going on to evolve ways and means for speedy dispensation of justice. All procedures which the human mind has so far devised for determining disputes, both of civil and criminal nature, aim at expeditious disposal. But unfortunately due to various factors, it has not been possible to achieve this objective. In Pakistan, the total number of cases pending in the trial courts on the 30th June, 1968, was 460,804 which included 7,893 cases pending for more than one year and 30,338 cases pending for more than six months. In Punjab, the biggest of the four Provinces of Pakistan, the cases pending on the 30th June, 1975, included 29,772 cases pending for more than one year and 37,655 cases pending for more than six months.

The deluge of cases is reflected in every aspect of the court's work, from over-crowded corridors and court rooms to the long calendars that do not allow more than cursory consideration of individual cases. Sheer number produce a pressure for speed which allows little time to sift facts, safeguard rights or identify the budding recidivist and the abnormal offender who presents a continuing danger and whose case calls for special attention. The heavier the volume, the greater the delay in the disposal of a case which undoubtedly weakens the deterrent effect of the criminal process. It can cause the collapse of the prosecutor's case as witnesses tire and fail to appear and as memories fade. It will be appreciated that the approximation of truth in an adversary system, which is in vogue in my country, is affected by the memory and availability of witnesses. With delay, dysfunctions will occur.

There are other less visible consequences of the volume problem. In the lower courts, the agencies administering criminal justice sometimes become preoccupied simply with moving the cases. Clearing the dockets becomes a primary objective of all concerned and cases are dismissed, guilty pleas are entered and bargains are struck with that end as the dominant consideration. Moreover, frequent adjournment of cases needlessly expends witnesses' time, including that of a large number of police witnesses. From the point of view of the accused, delay increases the length of pre-trial detention of those who cannot afford to furnish bail bonds or are declined bail. As a result, both the quality of law enforcement and the rights of the accused are made to suffer. Complaining witnesses often feel that their case has not received proper attention. Under such conditions, remedial and beneficial results to the community or the accused are only incidental.

## The Causes of Delay

The causes for delay may broadly be classified into the following two categories:

(a) those arising from, and inherent in, the prescribed procedure, and

(b) those operating more or less independently of the prescribed procedure, and generally arising out of the administrative, social and economic factors and attitudes connected with the working of the criminal courts.

As regards the procedure, delay occurs mainly in enquiry proceedings which are taken by magistrates in all cases such as murder and culpable homicide not

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amounting to murder which are exclusively triable by courts of sessions, in the disposal of summary cases, in the *de novo* trial of cases on their transfer from one court to another, in procuring the attendance of expert witnesses and some other matters. On the recommendations of the Law Reform Commission 1967–70, the Government has already effected amendments in the procedure abolishing the enquiry proceedings, envisaging the system of pre-trial summons for offences under the traffic laws, municipal laws, pure food laws and other special laws, taking away the option of the accused to demand *de novo* trial of his case on its transfer, making reports of the experts per se admissible in evidence in certain circumstances and introducing some other modifications. These amendments are likely to be enforced in the near future.

The causes for delay mentioned in the second category may be attributed to the following main factors: (i) delay in investigation, (ii) non-attendance of witnesses, (iii) non-attendance of the accused, (iv) dilatory tactics of the defence lawyers, (v) increase in the volume of work and shortage of courts, (vi) frequent adjournments, (vii) stay of proceedings and non-receipt of record, and (viii) lack of proper working conditions.

*1. Delay in Investigation*

In cognizable cases, the machinery of law is put into motion through a report to the police which is commonly known as the "first information report." Once this report has been recorded, the Code of Criminal Procedure contemplates that investigation should proceed expeditiously but unfortunately the factual position is far from satisfactory. Instances are not lacking where cases have remained under investigation not only for months but years. In a vast majority of important cases like murder, the first information report is not recorded till after the investigation officer has visited the scene of occurrence. Right from the inception of the case, delay creeps in, and with delay, corruption also creeps in, involving the possibility of roping in innocent persons along with the real culprits, or of letting the guilty escape altogether. This initial setback adversely affects the prospect of collection of evidence and immediate arrest of criminals. Disinterested witnesses do not come forward to speak the truth and sometimes false witnesses are put up by the complainants. This situation causes confusion and also protracts investigation.

The following are the major causes of delay at the stage of investigation:

(a) Inadequate number of investigating officers at various levels, especially in view of the increase in crime;

(b) Investigating officers' constant engagement in other miscellaneous police duties;

(c) Lack of transport and other necessary facilities for police officers and subordinates, especially in rural areas where public transport is not easily available;

(d) Delay in obtaining expert opinion, due to lack of necessary technical facilities and preoccupation of the experts;

(e) Lack of supervision of investigation by superior police officers;

(f) Lack of public cooperation;

(g) Unwieldy jurisdiction of police stations;

(h) Frequent attendance of investigating officers in courts involving absence from the field;

(i) Non-availability of means of communication like wireless;

(j) Lack of supervision of the investigating officers by the magistrates of the area and their readiness to grant remands to police custody without conscious application of mind.

*2. Non-Attendance of Witnesses*

The next stage of delay in criminal cases comes when the court has to record the prosecution evidence. The non-attendance of the witnesses may, generally speaking, be attributed to the following factors:

(a) In cognizable cases, the service of processes is effected by the police. The number of police constables earmarked in each police-station for the service of processes is too small. As a result the work-load is so heavy that sometimes it becomes physically impossible for this meagre staff to effect service of processes before the date of hearing.

(b) The process-serving staff does not get any travelling allowance for journeys required to effect service of processes. Therefore, they generally avoid undertaking long journeys for this purpose as they know that they will not be paid anything for performing them. Often, they will write fictitious reports while sitting in the office.

(c) There is also a general tendency on the part of the witnesses to avoid attendance in courts. This again is due to various reasons, some of which are that they have to wait for long hours outside the court before the case in which their evidence is to be recorded is called; there is no proper seating arrangement for them both in the court-room and outside; they are generally treated with lack of courtesy and sometimes with rudeness by the counsel for the opposing party during the course of cross-examination in which all sorts of personal and embarrassing questions are put to them; the travelling allowance and diet money paid to them is quite inadequate, and last but not the least, sometimes they are suborned by the opposing party.

(d) Quite a large number of cases remain pending for long for non-attendance as witnesses of government officials who generally are investigating officers, medical officers and magistrates; the reason being that by the time the case is ripe for hearing they are transferred to other stations and summonses for their appearance sometimes are either not returned to the courts in time or they are received back with a report of non-service.

### 3. *Non-Attendance of the Accused*

In a criminal trial, the personal appearance of the accused is a legal requirement unless the court has dispensed with his attendance on account of his being incapable of remaining before it (as for instance, due to his illness). Accordingly, the non-attendance of the accused necessarily leads to the postponement of the case. The failure of the accused to attend the court may be for various reasons. Sometimes, the absence may be intentional or wilful with the ulterior motive to gain time to win over the prosecution witnesses or to cause harassment to the complainant but sometimes this absence may be due to circumstances beyond his control, such as illness, or when he is in custody, the failure of the jail authorities to take necessary steps to produce him in court on the date of hearing.

### 4. *Dilatory Tactics of the Defence Lawyers*

Ordinarily, no defence lawyer is personally interested in delaying the disposal of the case in which he has been engaged but sometimes the accused may persuade him to adopt such tactics as may ultimately lead to the prolongation of the trial. The counsel may embark upon unnecessarily lengthy cross-examination of the prosecution witnesses or he may challenge the admissibility of evidence on every conceivable occasion or simply ask the accused to apply for adjournment on the ground that his counsel is busy elsewhere. And if all else fails, he may intimate to the court his desire to petition the High Court to transfer the case in which event the magistrate is bound to adjourn the trial under the law. The transfer applications in High Courts, unfortunately, remain pending for a long time thereby delaying the trials for months.

Another school of thought believes lawyers are the cause of court delays, since they are responsible for the movement of cases. The concentration of cases in a few lawyers also generates additional problems. Prestigious lawyers attract more cases than they can handle on a current basis. Backlogs with these lawyers create backlogs in courts. Reforms are needed to spread the distribution of cases through the legal market place possibly by a rule prohibiting lawyers from accepting more cases than they are capable of handling.

### 5. *Increase in the Volume of Work and Shortage of Courts*

The volume of work has grown during the past few years due to increases in crime resulting from increases in population and mass migration of rural populations to urban areas on account of

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industrialization. The number of cases pending at the end of 1961 was 84,120 rising to 92,337 at the end of 1962 and 103,850 at the close of 1963. On the 30th June, 1968, the number of such cases swelled to 460,804. On the 1st of August, 1975, the number of pending cases in only Punjab alone, one of the four Provinces of Pakistan, was about 458,000. It will be seen from these figures that there has been a steady rise in the volume of work. However, no proportionate increase has been made in the strength of the trial magistrates and prosecutors.

At present, magistrates are under the administrative control of the executive branch of government. Almost all of them in the district are also burdened with executive duties with the result that judicial work does not receive their full time attention. For example, magistrates are required to attend to the VIPs (Very Important Persons), accompany processions and arrange various functions. The disposal of judicial work certainly suffers on account of these numerous added duties. It is heartening to note that on the recommendation of the Law Reform Commission 1967–70, the present Government has approved the complete separation of the judiciary from the executive and made necessary amendments in the law which are likely to be implemented in the near future.

*6. Frequent Adjournments*

The magistrates generally do not exercise their discretion properly in granting adjournments. This is due to a number of factors, as for instance, the matter of scheduling cases for hearing is mostly left to the ministerial staff of the court who, without having any idea of the time which a case is likely to take, fix too many cases per day for hearing. Since, according to the present practice, magistrates do not work as full time judicial officers, they do not hesitate to adjourn cases on the usual ground of being busy in administrative work irrespective of the fact that witnesses are in attendance or the case had been adjourned previously for similar reasons. Incomplete cases where the witnesses are not in attendance or where the accused is not present, are generally left to be dealt with by the court clerk who adjourns them to a future date at his discretion. The daily cause list of a magistrate's court is generally heavy and so the presiding officer readily succumbs to the request of both the prosecution and the defence to adjourn the case for one reason or another.

*7. Stay of Proceedings and Non-Receipt of Record*

The disposal of cases by the criminal courts is sometimes delayed on account of stays of proceedings by the higher courts or non-receipt of records from the appellate court or some other court. Early decisions in cases in which the proceedings are stayed and prompt return of the record to the trial court could save a lot of time which otherwise is taken in the disposal of such cases.

*8. Lack of Proper Working Conditions*

Generally the conditions of the court-buildings are far from satisfactory. In most places, the courts are congested and over-crowded. At some places the magistrates occupy improvised court-rooms, lacking both in dignity and comfort. Furthermore, there are hardly any amenities for the litigant public and the witnesses. A large number of courts are without adequate libraries and many magistrates do not have even copies of the bare enactments which they are called upon to administer. For better performance, the importance of providing adequate accommodation and dignified surroundings for the courts can hardly be over-emphasized.

**Remedies**

A careful analysis of the causes of delay enumerated above will show that the fault lies with the administrative machinery and the facilities provided for working the existing procedure for the trial of cases. Expeditious disposal of cases can be achieved if the presiding officers of courts in the discharge of their duties act efficiently and strictly in accordance with

law and the very comprehensive instructions and guidelines issued by the High Courts from time to time. The main reason for the failure on the part of the Government to provide the requisite facilities for working the procedure satisfactorily has been the financial stringency and its preoccupation with the execution of the developmental projects. With the growth in the economy of the country, the Government is taking various measures and earmarking substantial amounts of money every year to overcome the handicaps and improve the situation.

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# Delays in Preliminary Investigation and Trial in the Philippines —A Study of Their Causes and Proposed Solutions

*by Candido P. Villanueva**

## Introduction

A survey conducted by the Office of the President of the Philippines shows that "backlogs and delays are still the major constraints that impede the efficient administration of justice" in our country (Report on the Administration of Justice, January 1975, p. 3, by Brig. Gen. Paciencio S. Magtibay). This conclusion was based on actual figures of pending cases in all provincial and city fiscals' offices and courts throughout the country. Thus, reports submitted by various city fiscals' offices show that as of January 1975, they had a total of 18,644 cases pending resolution, while the provincial fiscals' offices had a total of 10,920 cases left pending at the end of the said month. On the other hand, 45,404 cases were pending before the municipal courts throughout the country, while the city courts had 57,840 pending cases. The Courts of First Instance with 320 filled branches throughout the Philippines had 28,449 pending cases; the sixteen Circuit Criminal Courts had 1,055 pending criminal cases, while the Juvenile and Domestic Relations Court had 5,567 pending cases. This problem, however, appears to be true not only in the Philippines but in other Asian countries as well and even in the United States. As pointed out in his work entitled "Judicial Administration, the American Experience," Delmar Karlen, former Director of the Institute of Judicial Administration, noted, "Delay is an evil in itself, but it leads to other evils, even more serious. When criminal justice is neither swift nor certain, the deterrent effect of the criminal law is lost. Crime increases and the conditions of living, particularly in the cities, deteriorate."** Consequently, I believe that it would be worthwhile for all participants, to share their knowledge and experience and help discover the root causes of such delays and find appropriate solutions thereto.

## Delays in Preliminary Investigation

### *1. Main Causes*

While the preliminary investigation conducted by the fiscal is technically not part of the trial, its purpose being merely to determine whether there is reasonable ground to believe that the crime charged has been committed and that the respondent is probably guilty thereof so as to warrant the filing of the case in court, it cannot be gainsaid that there is a necessity in expediting disposition of cases at this stage. An expeditious preliminary investigation will enable the fiscal to subpoena witnesses while they are still around and while their memories of the events and circumstances surrounding the commission of the offense are still fresh. At the same time, some vital real evidence may be preserved and properly identified preparatory to its presentation in court. More significantly, the probable guilt or innocence of the suspect may be immediately determined so that if he is probably guilty the case may be immediately filed in court and thus prevent the prescription of the offense to set in, while if found innocent, he may be freed from the anxiety of further prosecution. Unfortunately, while as a general rule fiscals try to dispose of the cases assigned to them for preliminary investigation, the records show that they could not keep up with their backlogs. What causes such delays? I would venture to say that the

* Senior State Prosecutor, Department of Justice, Philippines.

** Delmar Karlen: *Judicial Administration, the American Experience*, 1970, New York, p. 77.

causes of such delays are as follows:

(a) The great increase in the number of cases being filed in the various provincial and city fiscals' offices throughout the country brought about by the increase in population, changes in social and economic conditions of the people, and other factors without, however, a corresponding increase in the number of prosecutors to handle such large number of cases;

(b) Delays in the service of subpoenas to respondents and other witnesses;

(c) Inefficiency of some of the fiscals.

*2. Proposed Solutions*

To solve this problem, I respectfully submit the following proposed solutions:

(a) Increase the number of public prosecutors or fiscals in places where such increase is warranted, the appointees to come from a select group of experienced practicing lawyers who are not only well-versed in substantive and procedural laws but also known for their honesty and integrity, the qualifications of candidates for the positions to be determined by the Department of Justice through a committee headed by the Chief State Prosecutor, for which purpose a written and oral examination may be conducted upon prior announcements duly published.

(b) Increase and standardize the salaries of all government prosecutors, the provincial and city fiscals and their assistants and all state prosecutors, in order to keep and attract more good and capable men in the prosecution arm of the government. Their salaries should as much as possible approximate the salaries being received by Judges of the Courts of First Instance. (At present, a judge of the Court of First Instance receives a basic salary of forty thousand pesos per annum, or approximately ₱1,500,000, while a provincial or city fiscal of a first class province or city receives only 22,200 pesos per annum, or a little more than one-half of what a judge receives.)

(c) Strict adherence to the circulars of the Honorable Secretary of Justice particularly Circular No. 23 dated June 16, 1975, amending Circular No. 74, series of 1967, issued with a view to expediting the dispensation of criminal justice, implementing the law on preliminary investigation by fiscals, Republic Act No. 5180 as amended by Presidential Decree No. 77, as to the time limit within which a case must be resolved. Thus, it provides:

> "5. The investigating fiscal shall resolve the case within ten (10) days after it is submitted for resolution. Thereafter, he shall immediately forward the records of the case with his resolution to his head of office who shall dispose of the same within five (5) days from receipt thereof. If the final resolution is for the filing of the case in court, the corresponding information shall be filed within five (5) days after such final resolution is issued. In any case, the complainant and the respondent shall be furnished copies of the final resolution.
>
> "6. Where the complaint is for a light offense which prescribes in two months, or where the crime charged is about to prescribe, the periods provided for in the foregoing rules shall not be observed. Instead, the case shall be treated expeditiously to avoid prescription of the offense."

**Delays in the Trial of Cases**

*1. Main Causes*

In the different courts, I would say that the probable causes of delays in the trial could be all or one of the following:

(a) Crimes have increased and the number of cases filed has likewise increased but the number of branches of courts to try the same have not been increased. As a matter of fact, the courts trying our cases were created by laws passed back in 1948, the Judiciary Act of 1948, Republic Act No. 296, except for some amendments increasing the number of branches in a particular province or city. But even then, many branches of the Courts of First Instance have not yet been filled up.

(b) The branches of the Courts of First Instance and the Circuit Criminal Courts are usually situated in different, far away places, for which reason, practicing lawyers could appear in only one of their cases at a time, and necessitating postponements

of their other cases.

(c) Failure of some of the judges to observe the legal requirement that "the number of hours that the court shall be in session per day shall be not less than five" (Section 58, Republic Act No. 296).

(d) Too much leniency of some of the judges in granting requests for postponement.

(e) Inefficiency of some judges in the performance of their functions.

(f) Deliberate absences or jumping bail of some of the accused knowing that they could after all easily move for the lifting of the order issued for their arrest, such dilatory tactics being motivated at times by the desire on the part of the accused to approach the offended party for a possible amicable settlement of the case or to talk the matter over with the witnesses for the prosecution to prevent them from testifying against them.

(g) Delay in the service of subpoenas to the witnesses either for the prosecution or for the defense.

(h) Delay in the transcription of stenographic notes whenever needed for the preparation for trial by the parties or for submission of memoranda by the prosecutor or the defense counsel, as well as for the writing of the decisions by the judge concerned.

*2. Proposed Solutions*

For a more speedy trial of cases before the different courts, I respectfully submit the following proposed solutions:

(a) Increase the number of branches of courts, and fill all existing vacancies. Appoint as judges men known for their integrity and honesty, who are willing to accept the responsibilities of the positions not necessarily for the honor that goes with them or for the bigger salaries given to judges, but for the opportunity afforded them to help in the dispensation of justice to our people.

(b) Gather all branches of the courts as much as possible in a particular place or building to enable practicing lawyers to appear not only in one case but even in two or more cases in one day by the simple expedient of having the time or hour of hearing arranged with the clerks of the courts, or with the judges themselves in the branches where they have cases calendared for the day. That way postponements of cases can be avoided.

(c) Strict enforcement of the legal requirement that judges must hold session for a period of not less than five hours a day. (Section 58, Republic Act No. 296.)

(d) Strict enforcement of the constitutional requirement that judges must dispose of cases pending in their courts for decisions or resolutions within a period of not less than three months according to the New Constitution. (Section 11 [1], Art. X, New Constitution of the Philippines.) As a matter of fact, this period appears to be long enough, and the Supreme Court which now has administrative supervision and control over judges of inferior courts under the same constitutional provision should attempt to make some reduction in delay.

(e) The courts must be strict in granting motions for postponements, and should grant the same only on clearly meritorious grounds. If possible and as a remedial measure, the courts must limit the number of times that a party could ask for postponements.

(f) The courts must apply to the letter of the provision of the new constitution concerning deliberate absences of accused just to delay the trial, which states that "after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified." (Section 19, Art. IV, New Constitution of the Philippines.)

(g) The communications and subpoenas coming from the courts as well as from the fiscals' offices shall not only be entitled to franking privilege but must be given preferential attention with regard to their service or delivery.

(h) The transcription of stenographic notes by the court stenographers should be done automatically and free of charge in the sense that all the stenographic notes taken down during the trial should be transcribed whether or not the parties request their transcription and thereafter the transcript should be attached to the records of the case. The practical advantage of this procedure is that the parties as well as the court can avail

themselves of the transcript at any time in the course of the trial and up to its termination. Incidentally, this procedure will also help solve the delay in the disposition of appealed cases, since one unavoidable cause of delay in the appeal is the appellate courts' having to wait for the transcript of stenographic notes from the lower courts. If that would impose a burden on the part of the stenographers, it is suggested that the number of stenographers in all branches of the courts be increased and their salaries be likewise increased and standardized so that they will not have to depend upon or expect any fees from their transcripts of stenographic notes.

(i) There should be continuing legal studies or training to be participated in by all judges and prosecutors alike in cooperation with the University of the Philippines Law Center as is usually being done, in which the attendance should be strictly required and not participated in only as some sort of "junket" or vacation. The purposes of such training should not only be to keep them abreast of the latest laws and jurisprudence involving the administration of criminal justice in general, but also to keep them always mindful of their heavy responsibilities.

(j) Finally, we should favorably consider the suggestion of the Fifth United Nations Congress on the Prevention of Crime and Treatment of Offenders held at Geneva, 1st to 12th September 1975, regarding the feasibility of depenalization and decriminalization of certain offenses.

# Workshop II: Crime Problems Resulting from Socio-Economic Development

## Summary Report of the Rapporteur

*Chairman:* *Mr. Kim Yong Whan*
*Advisers:* *Mr. Teruo Matsushita and Miss Masako Kono*
*Rapporteur:* *Mr. Ishwar Chandra Dwivedi*

### Titles of the Papers Presented

1. Crime Preventive Activity of Police in a Changing Society
   *by Mr. Yasutaka Kawamitsu (Japan)*
2. The Roles and Functions of the Public Prosecutor in Japan
   *by Mr. Toshiaki Hiwatari (Japan)*
3. Organized Crime in Japan
   *by Mr. Shigeo Sasaki (Japan)*
4. Economic Crime in Korea
   *by Mr. Kim Yong Whan (Korea)*
5. Combatting White-Collar Crimes in India
   *by Mr. Ishwar Chandra Dwivedi (India)*

### Introduction

The group consisted of three public prosecutors and two police officers. All the papers prepared by them dealt with important topics relating to social defense measures for effective control of the growing number of crimes whose complexity was increasing as the social structure changed in the course of increasing industrialization and economic growth. The group keenly felt that criminal law and its administration should be concerned with white-collar crimes, organized crimes, as well as other more obvious types of crimes. The discussions were divided into two parts: the first half was devoted to Japanese experiences in the prevention and control of crime, and the second half to socio-economic crimes in Korea and India.

### Japan's Experiences

The first paper to be discussed was presented by Mr. Yasutaka Kawamitsu on "Crime Preventive Activity of Police in a Changing Society." In Japan, the crime rate has shown a general downward trend over past twenty-six years. Annual crime statistics suggest that increasing industrialization and urbanization has not been reflected in increased anti-social behaviour. However, Mr. Kawamitsu pointed out that in recent years in Japan there have been a number of social, economic, and technological factors which directly or indirectly have affected criminal behaviour patterns and crime control. For example, the increased use of autos has brought about considerable changes in modus operandi of rape, robbery, homicide, and theft. For example, statistics show that automobiles were used in 45.9 percent of all rape cases in 1974. Another more serious example relates to the impersonality and anonymity of urban life which has made the citizens less willing to volunteer assistance in the form of information to the police. In 1974, the citizens' information helped solve only around 13.8 percent of all Penal Code offenses in urban areas, while in rural areas it helped in the solution of around 18.1 percent of the cases.

Mr. Kawamitsu then asserted that police preventive efforts should develop wider and more specialized areas of activity. He cited statistics indicating that specialized crime prevention and safety police accounted for only 5.6 percent of the total Japanese police force. Many participants recognized that there was a growing trend to stress preventive functions and services which police could fulfill in the community, and this was contributing to greater cooperation between the police and the social agencies and, in some cases, to greater support by the public. Although

there were obvious problems of persuading citizens properly to fulfill their roles in the community, it was generally agreed that more police efforts, drawing upon community groups for assistance, must be devoted to public educational programs on the meaning of crime in the community and the citizen's duties in its prevention. Mr. Kawamitsu proposed intelligent use of social and other agencies, police leadership in community planning, thorough patrol, and other programs which aimed chiefly at improving the individual's environments.

Mr. Toshiaki Hiwatari, in his paper on "The Roles and Functions of the Public Prosecutor in Japan," explained the unique characteristics of the public prosecutor in Japanese criminal justice system. The public prosecutor does not institute prosecution unless he has a firm belief in the guilt of the accused. Therefore, no case is brought to court unless the public prosecutor has made a full investigation of the facts surrounding the crime prior to the filing of indictment. This strict attitude concerning the filing of indictments has been strongly supported by the public. Thus the rate of convictions amounted to 99.98 percent of the total cases in 1973. A number of participants, while very impressed with this unusually high conviction rate, considered the public prosecutor as acting in a quasi-judicial capacity, having unlimited screening power over criminal cases.

Mr. Hiwatari then pointed out two difficult situations arising from the enormous powers and responsibilities of the public prosecutor. The first situation related to the contention that the public prosecutor should refrain from investigative work, leaving that to the police, and should concentrate upon conducting the trial as an attorney for the government. Under the present Code of Criminal Procedure, the first and primary responsibility for investigating crime lies with the police. The prosecutor's function is merely supplementary and he is not properly trained in investigating crime. Mr. Hiwatari, however, stressed that in the actual situation in Japan, it was impossible to institute prosecution with sole reliance on the evidence collected by the police, since, in many cases, there were deficiencies in police investigation which had necessitated a supplementary investigation. The second situation concerned the prosecutor's intervention in disputes between citizens. In criminal cases, the prosecutor often acts as a mediator on the basis of his authority. A considerable number of fraud, embezzlement, breach of trust, and other property crimes have been resolved by agreement between the parties based on the prosecutor's recommendation. This practice was generally supported by the participants on the ground that it was within his power to make such recommendations as a result of his investigation.

Mr. Shigeo Sasaki, in his paper on "Organized Crime in Japan," stressed that growing violent groups were creating constant intimidation to the daily lives of Japanese citizens. In Japan, violent crimes by the general public have been decreasing in number and in constancy over past ten years. This is attributed to the fact that recent economic growth and physical well-being are meeting people's wants and dissolving discontent and therefore there is less frustration or aggressiveness. However, violent crimes committed by organized violent groups have been increasing since 1968. For example, the number of offenders in such groups who were apprehended for assault and body injury in 1968 was 5,515 and 9,279 respectively. In the intervening six years, they have considerably increased in number, and the corresponding figures in 1974 were 6,961 and 11,765.

Mr. Sasaki pointed out the traditional feelings in Japanese society was to praise the gang's behaviour for its manliness in siding with the weak and crushing the strong. He referred to the results of a recent study on the purpose of affiliating with a criminal gang group indicating that the most prevalent reason was "conform to or identify oneself with gang subcultures such as *giri* (obligation) or *ninjo* (human sentiment)." Some participants stressed that the recent mass media efforts have given a distorted picture of the gang's behaviour by suggesting a spirit of manliness, toughness, and adventurousness which created attitudes and behaviour conducive to criminal behaviour. However, other participants asserted that there were other social influences such as personal contact and association, and that people

who resided in areas where crime rates were high would be influenced more significantly by mass media than those who lived in areas of low crime rates.

**White-Collar Crimes in Asian Countries**

1. Korea

Mr. Kim Yong Whan, in his paper on "Economic Crime in Korea," analyzed recent trends of economic crimes in Korea. Korean statistics show that the number of those crimes has remarkably decreased during the last decade. This decrease, however, was mostly attributed to the decrease in economic crimes other than those of white-collar nature that have presumably been increasing over this period. Among white-collar economic crimes, Mr. Kim paid special attention to tax and customs offenses. There were a total of 4,086 tax offenses and 6,031 customs offenses in 1972. The former contained all types of tax evasion offenses and the latter mostly consisted of smuggling, abuse of duty-free privilege, and false declaration of commodity price.

Mr. Kim then described governmental efforts to prevent and control those offenses. The measures were focussed on two major categories: (1) aggravated punishment and (2) joint authority of investigation. In 1966, the Korean Congress passed the Law Providing Special Punishment for the Specific Offenses which provided aggravated punishments against those offenses. Under the Law, tax evasion amounting to no less than five million hwan (US $ 10,000) may be punishable with imprisonment for life or for not less than three years, and, a fine equivalent to two to five times the evaded amount. Complaints by tax offices are not a prerequisite for prosecution in those cases. In the case of customs offenses, the offender may be punishable with death, or imprisonment for life or for not less than five years, and/or with a fine equivalent to from five to ten times the evaded amount. In 1965, the government established the Joint Task Force of Investigation on the Smuggling to coordinate activities among law enforcement agencies, under the direction of Public Prosecutors Offices. Many participants observed that this kind of coordination would improve the effectiveness of law enforcement activities in each fragmented agency.

2. India

The final paper which came up for discussion was presented by Mr. Ishwar Chandra Dwivedi on "Combatting White-Collar Crimes in India." In India, white-collar crimes are usually committed by the members of the upper strata of society in the course of their occupations. This special class of crimes greatly affects public morals and welfare of the whole community. Bribery, tax evasion, hoarding, blackmarketing, smuggling, breach of foreign exchange regulations, trafficking in licenses or permits, under-invoicing or over-invoicing, adulteration of foods and drugs, and substandard performance of contracts of construction and supply were cited as some examples of these white-collar crimes. Mr. Dwivedi pointed out that this class of crimes were often committed by influential members of the society, through the use of a hireling. During the commission of those crimes, many papers are prepared for placing all responsibility on the paid "executive," although the "master" actually makes all kinds of decision and gives necessary instructions orally to the "executive." Therefore, no documentary evidence is available against the "master" when an investigation is carried out into such crimes.

Mr. Dwivedi presented a question as to whether the traditional criminal law requirement of *mens rea* should, in some cases, be eliminated from white-collar crimes. He observed that there were certain acts which were considered so hazardous to the society that the law absolutely forbade the commission of such acts irrespective of the intention with which the act was committed. The Law Commission which had been established by the Indian Government recommended that some white-collar crimes should be made absolute liability offenses, and that it should be sufficient for a public prosecutor to establish that the prohibited act was committed by the accused. If the accused claimed that he had committed it

innocently, the burden of proving the absence of guilty intention should lie on him. Such a modification has already been made as to the offenses under the Prevention of Food Adulteration Act and the Essential Commodities Act. However, these developments were criticized by some participants who opposed the strict liability on the ground that punishment should not be imposed unless it was possible to impute moral blame to the actor for his guilty intentions.

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# Combatting White-Collar Crimes in India

*by Ishwar Chandra Dwivedi**

## Socio-Economic Crimes — The Problem —

Socio-economic crimes are non-conventional offences which are generally committed by persons belonging to the upper strata of society, in the course of their occupation. Such crimes adversely affect the health or material welfare of the whole community rather than simply causing injury to one individual. The criminal is primarily motivated by greed and defrauds the State, or the consumer, in a cold and calculated manner. The crimes are planned in secrecy by the clever, and influential, offenders in such a sophisticated manner that the criminal act, which is prohibited by law, is mostly committed by a hireling. The "master" criminal thus operates behind a curtain and is able to maintain a respectable front and, very often, a high social status which goes with abundant wealth.

Bribery and other abuse of office by public servants, trafficking in licenses and permits, tax evasion, hoarding and black-marketing of essential and scarce commodities, supply of substandard, or lesser in quantity, goods to public bodies, execution of contracts of construction of public projects in a substandard manner, smuggling of goods, under-invoicing and over-invoicing, deliberate breach of foreign exchange regulations and the adulteration of foods and drugs may be cited as some examples of socio-economic crimes. The total damage to the community by such offences far exceeds the damage which is caused by conventional offences against property such as burglary, theft, embezzlement, and others. However, such crimes are generally considered less reprehensible by society as well as by the courts because the actual damage caused by such crimes is not easily perceived. The criminal, therefore, is able to get away with the crime and enjoy substantial material rewards at little, or no risk and no loss of status.

## The Modus Operandi of the Criminals

The process of industrializing, modernizing and developing a simple agrarian society requires the regulation by the State through laws and rules of not only economic activities but also other aspects of human conduct. Criminal law is the traditional and one of the most important and effective means of social control. But with the expansion of the regulatory activities of the State into more areas of individual activity, the scope for manipulation of the regulatory processes by influential and resourceful socio-economic offenders also increases. Frequently they bribe their way out of the regulations, and these offenders can only be unmasked by a prompt and thorough investigation and effective presentation of the evidence before the court. However, the law enforcement agencies devote almost all their time and energy to apprehending low-level criminals who indulge in visible crimes and they seldom have the inclination, resources or expertise required to track down socio-economic offenders, who, in quite a few cases, also occupy important places in local public life. By a judicious investment of a portion of their ill-gotten wealth in public welfare activities, these criminals are able to divert public attention from their nefarious activities and are able to carve out such "respectable" niches for themselves that they are effectively insulated from law enforcement. These criminals use their influence to hush up the matter and in case one of their "operatives" is caught, they always take care to conceal their special relationship with him. Although they arrange for the legal defence of the "operative" as well

* Deputy Inspector General of Police, Central Bureau of Investigation, India.

as for the proper upkeep of his family, provided he does not "squeal" the lawyers are more concerned with protecting the interests of the "master" than with the defence of the "operative." In the event of a clash of interests, the lawyers do not hesitate to sacrifice the interests of their client, the "operative," in order to prevent any harm being caused to the "master." It is very rare for an operative to "squeal" because he knows that if he does so, he not only foregoes all the privileges and monetary rewards but also incurs grave risk to his life and the life of his family members. This *modus operandi* is not only prevalent in crimes like smuggling but is also to be seen in company frauds, crimes connected with the production and supply of substandard goods and tax evasion, and others. The "master" operates in such a manner that on paper all the responsibility, if anything goes wrong, is clearly and specifically placed on the paid executives although all the decisions are made by the "master" personally, usually by detailed oral instructions to the paid executive. No documentary evidence is thus available if an investigation is made into such crimes. What is more, the paid executive willingly takes the responsibility for the "act" himself in full knowledge that the "master" would not only defend him to the end with all his material and other resources but would also reward him for his loyalty by promoting him.

Having discussed the nature and prevalence of socio-economic crimes and the criminals, let us consider the various causes which are responsible for ineffective enforcement of the economic laws and the measures which have to be taken to combat these crimes effectively.

### Public Apathy Towards Such Crimes

Since the employees of socio-economic offenders willingly carry the cross for their masters, the detection and prosecution of socio-economic crimes can succeed only if the enforcement officials get information about the criminal activities from innocent citizens. However, the average citizen does not like to act as a police informer because a certain amount of stigma is attached to this role. While people are willing to help the police in dealing with crimes which offend their own sense of morality such as murder, rape, burglary, and others, they are largely indifferent to the socio-economic crimes in which their own interests do not apparently suffer. They also are concerned about the danger to which they may expose themselves by helping the enforcement machinery. Therefore, even when a public-spirited citizen wants to give information, he first likes to make sure that the agency to which he would give the information would be discreet enough not to reveal his name, and thereby expose him to all the risks which are to be faced by those who dare to take any action to rip the mask of the face of these powerful criminals, and, what is more important, that they would take action on the information and would not try to cash in on his information by making a show of action *after* forewarning the criminal.

### Public Image of the Enforcement Machinery

The public image of the enforcement agency and its individual officers thus plays a very important role in the inflow of vital information from casual sources and therefore, the necessity of ensuring a very high level of integrity in enforcement officials cannot be over-emphasized. It is seldom possible for a developing country to find sufficient resources to be able to pay its enforcement officers well enough so that they are reasonably insulated against temptations. Moreover, even if the salaries of the officials were to be substantially raised, the problem would still remain because the financial stakes involved are so high that the criminals would always be willing to offer bigger bribes to purchase protection from the operation of the law. The only solution therefore is to instill in the officials a deep sense of patriotism and fire them with a missionary zeal for effectively protecting the economy and the material resources of the nation.

### Selection and Training of Enforcement Officers

An enforcement agency has to be efficient in order to be effective. An investigating officer who is to handle socio-economic offences has to be more intelligent and better educated than an officer who is investigating ordinary crimes because his adversary, the criminal, is much more subtle and cunning. He should have the patience and the ability to go through voluminous documents and find his way in the devious lanes and bylanes of "respectable" and apparently legal fronts so cleverly erected by the offenders with the assistance of competent but unethical professionals. He must be tough, fearless and tenacious and bold enough to work in the face of constant threats to his life, and often his reputation.

Socio-economic crimes are of many types and each type requires expertise and knowledge of a particular nature. Even in offences of the same type, the *modus operandi* adopted by two criminals is rarely similar. It is only after spending some time as an assistant to experienced investigating officers that a fresh officer can acquire the competence to handle the investigation of a crime independently. Continuity of experience is therefore of great importance in the investigation of such crimes and officers should be allowed to remain in the specialized investigation units for long periods. Otherwise there is every likelihood that an officer will be moved out just when he has acquired sufficient know-how to be able to make his independent contribution in the battle against such crimes. The same holds true for officers supervising the investigations.

### Competent Prosecution

Howsoever efficient and effective the investigation may be, there is every chance of a well-investigated case being lost if the prosecutor lacks the requisite legal expertise and is not good at court craft. The accused, who commands vast material resources, invariably engages a battery of the most eminent counsel available in the country to defend him or his hirelings, and the public prosecutor, or in some cases the departmental inspector, conducting the prosecution is often no match against the legal brains on the defence side. On account of the complexity of such cases and the hairsplitting frequently resorted to by the defence counsel, it is imperative that the law enforcement agencies make proper arrangements for the prosecution of their cases and ensure that it is in safe and competent hands, irrespective of the expenditure it is likely to involve toward payment of fees of special counsel who may have to be engaged if the best legal brains of the establishment are otherwise engaged and are not free to attend to such cases.

### Inadequacies in Law and Procedure

Defective or delayed investigation and prosecution are not the only factors which come in the way of effective enforcement of the socio-economic laws. The culprits also take advantage of the inadequacies in law and procedure. At the instance of the Government of India, the Law Commission closely examined this problem and gave its recommendations in its 29th and 47th Reports. Keeping in view the peculiar nature of such crimes and criminals, the Law Commission recommended some far-reaching changes in law and procedure to make the socio-criminal laws a fit vehicle for the achievement of social objectives. Some of these recommendations have already been accepted by the Government and implemented, while some are still under consideration.

### Delay in Trials

In India the number of cases instituted in the courts every year far exceeds the number of cases disposed of with the result that the total number of cases pending trial has been steadily mounting up. During 1972, only 30.9% of the pending 1,011,699 criminal cases, relating to cognizable offences under the Indian Penal Code, had their trials concluded. The problem is all the more acute in respect of the socio-economic offences where the clever and resourceful offenders

fully realize that with the passage of time the chances of their being convicted would be considerably reduced on account of the death or disappearance of witnesses and the non-availability of the investigating and the supervisory officers due to transfer or retirement to assist the prosecutor in the presentation of complex and voluminous evidence before the court. The accused in such cases therefore adopt dilatory tactics such as not attending court hearings on the dates fixed on various pretexts and praying for adjournments on the ground that their counsel is otherwise engaged on that date. Further, the court trials are constantly hampered by the accused filing revision applications challenging the correctness and legality, or propriety, of the orders passed by the court at all stages in the course of hearing. The disposal of such revision petitions by the higher courts takes considerable time and the progress of the trial is thus held up. The result of such dilatory tactics would be apparent from the fact that while 541 cases investigated and prosecuted by the Central Bureau of Investigation, most of which related to socio-economic crimes, were pending trial before the courts at the close of 1964, the number of such cases at the close of 1974 had arisen to 1,487, almost three times as great.

### Abuse of Due Process of Law

In a large number of cases the defence counsel used to take advantage of the provisions of Section 435 of the Code of Criminal Procedure (1898) under which the High Court or the Court of Sessions could call for and examine the record of proceedings of any case being heard by any inferior court within its jurisdiction for the purpose of satisfying itself about the correctness, regularity, legality or propriety of any finding or order of the inferior court. On a petition being moved on behalf of an accused, the Superior Courts, while calling for the record of the case, also used to direct that the proceedings in the case before the lower court would remain suspended till the Superior Court had made a decision on the petition which had been moved before it. These provisions of law were so consistently abused that when the Code of Criminal Procedure was revised in 1973, it was specifically laid down under Section 397(2) of the new Act that the powers of revision *shall* not be exercised in relation to any interlocutory order passed in any proceedings.

While this amendment has certainly improved matters to a considerable extent, the ingenious defence counsel have now started resorting to Section 482 of the Code of Criminal Procedure (1973), under which the High Court can intervene in any proceedings "to prevent the abuse of the process of any court or otherwise to secure the ends of justice," for securing the intervention of the High Court at interlocutory stages. In the High Court of Delhi, which has jurisdiction over the twin cities of Delhi and New Delhi and their suburbs, as many as 120 such criminal miscellaneous applications were moved since January 4, 1974, the date on which the new Code of Criminal Procedure came into force. The effect of such maneuvers is amply reflected in the fact that at the close of the year 1974 the trial of 28 cases investigated and prosecuted by the Central Bureau of Investigation was pending for more than 10 years during which interval some important witnesses for the prosecution had died, while a number of others were no longer traceable as they had since left their old residences.

Investigation into socio-economic crimes necessarily involves searches of premises and seizure of documents and other property. Clever defence lawyers generally challenge the legality of the search and contend that one fundamental right of the accused or the other has been violated and on this basis very often succeed in obtaining writs from the High Courts restraining further investigation till the legal issues are settled. A prompt and thorough scrutiny of the seized documents is of great importance in the investigation of such offences as it is only through such a scrutiny that clues about the existence of documents and other material evidence, which might have deliberately been concealed by the accused, become available. Sometimes the courts, while entertaining the petitions moved by

the accused, prevent and prohibit the investigating agency even from scrutinizing the documents which were recovered and seized during a search. The culprits are thus able to gain valuable time which they frequently utilize to do away with other incriminating evidence or in fabricating documents to controvert, or minimize the evidentiary value of, the documents which had been seized. In some cases though, the actual process of investigation is not stayed, the court orders that a charge sheet, or a complaint, would only be filed after the disposal of the petition of the accused. The investigation of some important cases thus is held up for a number of years.

In one case investigated by the Central Bureau of Investigation, a textile mill belonging to a very big industrial house was searched in June 1967 on the basis of a complaint of large-scale evasion of central excise duty and a large number of incriminating documents were seized. However, the mill promptly went to the court challenging the legality of the searches and the High Court, while admitting the petition, stayed the investigation and prohibited the investigating agency from scrutinizing the seized documents. Since the issue raised by the mill has not been finally decided yet, the investigation of the case continues to be held up. The issuance of such stay orders is not very rare. According to the 58th Report of the Law Commission of India, an interim stay was granted by the High Courts in 16,009 cases in 1971 and in 32% of these cases the stay was granted without notice. It should also be mentioned that many of the legal provisions, whose constitutionality is being challenged in this manner, have been on the Statute Book for a long time.

### Cheating of Public Bodies by Unscrupulous Contractors

In a developing country the Central, State and Local Self Government organizations incur substantial expenditure on public welfare projects. Unscrupulous contractors collude with officials and supply short or substandard goods to public bodies, or execute contracts in a substandard way, thus causing considerable loss to the people. There are usually no complaints about such malpractices as the officials, who are expected to keep the public interests under watch, themselves connive with the contractors. Ordinarily all contracts are governed by the Contract Act. Wherever a contractor is found to have cheated, criminal action can also be initiated under the Penal Code. The contracts placed by the government agencies should, however, not be treated as ordinary contracts as the beneficiaries of the execution of the contracts are the people and not a particular individual.

Considering the huge losses which are incurred every year by the unholy combination of unscrupulous contractors and greedy public officials, the Law Commission suggested the incorporation of a specific provision in the Indian Penal Code under which anyone cheating the Government or public authorities in persuance of a contract for the delivery of goods or execution of a work would be punishable with seven years of imprisonment and fined. The Union Government accepted this recommendation of the Law Commission and a new section making cheating of government bodies an aggravated form of cheating has been introduced in the Indian Penal Code (Amendment) Bill 1972. A new section has also been introduced in the Bill to deal with corruption on the part of employees of private organizations and professionals like advocates, solicitors, chartered accountants, cost accountants or architects, which under the present law is not punishable as an offence unless it otherwise amounts to cheating, criminal breach of trust or criminal misappropriation. Under the suggested section anyone employed by another, who accepts any gratification, other than legal remuneration as a motive or reward for doing or forbearing to do, etc., in relation to his employer's affairs or business, shall be punished with imprisonment up to three years and/or fine.

### Dispensing with Mens Rea

Acts prohibited by law are generally made punishable only if these are shown

to have been committed with guilty intention. However, under all legal systems, there are some acts which are considered so very hazardous to the community that the law absolutely forbids the commission of such acts irrespective of the intention with which the act was committed. Considering the abject necessity of strict observance of the socio-economic laws during the critical period of development of the economy of the country, the Commission was of the opinion that some of these offences need to be made offences of absolute or strict liability. They also felt that it should not be necessary to prove the intention with which the breach of law was committed, as insistence on "mens-rea" being proven in such cases makes the enforcement of these laws extremely difficult—the offences having been planned in absolute secrecy and executed through cut-outs.

In view of the special nature of these offences, the traditional standards of proof under which the entire burden of proving the "act" as well as the "guilty mind" rests on the prosecution are not suited to such cases. It therefore recommended that in socio-economic offences it should be sufficient for the prosecution to establish that the prohibited "act" was committed by the accused and if the accused claims that he committed it innocently, the burden of proving the absence of guilty intention should lie on him. Such a modification has already been made in respect of offences under the Prevention of Food Adulteration Act and the Essential Commodities Act. It also recommended that in the Customs Act, the Foreign Exchange Act and the Imports and Exports (Control) Act, a rebuttable presumption may be raised about the genuineness of any document which comes up during investigation and which is purported to have been executed by a person and further that such a document may be admitted in evidence even if it is not duly stamped, if such a document is otherwise admissible in evidence.

### Curing of Technical Defects in Sanction

Considering the large number of cases in which the accused successfully took advantage of technical defects in the prior sanction or consent of the appointing authority of the public servant, which is required for conducting a prosecution in respect of some of these offences, the Commission recommended the enactment of a provision in these special acts to the effect that a finding shall not be reversed by an appellate court merely on the ground of an error, omission or irregularity in the sanction or consent unless the court is of the opinion that a failure of justice has in fact been occasioned by it.

### Benefit of Probation of Offenders Act Being Denied to the Offenders

The Commission also recommended that persons found guilty of having committed such offences should be excluded from the operation of the Probation of Offenders Act, excepting those under 18 years of age, and that those who abetted the commission of any offence, punishable with imprisonment, by a child under 15 years of age should compulsorily be punished with imprisonment for a term up to twice the longest term of imprisonment provided for the offence.

### Need for Deterrent Punishments

In spite of all their efforts, the enforcement agencies are able to detect only a fraction of the socio-economic crimes which are committed. It is, therefore, all the more necessary that the punishment meted out to the accused who are found guilty by the courts should be of such an extraordinary nature that it should act as a deterrent to others similarly inclined. The quantum of punishment should also bear some definite proportion to the amount of illegal gain involved and the punishment for the evasion of hundreds of thousands of excise duty should not be the same as the punishment for evading payment of a couple of hundreds, just because both the "acts" involve the breach of the same section of law. A mandatory minimum punishment should also be provided for second and subsequent offences. In view of the tendency of the courts to treat the economic offenders

lightly, to insure adequate punishment, a provision (Sec. 377) has been incorporated in the Code of Criminal Procedure (1973) which enables the State to appeal against a sentence of conviction on the ground of its inadequacy. Generally, the socio-economic crimes are not the manifestation of any anger or grouse which the criminal may be harbouring against the society for having received a shabby treatment at the hands of his fellow beings.

Such crimes are born primarily out of the sheer greed of the criminal and there is, therefore, little likelihood of his correction or rehabilitation if he is given a light sentence. The interests of the society demand that proven offenders should be prevented from causing further damage to the society for as long as is possible. While deciding the quantum of punishment it should always be kept in view that in all likelihood it was not the first time that the accused committed the crime but rather the first occasion when he was apprehended after a long spell of successful operation.

### Public Censure

Economic offenders are seldom deterred by a sentence of fine alone—howsoever stiff. They are however unwilling to damage their public image. The Commission has therefore recommended that while convicting an offender the court may publicly reprimand him by causing the fact of his conviction to be published at his expense. In order to deter acquisitive corporate crime, the attachment of all illegal profits and the imposition of fines in lieu of imprisonment where the offence was punishable only with imprisonment have been recommended. The directors and other principal officers of a business corporation should be deemed to have guilty knowledge of the illegal acts of the company.

### Trial by Special Courts under Special Procedure

Judges entrusted with the trial of ordinary crimes do not always fully comprehend the complex and intricate nature of such cases and perhaps show excessive indulgence in favour of the accused as they come from "respectable" strata of the society. The Commission, therefore, recommended that the laws should be amended to make these offences exclusively triable by Special Courts to be set up for this purpose which courts should not take up any other work. Considering the dilatory tactics frequently adopted by the accused in the trial of such cases, the Courts should also be empowered to adopt a speedy procedure for the trial of these offences and should also have the discretion to proceed with the trial of the case even in the absence of the accused, if the court found that the accused was wilfully absenting himself.

In such cases a provision may also be made to call upon the accused to make a statement of his case after the "charge" is framed and copies of the statements of witnesses and of documents, which are proposed to be relied upon by the prosecution, are given to the accused. The Commission also recommended that the offences be made non-bailable so that the rich and influential accused do not get bail, and thereby an opportunity to tamper with evidence, as a matter of right but only at the discretion of the court.

### Preventive Detention of Offenders

The preventive detention of socio-economic offenders has also been considered justifiable by the Commission on the ground that protection of the economic stability of the nation from the depredations of the economic offenders is certainly as important as the defence of its territory in the time of war.

Lately, very effective action has been taken in India against the socio-economic offenders and a number of important gang-leaders, if this term could be used in respect of those white-collar criminals, have been detained and proceeded against.

### Conclusion

Subversion of the economy of a developing country is as dangerous to its independent existence as any external ag-

gression on its territory. It is therefore very essential that socio-economic crimes are tackled on a war-footing. The increased expenditure on the augmentation and modernization of the enforcement machinery, and the setting up of Special Courts, would be in the nature of a sound investment which would pay substantial dividends in the shape of increased revenue and foreign exchange.

The weapons and the strategy to be used in a war are always determined, keeping in view the strength and the maneuverability of the enemy. No one can expect to win a war against the well organized and entrenched socio-economic offenders by using the antiquated weapons of law. Therefore, where necessary, the laws and the procedure governing the investigation, trial and punishment of these crimes should be modified in such a manner that the criminals are not able to take advantage of the inadequacies in law to defeat the achievement of those social objectives for the attainment of which the law had been brought into being.

In spite of all the amendments in law and procedure, effective enforcement would not be possible without an efficient and honest enforcement machinery. In addition to providing them with proper equipment and training, the enforcement officials also need to be given an intensive orientation course to make them fully alive to the dangers of economic subversion and to arouse in them a strong patriotic fervour which would not only make them pursue their goal with missionary zeal but would also effectively insulate them from the temptations of bribery.

The society also needs to be educated about the incalculable damage which is being done to the economy of the country. A climate would thus be created in which patriotic law-abiding citizens would willingly come forward to play their part in the prevention and detection of such anti-social and anti-national crimes.

# Workshop III: Diverse Problems in the Administration of Criminal Justice

## Summary Report of the Rapporteur

*Chairman:* *Mr. Abdul Ahad Mujeeb*
*Advisers:* *Mr. Takeo Osumi and Mr. Shozo Tomita*
*Rapporteur:* *Mr. Roderick E. Martin*

### Titles of the Papers Presented

1. Problems in the Prevention of Ocean Pollution, with Emphasis on Surveillance and Control
   *by Mr. Masaru Kubota (Japan)*
2. Medical Services for Offenders in Japan
   *by Mr. Kiyoshi Ogishima (Japan)*
3. Conciliation Tribunals
   *by Mr. Abdul Ahad Mujeeb (Afghanistan)*
4. The Accuracy of the Pre-Sentence Report in the Light of the Problems Encountered in Gathering Information
   *by Mr. Denis Gunasekera (Sri Lanka)*
5. The Sentencing of Young Adult Offenders in Singapore
   *by Mr. Roderick E. Martin (Singapore)*

### Introduction

At the outset it should be emphasized that the five penal members of this group workshop were from different fields of the criminal justice system: a maritime safety officer, a correctional administrator, a probation officer and two judicial officers. Accordingly, papers on diverse problems rather than a single common problem were presented, and therefore this summary will deal with each participant's paper separately.

### Problems in the Prevention of Marine Pollution

Mr. Masaru Kubota of the Maritime Safety Agency informed the panel that the major pollutant of the sea has been oil. This oil has been coming either from "known sources" (i.e. ships, land) or "unknown sources," believed to be mostly from ships whose identities are not known.

As regards "known sources," the major problem is that countries do not treat the problem of marine pollution with the same degree of urgency and importance, making international accord on solutions somewhat difficult. These solutions range from the establishment of "pollution prevention zones" far exceeding the limits of territorial waters, to international conventions seeking the adoption of marine pollution control laws within respective member countries.

But with oil from "unknown sources," the problem is really one of developing more effective methods of detection. To this end, the Maritime Safety Agency has embarked upon a three year research program (beginning this year) to develop techniques in detecting the sources of such oil spills. In addition, there has been some thought of developing space satellites for the purpose of effective detection.

However, it was the general consensus of the group that perhaps the best approach to the problem would be the construction of ships fitted with the necessary equipment to process oil waste.

The discussion ended with Mr. Kubota's observation that foreign vessels were greater polluters than Japanese owned ones in waters around Japan, largely because foreign owned ships have less concern for the problem of marine pollution. To strike home the importance of pollution prevention, the Maritime Safety Agency has been most stringent in dealing with such ships.

### Medical Services for Offenders in Japan

Mr. Kiyoshi Ogishima, a correctional administrator, dealt with the subject of medical services for offenders in Japan.

He gave a detailed history of the development of medical services in this country, starting from 1872 right through to the present set-up, which consists of 10 prison medical centres with bed capacities ranging from 55 to 210 beds, and a medical complement of 226 physicians, 35 pharmacists, 20 X-ray specialists, 14 dieticians, 122 nurses and 16 medical examiners.

Despite these developments, he maintained in his paper that medical services for offenders in Japan are inadequate because of an acute shortage of both specialists and doctors. This has been the result of the inability to offer as favourable terms of employment (e.g. remuneration, sufficient medical assistants per doctor, etc.) as those existing in the private sector.

Another problem raised was that the prison medical service has not been able to maintain the same progress, in terms of incorporating improved medical techniques and "know-how," as that undertaken outside, a situation caused by the "infeasibility to centralize medical facilities and equipment" within the prison structure. To remedy or at least alleviate this, the Correction Bureau has plans to post medical specialists only to certain medical centres, so that with the aid of the classification system, prisoners requiring long-term medical care or needing special medical treatment can be sent there. However, the rest of the institutions would be equipped with medical facilities capable of dealing with mild and short-term cases.

Ideally, however, Mr. Ogishima mooted that idea of improving the terms and conditions of service of doctors and specialists within the prisons, as a move to attract and retain such professionals. As a supplement to this, the prisons could also increase the value of scholarships awarded to medical students, preferably with an accompanying bond that recipients upon graduating must serve in the prison medical service for a stipulated number of years.

The discussion on this paper ended with the suggestion by the panel that in the future there should be greater dialogue and cooperation between the Correction Bureau, the Ministry of Justice and the Ministry of Health and Social Welfare, through frequent meetings at both central and local levels, with the view to improving and maintaining medical services for offenders. For a start, this could lead to the establishment of emergency wards in government owned hospitals that are in close proximity to prison institutions, so as to ensure emergency medical care even for offenders.

### Conciliation Tribunals

Mr. Abdul Ahad Mujeeb, President of the Kandahar Commercial Court in Afghanistan, presented an interesting paper on how a developing country has met the problem of backlog of cases.

It was disclosed that much of the Courts' time in Afghanistan was wasted in trying trivial and minor cases, and therefore tended to contribute to a considerable amount of backlog. In an effort to divert such cases out of the judicial system, Conciliation Tribunals have been established since May, 1974. To date, there are about 70 such tribunals.

These tribunals are not judicial in nature, as their decisions have no binding force unless and until they are accepted by the disputants. If decisions are not acceptable, these cases go to the normal courts for trial. These tribunals are comprised of elders of known trustworthiness, chosen by the government, with the assistance of the local people themselves. These elders sit, without remuneration, in local mosques and attempt to solve, inter alia, "minor misdemeanours" (e.g. assaults arising from family quarrels, deviant behaviours in children, etc.).

Cases either go to these tribunals directly (i.e. disputants approach these tribunal themselves) or are referred to them by a primary court judge.

The laws applied by these tribunals in deciding disputes are Islamic in nature.

Despite the apparent success of these tribunals, the consensus of the workshop members was that decisions of such tribunals should be given legal or binding

effect, lest a tendency arises in the future to refer a large number of such decisions to a normal court for trial, and in this way defeat the raison d'etre of these tribunals. It was suggested that all decisions of Conciliation Tribunals be perused by primary court judges, which on approval could be endorsed by such judges and registered in the registry of such courts as Orders of Court.

### Accuracy of the Pre-Sentence Report

Mr. Denis Gunasekera, a probation officer from Sri Lanka, presented a paper entitled, "The Accuracy of the Pre-Sentence Report in the Light of the Problems Encountered in Gathering Information."

The panel was informed that in Sri Lanka when a court convicts a person of an offence, it may, considering the nature of the offence and the offender, call for a probation report before passing sentence. When this happens, the case is postponed for a period not exceeding three weeks to enable the report to be prepared.

The probation officer entrusted with making this report will first get all the material information regarding the offence from the court's records. Then he holds an interview with the offender in an effort to find out all the facts and to establish rapport between himself and the offender. The facts normally obtained from the offender concern his views regarding the offence, his background, family particulars, physical and mental condition, habits and character. From this interview, the probation officer makes a tentative assessment of the offender's personality.

The probation officer then proceeds to contact the offender's family, school or work-place, associates, and others in an attempt to cross-check what has been told by the accused and to secure further information.

With all this in hand, the probation officer prepares his report, which consists of a detailed description of the socio-economic background of the offender, circumstances under which the offence was committed, and finally whether probation supervision would benefit the offender.

Mr. Gunasekera intimated that inaccuracies in such reports have constituted a problem. To start with, the normal reaction in Sri Lanka is to identify an officer attached to the court with the police, with the result that offenders try to hide the truth from probation officers. Admittedly, this has presented more of a problem to younger probation officers who lack the necessary experience. Apart from moving probation offices out of the precincts of the courts, the panel was of the view that perhaps, as an interim measure, preparation of reports by younger and inexperienced probation officers be closely supervised by more senior probation officers.

It was also pointed out that in Sri Lanka information is sometimes sought from a "Grama Sewake" (a government official resident in a village). This occurs when an offender lives in a village or has spent part of his life in a village. In such a case, the probation officer will interview the "Grama Sewake" with the view of obtaining information regarding the offender. Obviously this mode of obtaining information runs the risk of it being biased and inaccurate, particularly if the government official is on bad terms (or, for that matter, on good terms) with the offender or his family. To remedy this, the panel was of the view that such information be supplied in writing and signed by the government officials, thereby rendering him subject to governmental disciplinary proceedings if inaccuracies are deliberately supplied.

### Sentencing Young Adult Offenders

Mr. Roderick Martin, a magistrate from Singapore, presented the final paper entitled, "The Sentencing of Young Adult Offenders in Singapore."

After defining "young adult" as a person between the ages of 16 and 21, the paper dealt with the dimensions of young adult criminality. He observed that though the tendency towards criminal behaviour is almost negligible among juveniles until they reach the age of 13, it tends to attain its climax at three stages, viz. 15–16, 17–19 and 20–21 age groups. It was estimated that the average yearly

incidence rate of such criminality was around 48 offenders per 1,000 population of young adults. On a yearly average, sixty percent of the offences committed have been against property, with violence shown in approximately one out of every three of such offences.

The paper also dealt with the range of sentences available for young adult offenders viz. imprisonment (with or without caning), reformative training (an indeterminate form of sentence between 18 to 36 months), probation, fine, conditional and absolute discharges.

It was established statistically that custodial sentences (i.e. imprisonment and RTC) were imposed in less than 50 percent of the cases, and that they were meted out only in very serious offences (e.g. aggravated assault, violence, extortion, etc.). For one thing, these figures revealed a reluctance on the part of the courts to impose custodial sentences on such offenders in the majority of cases. The courts are aware that such offenders are most susceptible to "contamination" through institutionalization, particularly when this age group (16–21) has been reckoned to be one which places great importance on being identified with a group or sub-culture. In the same breath, these figures showed the courts' reluctance to take chances with or to compromise the elements of public protection and deterrence when dealing with the very serious offences. In such cases, custodial sentences must be the rule, with probation being the exception.

As for the less serious or minor offences, a difference in the types of disposition was also perceivable—that is, between cases which require probationary supervision (e.g. possession of dangerous weapons, theft, dishonestly retaining stolen property, etc.) and those which do not (e.g. gambling offences, reselling of cinema tickets, sometimes consumption of drugs, etc.). Obviously in the latter category, fines and discharges are necessarily the rule, unless of course it happens to be a case of recidivism.

It was further disclosed that research into the success rates of reformative training and probation have shown a 60 and 64 percent rate of success respectively.

The focus of the discussion then moved to existing problems and their possible solutions.

Needless to say, recidivism was disclosed to be the most pressing problem. However, the panel was informed that future legislative trends in Singapore are in the direction of bringing young adult offenders within the range of the sentence of corrective training. Presently, this type of sentence (not less than two years nor more than four years) is only available to a person above 21 years and who, apart from his present conviction of an offence which has to be punishable with imprisonment of two years and upwards, has also been convicted on two previous occasions of offences similarly punishable. In a recent amendment bill, this sentence was sought to be made available to persons 18 and above. Further, the term of imprisonment has been increased to not less than three years nor more than seven years.

The panel was also informed that a special committee in Singapore has suggested to the Minister of Home Affairs that "Detention Centre" treatment be adopted for reformative and corrective trainees, in which a short period of training emphasizing strict discipline would be employed to "break-in" such offenders with a view to making them more receptive to normal penal treatment.

As regards the problem of having to choose an appropriate sentence or penalty, the discussion of the group revealed that many countries have made pre-sentence investigation compulsory in relation to juveniles and young adults—that is, even when the judge is not disposed to place an offender under probation. There are also countries (e.g. Sri Lanka) which allow probation officers to make alternative recommendations to probation. Obviously this gives a judge a greater insight into the commission of the offence, and certainly places him in a better position in deciding an appropriate sentence. Bearing in mind the risk of "contamination" through institutionalization, this paper canvassed the idea of extending pre-sentence investigation in Singapore to cases where the court is not inclined to place a young adult offender on pro-

bation. Such reports could well throw a different complexion on the case.

A final problem discussed was that there is a dearth of research into areas such as the effectiveness of various types of sentence on offenders (i.e. in terms of recidivism), the effect (if any) of corporal punishment, the relationship between recidivism and inmate sub-culture, and others. In terms of sentencing, the value of such feed-back information is obvious. In Singapore, this dearth of research is the result of there being no central agency to compile comprehensive, nation-wide statistical information on crime and delinquency. The panel agreed that the establishment of such an agency would be a step in the right direction.

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# The Sentencing of Young Adult Offenders in Singapore

*by Roderick E. Martin**

## Introduction

Singapore's crime problem is similar to that which prevails in many other countries today. Economic development, urbanization and ever-expanding industrialization have led to extreme changes in social organization, thereby causing changes in the trends and content of criminality. Indeed, such changes have created an ever-increasing dichotomy between crime and existing social and legislative controls, warranting the consensus that the traditional approaches to crime must be re-examined and altered to meet the problems of not only the present, but more important, of the future.

The last two years have seen strenuous efforts in this direction. These efforts have led to two reports being published: "The Report of the Prisons Reorganization Committee" and the "Report of the Committee on Crime and Delinquency." Of the many problems and solutions examined in these reports, one of the most disturbing features disclosed is the increase of young adult criminality in Singapore. It has been observed that though the tendency towards criminal behaviour is negligible amongst juveniles until they reach the age of 13, it tends to attain its climax at three stages viz. 15–16, 17–19 and 20–21 age groups.[1]

Sentencing, no doubt, occupies a central position in any strategy devised to meet the problem of young adult criminality, as indeed decisions made at the sanctioning level have important consequences for offenders. With this as its theme, this paper will attempt first to deal with some basic definitions, followed by a brief outline of the dimensions of young adult criminality in Singapore, and then will proceed to examine the available sentences and the pattern of their imposition for this category of offenders, with particular emphasis on problems faced in their selection and imposition.

## Definitions

In this paper certain words or terms necessarily have to be used, such as: "sentence" or "sanction" and "young adult offender." To avoid any ambiguity arising from the usage of these terms, they therefore will be defined or explained at this stage.

"Sentence" or "sanction" will be used in the broad sense to include any order of a court dealing with a convicted person's post-trial conduct. That is to say, it will include not only sentences like imprisonment, reformative training and fines, but also orders of probation, conditional and absolute discharges, which in the strict legal sense cannot be considered as sentences as such.

As regards the description "young adult offender," there seems to be a tendency to equate an "adult" with a person who has attained the age of majority.[2] This view, however, has been held to be incorrect in a recent decision[3] of the Singapore High Court wherein Mr. Chief Justice Wee Chong Jin ruled:

"... adult is not defined in the Criminal Procedure Code and it must therefore be given its ordinary dictionary meaning of a person who is mature or grown up. 'Adult' cannot be equated with a person who has reached the age of majority unless specifically so defined. Secondly, 'youthful offender' is defined in Section 2 of the Criminal Procedure Code and the definition reads as follows:

> 2. In this Code, unless there is something repugnant in the subject or context—'youthful offender' includes any child convicted of any offence punishable by fine or imprisonment who in the absence of legal proof to the contrary is above the age of seven and under the age of sixteen years in the opinion of the Court be-

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fore which such child is convicted.

"It follows, in my opinion, that a person under the age of sixteen who is convicted at one trial of any two or more distinct offences comes within the meaning of 'youthful offenders' and a person of the age of sixteen and over who is similarly convicted comes within the meaning of 'adults' in Section 220."

The effect of this decision is that a person who is 16 years old but below 21 years of age is, for the purposes of determining criminal liability, an "adult"; hence, the description "young adult offenders" for offenders falling within this category.[4]

### Dimensions

When a young adult offender appears before a court in Singapore, he will be one of an estimated number of 12,000 young adult offenders who constitute the yearly volume of young adult criminality. Taking into consideration the average population of young adults, this gives a yearly incidence rate of 48 young adult offenders per 1,000 population.[5]

He would probably belong to the same poor socio-economic background that is shared by many other young adult offenders. Like the majority of them, he would also have dropped out of the school system.[6] Chances are that he dropped out at the primary level, as it is estimated that annually around 7,000 young boys (small proportion of girls) drop out of the school system at this level. Obviously this results in the young adult offender having a longer period of exposure to unemployment and undesirable influences.

As expected, the young adult offender would probably be a male, for crime and delinquency among young offenders is predominantly committed by males. It has been estimated that the male : female ratio is around 4.5 : 1 in respect of young adult offenders.[7] This is not unique since it is a world-wide phenomenon for men to be more prone to be criminality than women.[8]

Perhaps the most significant feature of young adult criminality is the propensity to commit offences against property. Slightly over 60 percent of offences committed by young adults are in this single category, and violence occurs in approximately one out of every three offences against property as well. Further, there have been an increasing number of offences associated with the use of violence (murder, robbery), the use of weapons (possession of weapons, gang clash/fight) and drug abuse since 1968. (See Table 1.)

Table 1: Types of Offences Committed by Young Adult Offenders Based on Subordinate (Criminal) Courts Statistics

| *Offences* Against* | *1968* *No. (%)* | *1969* *No. (%)* | *1970* *No. (%)* | *1971* *No. (%)* | *1972* *No. (%)* | *Average* *No. (%)* |
|---|---|---|---|---|---|---|
| Person | 26 ( 3.0) | 32 ( 4.2) | 35 ( 3.0) | 39 ( 3.9) | 41 ( 3.4) | 34.6 ( 3.5) |
| Property with Violence | 151 ( 17.4) | 173 ( 22.4) | 308 ( 26.7) | 227 ( 22.4) | 205 ( 17.1) | 212.8 ( 21.3) |
| Property without Violence | 422 ( 48.6) | 307 ( 39.8) | 441 ( 38.2) | 444 ( 43.8) | 484 ( 40.4) | 419.6 ( 41.8) |
| Other | 269 ( 31.0) | 259 ( 33.6) | 370 ( 32.1) | 303 ( 29.9) | 468 ( 39.1) | 333.8 ( 33.4) |
| Total | 868 (100.0) | 771 (100.0) | 1,154 (100.0) | 1,013 (100.0) | 1,198 (100.0) | 1,000.8 (100.0) |

* Only offences whereby the offenders were sent to prison, the Reformative Training Centre or placed on probation are included.

**Range of Sentences**

In Singapore the young adult offender is liable, upon conviction, to have any of the following sentences or penalties imposed on him.[9]

*(1) Imprisonment*

This would mean committing a young adult offender to prison for a prescribed period of time. Normally this type of punishment is prompted by the severity of the offence, previous convictions (if any), circumstances surrounding the accused's apprehension (violence shown), etc.

As regards the term of imprisonment, this depends largely on the range prescribed by the provision dealing with the offence concerned, and within that range on the existence of mitigating factors e.g., first offender, plea of guilty, dependants if the accused is employed, etc.

In addition to a term of imprisonment there is the possibility of caning being imposed. For any single offence, the maximum is twelve strokes,[10] whilst the maximum for two or more distinct offences at one trial is twenty four strokes.[11] Obviously this is resorted to when the offence is of a very serious nature or where the statute makes it mandatory.

*(2) Reformative Training*

This is applicable where a male person not less than 16 years old but below 21 years of age is convicted before the High Court or a District Court of an offence punishable with imprisonment. Such a court may in lieu of any other sentence pass a sentence of reformative training if it is satisfied, having regard to the "accused's character and previous conduct" and to the circumstances of the offence, that it is expedient with a view to his reformation and the prevention of crime. Normally the courts will consider a report by the superintendent of the Reformative Training Centre made on behalf of the director of prisons as to the offender's physical and mental condition and his suitability for reformative training.

Such a sentence would involve being detained in the reformative training centre for a period not less than 18 months nor more than 36 months from the date of such sentence. Within that period, the actual date of release would be determined by the visiting justices.

A trainee, after his release from the Centre and until the expiration of four years from the date of his sentence, would be under the supervision of such person (i.e., parole officer) as may be specified in a notice to be given to him by the visiting justices on his release, and while under such supervision he has to comply with such requirements as may be so specified.

In the event that these requirements are not fulfilled, the person may be returned to the Reformative Training Centre, and may be detained for the remainder of the original sentence or for a maximum of six months whichever is the longer period.

*(3) Fine*

Normally this is imposed where the offence committed is not of a serious nature or is a victimless crime, e.g., gambling, reselling of cinema tickets, sometimes consumption of prohibited drugs, etc. The maximum limit of a fine is usually prescribed by law, but if no sum is expressed, the amount of the fine for which the offender is liable is unlimited but must not in any event be excessive.[12] Within the prescribed range, the actual amount of the fine is usually determined by such factors as previous convictions (if any), the monetary value of the subject-matter of the crime (an offender is not to profit from his own crime), plea of guilty, etc.

Invariably the court orders that in default of payment of a fine the offender shall suffer imprisonment for a certain term.[13]

*(4) Probation*

The Probation of Offenders Act empowers the court to forego sentencing an accused person, in our context a young adult offender, by placing him under probation.[14] But there are two requirements that have to be satisfied: first, the sentence for which such an accused person is convicted "must not be fixed by law";[15] second, the court must consider such an order expedient having regard to the circumstances, including the nature of the

offence, and the character of the offender. The currency of a probation order should not be less than one year nor more than three years.

The court, before placing an accused under probation, can call for a probation report which is to be prepared by a probation officer appointed by the court. Obviously this report is of invaluable assistance to the court as it involves a detailed description of the general social and economic background of the offender, together with recommendations of the probation officer. In general practice, such a report is called for when a young adult offender has had not previous convictions since attaining the age of 16 years, no secret society affiliations and the offence committed is not of a serious or violent nature.

It should be emphasized that contrary to public belief, probation is not regarded by the courts as a "let-off." It is imposed when the court feels that a young adult offender's reform is better achieved through the disciplinary aspects of probationary supervision, permitting a more normal social experience than institutionalization.[16] Its merits are that young adult offenders, whose minds are apt to be impressionable, do not run the risk of "contamination" through institutionalization.

However, the basis for success through probation is the probationer's determination to refrain from all forms of criminality and to cooperate with the probation officer charged with his supervision. For this reason, the Act has provided that the court will not place an offender under probation unless he expresses his willingness to comply with the conditions that go with a probation order.

These conditions include reporting to the probation officer at least once a week to discuss any problem or merely to report his progress, not to commit any further offence during the period of probation, etc. Any breach of the terms or conditions of the probation order during the period of probation renders the young adult, like any other accused, liable to punishment by the same court either for such breach, without affecting the continuance of the probation order, or for the original offence for which he was placed on probation.

Furthermore, the Probation of Offenders Act empowers the court to discharge, amend and review probation orders on the application of either the probation officer or the probationer himself.

*(5) Absolute or Conditional Discharge*

Apart from probation, the Probation of Offenders Act also provides the court with the discretion to discharge the offender either absolutely or on the condition that he does not commit any other offence for a period not exceeding 12 months. In the event of failure to observe this condition, the offender would be liable to be dealt with for the original offence. Like probation, this can only be resorted to where the offence committed does not carry a sentence which is "fixed by law."

In young adult offender cases, this is resorted to quite frequently, particularly when the offence itself is very minor or, for that matter, technical nature, and of course when the character of the offender does not require probationary supervision.

**Sentencing Pattern**

Having examined the types of sentences available, the next question to be dealt with is how often, in practice, is each of these sentences imposed on young adult offenders? Can a balance be seen between the deterrent, retributive and correctional elements in the selection of sentences?

In terms of the individual rate of imposition of these sentences, the response of the courts in Singapore to young adult criminality has generally been one of balance between public protection and deterrence on one hand and the offender's correction on the other, with slight and justifiable tilting of the balance when circumstances deem retribution necessary.[17]

However, this balance can be statistically shown only if one accepts the hypothesis that if there was an over-reaction to pressures for public protection and deterrence, as opposed to correction, it would invariably result in a disproportionate use of imprisonment and other forms of custodial sentences compared to other available penalties.

No doubt it could be asserted that

Table 2: Volume of Young Adult Offenders Dealt With by the Subordinate (Criminal) Courts (1968–1972)

| Year | *Imprisonment* No. (%) | *Reformative Training* No. (%) | *Probation* No. (%) | *Sub-Total* No. (%) | *Other Dispositions* No. | *Total* |
|---|---|---|---|---|---|---|
| 1968 | 374 (49.2) | 119 (15.6) | 226 (35.2) | 759 (100.0) | 648 | 1,407 |
| 1969 | 322 (48.4) | 122 (18.3) | 221 (33.3) | 655 (100.0) | 567 | 1,232 |
| 1970 | 425 (45.4) | 153 (16.3) | 357 (38.3) | 935 (100.0) | 798 | 1,733 |
| 1971 | 324 (37.5) | 129 (14.9) | 411 (47.6) | 864 (100.0) | 738 | 1,602 |
| 1972 | 501 (47.9) | 127 (12.1) | 417 (40.0) | 1,045 (100.0) | 892 | 1,937 |
| Total | 1,946 | 650 | 1,672 | — | — | — |
| Average | 389 (45.5) | 130 (15.2) | 335 (39.3) | — | — | — |

prisons too are concerned with the offender's correction. But then this truism does involve correction within an institution, and, though the emphasis on public protection and deterrence, with correction, has immense long-term value, it is really an incidental or secondary role. Indeed, it has to assume a secondary role; otherwise, why send a convicted young adult to prison at all when correction can be effected outside?

On this basis, an examination of Table 2 would be somewhat informative.

This table shows that as regards imprisonment, reformative training and probation, custodial sentences (i.e., the first two) are imposed only in 60 percent of such cases, with probation constituting the remaining 40 percent. It should be emphasized that the total percentage (100%) of this sub-total does not take into account other dispositions such as fines, conditional or absolute discharges. This is deliberate as the total number of "other dispositions" includes a small number of acquittals.[18] If these other dispositions, (other than acquittals) were included, custodial sentences would account for less than 50 percent of the total dispositions.

These figures, no doubt, reflect an awareness on the part of the courts that young adult criminality is essentially a "youth problem," arising from numerous factors which can hardly be described as criminal in nature e.g., inadequate parental support and guidance, lack of recreational and other outlets, inability to cope with the pressures of a demanding educational system and of society in general, existence of peer group pressures, etc.[19] Further, being a "youth problem," when minds are apt to be malleable and impressionable, custodial sentences do run the risk of subjecting the youth to negative influences of prison inmate sub-culture and other sorts of contamination. Obviously when this occurs, custodial sentences are contrary to long-term public well-being and protection. Therefore, in the majority of cases, as evinced by Table 2, courts in Singapore have a tendency, where circumstances permit, to impose non-custodial sentences, for in this way both the needs of the young adult offender (i.e., correction) and of society are met.

There are, however, exceptions to this pattern, as there must always be. The fact that such offenders are young, or for that matter come from families of poor socio-economic background which indeed affords some plausible reason for their criminality, is not per se sufficiently persuasive when the court feels that the severe nature of the offence demands a sufficient deterrent. In such cases, custodial sentences (with or without caning) must necessarily be the rule, with probation the exception. This was why in 1972, for instance, in only 1.1 percent of offences affecting the body were probation reports requested.

Table 3: Types of Offences Committed by Young Adult Offenders Dealt With by the Subordinate (Criminal) Courts (1972)

| *Offence* | *Sentence Imposed by the Court* | | *Total* |
|---|---|---|---|
| | *Imprisonment, Reformative Training or Probation* | *Other Dispositions (Including Acquittals)* | |
| Offences Against Person | | | |
| Hurts of All Kinds | 36 | 25 | 61 |
| Outraging Modesty | 4 | 6 | 10 |
| Others | — | — | — |
| Sub-Total | 40 | 31 | 71 |
| Offences Against Property Without Violence | | | |
| Housebreaking | 92 | — | 92 |
| Theft | 223 | 76 | 299 |
| Dishonestly Retaining Stolen Property | 16 | — | 16 |
| Fraudulent Possession of Property | 28 | 16 | 44 |
| House-trespass | 2 | 37 | 39 |
| Others | 54 | 102 | 156 |
| Sub-Total | 415 | 231 | 646 |
| Offences Against Property With Violence | | | |
| Robbery | 168 | 65 | 233 |
| Extortion | 28 | 6 | 34 |
| Others | — | — | — |
| Sub-Total | 196 | 71 | 267 |
| Other Offences | | | |
| Gambling Offence | 11 | 477 | 488 |
| Reselling Tickets | 6 | 12 | 18 |
| Violation of Dangerous Drugs Act | 139 | 91 | 230 |
| Possession of Offensive Weapons | 56 | 38 | 94 |
| Breach of Police Supervision Order | 20 | — | 20 |
| Other | 177 | 30 | 207 |
| Sub-Total | 409 | 648 | 1,057 |
| Grand Total | 1,060 | 981 | 2,041 |

Table 3 relates the offences committed and the types of punishment imposed.

This table shows that there were 2,041 offences dealt with by the Subordinate (Criminal) Courts in 1972.[20] Of these, 1,060 offenders were either sent to prison, or to the reformative training centre, or were placed on probation. Offenders in the remaining 981 cases, apart from those who were acquitted, were disposed of either by fines and conditional or absolute discharges.

It is pertinent to observe that, out of the 981 offences in the "other dispositions" category, 477 (or 48.6%) were gambling offences. The next major offence under this category are "offences relating to dangerous drugs" which alone account for 9.3 percent of the total cases.

Since approximately 60 percent of the offenders receiving "other dispositions" had been convicted of "other offences," and that only about 10 percent of those receiving this disposition committed

offences either "against person" or "against property with violence," it can be fairly said that courts in Singapore exhibit some degree of leniency when dealing with young adult offenders who have committed "other offences." This difference is justifiable because such cases (e.g., gambling offences, reselling of cinema tickets, etc.) do not really reflect basic defects in character and personality and therefore do not warrant incarceration or probationary supervision. Further, it would be a waste of public funds and time to place on probation a young adult offender convicted of gambling unless it was a case of recidivism. Normally a fine would be the best sort of deterrent; in other cases, a strong admonition followed by a conditional discharge might be appropriate.

### Success Rate

Statistically it has been shown that the courts have been rather careful in selecting the proper sentence for young adult offenders, mindful always of the character of the offender concerned, his offence and his needs (e.g., correction within or without an institution). In this way, a balanced pattern has emerged.

Indeed, the sentences selected seem most appropriate "at the sentencing stage," but then are we in any position to say, with some degree of certainty, that the sentence chosen would fulfill in time what was intended in its imposition? It would not really be correct to say "no one can tell," since through diligent research of persons sentenced by the courts, it is possible to determine empirically the probable rate of success for each type of sentence. Such "feedback" is most important when dealing with young adult criminality since it is in youth that criminal or deviant behaviour is more easily corrected. The right penalty is, therefore, of paramount importance because it can potentially bring about the desired response and minimize chances of recidivism.

There have been commendable endeavours to ascertain the success rates of reformative training and probation. As regards released reformative trainees, the Probation and Aftercare Department has ascertained that on an average 60 percent of such cases have proven satisfactory at the end of the parole or aftercare period (i.e., between the date of release and the end of four years from the date of such sentence).[21] An after-conduct study has also been made of those who have satisfactorily concluded their after-care period. This study showed that out of 234 cases that were satisfactorily concluded in the period 1962–1964, 176 cases or 75% were found to have a satisfactory after-conduct during the follow-up period: 50 cases had kept away from further trouble over a period of five years, 62 cases over a period of four years and 64 cases over a period of three years upon completion of their period of aftercare.[22]

As regards probation, follow-up research was carried out by the same department in 1972, based on adult offenders placed on probation between 1964–65. These persons' records were checked at the Criminal Records Office, Criminal Investigation Department, in March 1972 which provided a follow-up period of six to seven years from the time they were placed on probation. This resulted in two findings: first, it showed that the success rate of probation in respect of young adult offenders was around 64 percent;[23] second, it revealed that generally the higher success rate for such offenders was in the 19 to 21 age group.

Unfortunately, there has been no corresponding research into the success rates of imprisonment, corporal punishment, fines, and conditional or absolute discharges, depriving in a large way the presentation of a complete comparative analysis of the effectiveness of sentences meted out by the courts in Singapore. But insofar as probation and reformative training are concerned, the figures are fairly good, although admittedly they bring to the forefront the problem of recidivism.

### Problems/Solutions

Obviously the problem of recidivism among young adult offenders ranks most important. It has been asserted that sentences of corrective training should be imposed on young offenders who show clear signs of embarking on a life-time of crime, so that not only will the prison

authorities be able to devise special treatment programmes to provide for statutory supervision and, hence, control of the offender on his release.[24]

Hitherto corrective training has not been mentioned as it is available only where a person who is "not less than 21 years of age" is convicted before the High Court or a District Court of an offence punishable with imprisonment for a term of two years or upwards and has been convicted on at least two previous occasions "since he attained the age of seventeen" of offences punishable with such a sentence.

However, future legislative trends are in the direction of lowering the 21 year age requirement, thereby bringing the young adult offender within the range of this sentence. The Criminal Procedure Code (Amendment) Bill, not in operation yet, therefore seeks to make this sentence available to a person "not less than eighteen years of age" who has been convicted before the High Court or a District Court of an offence punishable with imprisonment for a term of two years or upwards and has been convicted on at least two previous occasions "since he attained the age of sixteen years" of offences punishable with such a sentence. In such a case, if the court is satisfied that it is expedient for the offender's reformation and the prevention of crime that he receive training of a corrective character for a substantial period of time, followed by a period of supervision if released before the expiration of his sentence, it can pass a sentence of corrective training for a term of not less than three nor more than seven years as the court may determine.

In my opinion, this proposed amendment to corrective training could prove effective in dealing with the problem of recidivism among young adult offenders. To start with, its requirements make it certain that only the recidivists are dealt with under its provisions. Further, it is really in relation to the recidivist that public protection should take priority. The long custodial sentence (not less than three years) serves as an excellent immediate preventive measure against further crimes being committed against society. At the same time this reasonably long period of incarceration could subject the recidivist to institutionalized training specially devised for his correction.

In this connection, the Prison's Reorganization Committee, 1974, has suggested[25] that "Detention Centre" treatment be adopted for three categories of young adult offenders viz: reformative trainees, corrective trainees and young Criminal Law detainees. This committee is of the view that many young offenders have no sense of discipline and lack basic social values. As such, a short period of training emphasizing strict discipline is needed to "break-in" these offenders. Only then would they be receptive to normal penal treatment and benefit from the industrial training provided. This kind of treatment will involve only the first four to six months of their detention, during which the young adult offender would be subjected to a regime emphasizing strict discipline and drill. This new regime would be akin to that of the detention centres in Britain. The proposed regime, it is emphasized, should be firm but not repressive, and the standards should not be tougher than that endured by those in the Armed Forces. It is firmly believed that the amendment to the provisions governing corrective training and measures taken at the penal level would help in minimizing or curbing young adult recidivism.

On the subject of widening the range of penalties available, there is the recurring problem of young adult offenders having difficulty in paying fines and therefore end up serving default sentences. If the fine is met, the money would normally come from parents many of whom can ill afford to spare the cash. This same Prisons Reorganization Committee, 1974, has mooted the idea that "attendance centres," like those in England, be adopted. It has suggested that community centres or police stations be used in this connection. Such offenders could be asked to do chores like whitewashing, watering of plants, cleaning of beaches, etc. and, in this way, be able to extinguish their default sentences through a stipulated period of time.

As regards the perennial problem or task of ascertaining an appropriate sentence for an offender, comparative studies at UNAFEI during this training course

have shown that many countries have made pre-sentence investigation compulsory in relation to juveniles and young adults—that is, even when a judge is not disposed to place an offender under probation. There are also countries (e.g., Sri Lanka) which allow probation officers to make alternative recommendations to probation. In Singapore, a judge or magistrate is not duly bound to call for a probation or reformative training report if he is not inclined to pass such a sentence. In my opinion, this may not necessarily be ideal, as most of the time not all the facts concerning the young adult offender are before the court, because the prosecutor, on the one hand, is only concerned with informing the court as to whether the accused has had previous convictions, and the defence counsel, on the other hand, usually makes a mitigation plea geared to invoking merely the sympathy and leniency of the court rather than assisting the court in its selection of an appropriate sentence. In this respect, compulsory pre-sentence investigation of juveniles and young adult offenders is a feature worth considering for use in Singapore.

A final problem in Singapore is that there is a dearth of research being undertaken in areas like: the effectiveness (i.e., in terms of recidivism) of sentences passed by the courts other than probation and reformative training, the effect (if any) of corporal punishment, the relationship between recidivism and inmate sub-culture, etc. This has been the result of there being no central agency to compile comprehensive, nation-wide statistical information on crime and delinquency. Since feedback derived from such proposed researches would greatly assist in plotting an effective strategy, both at the sentencing and penal levels, to tackle young adult criminality, it is suggested that such an agency be established. It would indeed be a step in the right direction.

## Conclusion

No doubt solutions to the problems raised would further assist the courts in the selection of proper penalties for young adult offenders. But then it is strongly felt that although the courts and the sentences they pass play an important part in correcting young adult offenders, the main responsibility for curbing this problem lies in society itself.

This is not to denigrate the utility of formal or legislative controls (e.g., laws, sentences, penalties), nor is it an attempt to canvass the idea of decriminalization, which seems to have attracted much attention in certain developed countries. The point is that although such laws provide excellent means in controlling human behaviour, they do not afford much scope for rationalization. Any society which ignores imbuing its youth with some degree of "social reasoning" for labelling certain human behaviours (e.g., drug abuse) as offences will find itself developing a society with little or no understanding of, or, respect for the criminal administration apparatus (e.g., laws, police, courts). This is no doubt the most serious obstacle to crime prevention and control.

In this direction, the answer to young adult criminality lies in not only having proper and better laws but also in the inculcation of "social reasoning" and responsibility in our youths through the medium of our schools, coupled with the establishment of Youth Guidance and Employment Boards, Youth Advisory Bureaus, and perhaps an examination of our society itself—its demands on both parents and on our children. After all, are we not more concerned with preventing rather than correcting young adult criminality?

## REFERENCES


1. Report of the Committee on Crime and Delinquency, 1974, on page 4.
2. In Singapore the age of majority is 21.
3. Chai Ah Kau v. Public Prosecutor, Magistrates' Appeal No. 104 of 1974.
4. cf. Article 2 of the Juvenile Law in Japan.
5. Report of the Committee on Criminal Delinquency, 1974, *op. cit.*, pages 9 and 10.
6. *ibid.*, page 16.
7. *ibid.*, page 13.
8. Result of different "social positions" held by the sexes. See, *Crime and Society* (2nd edition) by Gresham M. Sykes on page

87; also, *Delinquency and Crime: Cross-Cultural Perspectives* by Cavan and Cavan on page 222.

9. Section 11(1) of the Criminal Procedure Code provides an exception in that the High Court shall in no case inflict the three punishments of imprisonment, fine and caning on any person for the same offence.
10. Section 11(3) (c) of the CPC.
11. Section 220 of the CPC; see also supra foot-note (3).
12. Section 214 of the CPC.
13. cf. Article 54 of the Juvenile Law in Japan.
14. Section 5 of the Probation of Offenders Act (Cap. 117).
15. "not fixed by law" means not fixed in nature or quantum.
16. See, *Probation & Related Measures,* U.N. Publication, page 6.
17. e.g. caning.
18. For all adult cases, acquittal rates in respect of seizable offences are around 20 to 25 percent. See, Statistical Report on Crime in Singapore, 1974, in particular Tables 8 and 9. In the 1973 edition, see Chart No. 1.
19. Report of the Committee on Crime and Delinquency, 1974, *op. cit.,* pages 16 to 22.
20. *ibid.,* page 91.
21. Annual Report of the Probation and Aftercare Service (1974), page 30.
22. *Non-Institutional Methods — Probation, Parole and Aftercare* by K. V. Vello.
23. It has been observed that a success rate of 60% and upwards compares favourably with the success rates of other countries. *ibid.*
24. Excepts of the Report of the Prisons Reorganization Committee, 1974, on page 2.
25. *ibid.,* page 8.

# Workshop IV: Problems of Judicial Procedures and Organization

## Summary Report of the Rapporteur

*Chairman:* *Mr. Jagdish Chandra*
*Advisers:* *Mr. I. J. "Cy" Shain and Mr. Tomiyoshi Kawahara*
*Rapporteur:* *Mr. Ranjit Abeysuriya*

### Titles of the Papers Presented

1. The Bail in India
   *by Mr. Jagdish Chandra (India)*
2. The Role of Houses of Equity in Prevention of Crime in Iran
   *by Mr. Gholam Reza Shahri (Iran)*
3. The Rigidity of the Judicial Service Act
   *by Mr. Pramarn Chansue (Thailand)*
4. Criminal Justice Commission—A Trial Procedure for Extraordinary Conditions
   *by Mr. Ranjit Abeysuriya (Sri Lanka)*
5. Pre-Sentence Investigation
   *by Mr. Hiroaki Ohashi (Japan)*
6. The Diversification of Protective Measures for Juvenile Delinquents
   *by Mr. Yasuo Shiraishi (Japan)*

### Introduction

The participants in this workshop were four judges, an additional Director of Public Prosecutions and a Probation Officer from five different countries. Having regard to the composition of our group, it was no surprise to find that in its deliberations the accent was placed on the actual functioning of the judicial process and an examination of certain problems arising therein. Among the wide sweep of subjects which came in for examination were the composition and structure of the judicial body, certain specific institutions for administering criminal justice in extreme or peculiar situations, judicial measures for ensuring attendance in court of an accused person pending the adjudication of his case, the availability of adequate data to the judge for determining appropriate sentences and the determination of specialized measures for juvenile delinquents who are brought to court. Accordingly, a broad spectrum of selected features of the judicial process came in for close analysis in our discussions. All the presentations were extremely informative and were followed by lively discussions. This group considers itself extremely fortunate in having had Mr. Shain, the Visiting Expert, also actually participating to enrich the discussions.

### The Bail in India

The first presentation was made by Mr. Chandra whose paper was entitled "The Bail in India." It opened with a reference to the cross currents, consisting of the claim of society, on the hand, to be protected from the hazard of being exposed to the misadventures of one who is alleged to have committed a crime, and the dictates of criminal jurisprudence, on the other, that every accused person is presumed to be innocent until his guilt is proved. Accordingly, the grant of bail to a person pending his trial is not to be determined by any rigid considerations but is governed by varying circumstances. A relevant classification of offenses determines whether they are "bailable" or "non-bailable." Mr. Chandra pointed out that in India a court is bound to release on bail a person arrested or detained for a bailable offense. No discretion is granted to the court of first instance to refuse bail to such a person if he is prepared to furnish it. However, a High Court or a Court of Session is empowered to cancel bail and direct the arrest of such a person if subsequent to the grant of bail, it is found that his conduct makes his detention

necessary to ensure a fair trial. The grant of bail to persons accused of non-bailable offenses is in the discretion of a magistrate except in the case of offenses punishable with death or with imprisonment for life, unless that person is a woman, a youth under 16 years of age or a sick or an infirm person. Even a person accused of an offense punishable with death or life imprisonment, could be released on bail by the High Court or Court of Session, if it thinks fit. Subject to these limitations, the guiding principle is that the grant of bail is the rule and the refusal, the exception. Mr. Chandra enumerated a number of considerations which are ordinarily taken into account by the courts in India when dealing with an application for bail. Where bail is granted in non-bailable offenses the underlying assumption is that the accused should not, by his conduct, jeopardize the holding of a fair trial and if such an eventuality ensues, the courts in India have in many situations canceled the bail previously granted.

One of the significant innovations introduced by the Indian Code of Criminal Procedure of 1973 is the obtaining of anticipatory bail. A person who has reason to believe that he may be arrested for a non-bailable offense can apply to the High Court or the Court of Session seeking an order that in the event of his being arrested he should be released on bail by the police. In making such an anticipatory order of bail the court can impose conditions such as requiring the grantee to subject himself to interrogation by the police, not to interfere with witnesses or desist from leaving India, without reference to the court.

Much interest was evinced by the novel recourse to anticipatory bail whereby a person could avoid being detained in custody by the investigators. It was pointed out that, in effect, an opportunity is afforded to the prosecutor to show cause why such an application should not be allowed.

Another feature about which a question was raised was the incapacity of a Magistrate's Court to refuse bail to a person accused of a bailable offense even where it is possible to show valid reasons why the arrestee should not be released. Mr. Chandra explained that bailable offenses are relatively minor crimes and accordingly when it comes to evaluating the liberty of the subject on the one hand, and the desire of the State to have him detained pending trial, on the other, the liberty of the subject is considered paramount. In this situation the court of first instance is given no discretion to withhold the grant of bail. Accordingly, it was pointed out that courts in India would ensure that unless it is considered really necessary, a person accused of an offense would, ordinarily, be standing out on bail pending the trial of his case and furthermore the statute requires that the amount of bail is not to be excessive.

### The Role of Houses of Equity in Prevention of Crime in Iran

Mr. Shahri's paper on "The Role of Houses of Equity in Prevention of Crime in Iran" was the next taken up for discussion. He explained that geographical considerations and historical reasons necessitated the setting up of local courts which could administer criminal justice at the village level in the case of criminal offenses of a relatively minor character and also resolve petty civil disputes. Mr. Shahri pointed out that in Iran there are more than 50,000 villages, some of which are located at considerable distances from their neighboring counterpart villages and their inhabitants are, by and large, leading a simple village life wherein the sophistication of a modern society and its concomitants have not made their impact. Such persons lacked the capacity or financial means to engage in formalized litigation in regular courts of law. In order to effectively administer justice in this situation in regular courts of law. In order to the revolution of the Shah and the people of Iran, a type of village court called House of Equity, based on the Islamic tradition of Iran, was set up. These courts have functioned with such amazing acceptance that in each successive year, large numbers of additional courts have been set up. As at 1974 there were no less than 8,784 such courts as compared to 284 in 1963, the initial year of inauguration. Furthermore, over half a million cases have been disposed of by these

Houses of Equity in the last year. Arbitration and conciliation appear to be the keynote in the working of these courts which are presided over by, virtually, the village elders. Each House of Equity consists of five persons elected by the villagers from among themselves. Once elected, they discharge their functions for a period of three years without any renumeration. The responsibilities of House of Equity in criminal matters comprise trying minor offenses punishable with a fine of 200 Rials (86 yen), taking care in preserving evidence of a crime and endeavoring to prevent the escape of an accused person and to turn such a person over to a public official.

Mr. Shahri explained that the procedure for adjudicating a criminal case is quite informal and inexpensive and that no lawyers are permitted to appear in this court. He asserted that legal experts have found that despite the informality of its procedures, the decisions of these courts were in accordance with judicial principles.

A question was whether there was incompatibility with the essentials of administering criminal justice when those entrusted with that task, were placed in the position of judges by the decision of a popular vote. The point was made whether, particularly in a small village community, personal considerations might be brought to bear on the adjudication of cases by such elected judges. Mr. Shahri pointed out that in a case where there would be a conflict of interest, a member of the House of Equity would not sit in judgement in that particular case. In Iran, the recently set up Houses of Equity have fulfilled their purpose in such an exemplary manner that counterparts of such courts named Arbitration Councils have recently been established in the cities to function in a similar fashion for administering justice.

### The Rigidity of the Judicial Service Act

Mr. Chansue presented his paper on "The Rigidity of the Judicial Service Act" setting out the composition of the judicial structure of Thailand. As envisaged in the Judicial Service Act of 1954, all judges are fitted into a nine grade structure beginning with Grade 1 for the trainee judge, and reaching up to Grade 9 which is the post of the President of the Supreme Court. Mr. Chansue stressed that all judges are career professionals who are selected as judge trainees initially on the basis of a competitive examination. Movement up the hierarchy proceeds on the basis of seniority in the service and appointment to the higher grades of the judiciary, including the Supreme Court, is always from within the service itself. In his paper he pinpointed certain seemingly anomalous situations arising as a result of the rigidity of the structure, particularly at the intermediate level — Grades 3 to 6, and made out a case for the amalgamation of three or four of these grades into a single one. For example, the post of Chief Judge of the Provincial Court is ranked in Grade 3. In that capacity he carries a heavy share of responsibility in having to arrange the work of many judges of that court. Despite this important work, he would rank junior to a Judge of the Court of Appeal, Grade 4, who would have no supervisory duties and would merely work under a Chief Judge of the Court of Appeal. The reason for this situation is purely because a judge of the Court of Appeal is placed in a grade higher than the Chief Judge of a Provincial Court. Thus, if a vacancy occurs in Grade 4, the Chief Judge of the Provincial Court would have to give up his post and move into that higher grade. Vice versa, even if it was found that a judge of the Court of Appeal is well suited to function as a Chief Judge of a Provincial Court, such an appointment cannot be effected because it would be a down grading, in the structure. Mr. Chansue argued that merging of Grades 3 to 5 or 6 would give flexibility to the scheme of appointment at that intermediate level and ensure that a judge could be better fitted into a position which suits him.

He emphasised that in Thailand the complete independence of the Judiciary is ensured. All matters concerning judges' promotions and transfer come within the purview of the Judicial Service Commission comprising 12 members of whom seven are active judges, including the

President and the 1st Vice President of the Supreme Court, four are retired judges elected by the functioning judges and the remaining member is the Under-Secretary of State for Justice, who also would have been a Grade 6 judge. The composition of the Commission in this fashion has made for its complete insulation from external influences and separation from other branches of the administration.

It was pointed out that in many other countries, appointments to the Supreme Court are often made from outside the judicial service, so that the Supreme Court could reflect the preeminent legal intellects of the entire country. Mr. Chansue explained that this was not possible in Thailand which insists on its present scheme to ensure professionalism among its judges which attribute would guarantee a well insulated and integrated judiciary.

### Criminal Justice Commission—A Trial Procedure for Extraordinary Conditions

The paper presented by Mr. Abeysuriya was entitled "Criminal Justice Commission—A Trial Procedure for Extraordinary Conditions." Each country in setting up the structure of its own hierarchy of courts was providing the machinery for the administration of criminal justice in normal times. However, a situation may arise when the practice and procedure of the ordinary courts may be inadequate to administer criminal justice for the purpose of securing the trial and punishment of offenders.

Mr. Abeysuriya pointed out that Sri Lanka faced this situation when following the abortive insurrection of April 1971 many thousands of suspects had to be brought to trial. The position was further aggravated by the uncovering of widespread offenses in relation to currency and foreign exchange of such a character as to be subversive of the national interest and economy. To cope with this situation, there was enacted the Criminal Justice Commissions Act No. 14 of 1972 to establish, for the first time, a commission invested with punitive powers. He laid emphasis on the fact that the judges designated to sit on this commission were not ad hoc appointees but were to be judges of the highest judiciary, the Supreme Court. Further, the choice of the particular judges to sit on the respective commissions was a matter exclusively in the hands of the Chief Justice of the Supreme Court. It was pointed out that the Criminal Justice Commission which was set up to try the insurgent offenders comprised five Supreme Court judges and having as its chairman, the Chief Justice himself. Another commission, comprising three judges of the Supreme Court, was constituted to try the foreign exchange and currency offenders. The commission was freed from the necessity of observing the formalities and technicalities of the rules of procedure and evidence ordinarily applicable in a court of law and it was enjoined to conduct the proceedings "in any manner not inconsistent with the principles of natural justice, which to the commission may seem best adopted to elicit proof concerning the matters that are being investigated."

To ensure that the commission could function effectively, it was vested with power to receive a wide sweep of evidence. Provision was made, inter alia, permitting the admission in evidence of a confession of an accused person to whomsoever and in whatsoever circumstances made, and also gave the right to call upon a suspect to give evidence and answer any questions by the commission if it thought that there were matters in his conduct which called for an explanation. It could also admit any evidence which might be inadmissible in civil or criminal proceedings in the courts. Mr. Abeysuriya pointed out that it must be borne in mind that it was a tribunal consisting solely of judges of the Supreme Court who were given this highly responsible task of exercising these powers. It was stressed that no relaxation was made in the ultimate standard of proof for the law expressly required the commission to be satisfied beyond reasonable doubt of the guilt of an accused before convicting him. Upon a finding of guilt, the commission was empowered to impose on such offender the punishment already prescribed by law, subject to the limitation that it was expressly disentitled from imposing the death penalty. In view of the fact that this commission was

formed by five or three judges of the Supreme Court, who ordinarily composed the Court of Appeal, it was not regarded as necessary to provide for a right of appeal against any ruling, finding, order or sentence of a commission. Accordingly, a finding made or sentence imposed or order, determination or ruling made by a commission was declared to be final and conclusive and not questionable in any court or tribunal.

Mr. Abeysuriya indicated that every suspect charged before the commission was guaranteed the right to be defended by counsel and that every sitting of the commission was held in public. He explained the extent of the facilities which had been afforded to the suspects to enable them to defend themselves effectively. The trial of the leaders of the insurrection which formed the focus of attention of the Criminal Justice Commission commenced in April 1972. It had over 300 sittings and was concluded more than two years later, in December 1974 when it convicted 32 of the 36 leaders. He noted that this was the longest criminal trial of the country and wondered whether any treason trial elsewhere had so much time devoted to it, by the state.

Among the features which evoked considerable attention and concern in the group was the wide power to receive confessional statements, most of which were made to police officers, as proof of the guilt of the suspects. Mr. Abeysuriya explained that though such statements were adducible in evidence, an opportunity was expressly given by law to the suspects to adduce evidence of circumstances affecting the weight to be attached to them. A further safeguard was that it was to five judges of the Supreme Court that the delicate task of evaluating the truth and reliability of such statements was entrusted.

### Pre-Sentence Investigation

Next, the group received the presentation of Mr. Ohashi on the subject of "Pre-Sentence Investigation." At present, in Japan there is no clear-cut separation of the judicial process in a court hearing, into the fact evaluation stage and the post conviction stage during which matters affecting the appropriate sentence for the proven offender are considered. Mr. Ohashi pointed out that the sentence in many cases is determined on fragmentary materials which are submitted to the judge during the fact finding process and often these provide only a partial insight into the true character of the offender, his psychological make-up, and his emotional and environmental conditions. He stated that the family court, through the medium of the report of its social investigator has available all the necessary background materials which are so desirable to make a proper and appropriate sentence. He said that it was very desirable to separate the two stages and introduce a scheme of pre-sentence investigation in the criminal court as well. He revealed that from as far back as 1950 there have been moves to bring into operation such a scheme but no concrete measures have, however, been implemented. In that year, the Adult Probation System Researching Committee of the Supreme Court had resolved that such a system facilitated appropriate sentencing. Then in 1959 the System of Pre-Sentence Investigation Conference of the Supreme Court adopted a resolution setting out the frame work of this proposed scheme. Despite these clear-cut enunciations of the need to have such a system, its adoption has not been pushed with enthusiasm in other quarters.

Mr. Ohashi explained that the pre-sentence investigation, as found in many jurisdictions, is either under the public prosecutors' office, the court, a correction institution or an independent agency. He advocated, as suitable for Japan, the placing of such an investigator under the supervision of the court itself. This pre-sentence investigator could, according to him, commence immediately upon the conviction of the accused or even earlier if the accused agreed to such prior commencement. The pre-sentence investigation report presented to the court would be made available to the accused who could adduce material in rebuttal or clarification. Whilst wholly recommending the implementation of a scheme of pre-sentence investigation, he had reservations about whether one could unfailingly determine the ideally balanced measures for

an accused having regard to the limitations of data procurable by the related sciences. Accordingly, Mr. Ohashi favored making the pre-sentence investigation primarily in those cases in which the court is faced with the live issue as to whether the execution of the proposed sentence ought to be suspended.

It was urged during the discussion that the separation of the judicial process into fact evaluation and pre-sentence investigation has the valuable virtue of minimizing the fear of the possible contamination of the judicial mind by knowledge of the criminal record of the accused. Further, it was pointed out, that if the two steps are kept distinct, then the utilization of the necessary know-how and personnel for collection of the background material could be more economically arranged.

### The Diversification of Protective Measures for Juvenile Delinquents

The final presentation was made by Mr. Shiraishi on the subject of "The Diversification of Protective Measures for Juvenile Delinquents." He explained the application of the Juvenile Law of 1948 and the protective measures which have been made available for dealing with juvenile delinquents in Japan. A juvenile (a person under 20 years of age) would come up for consideration in this regard in one of three situations—a "juvenile offender," an offender who has reached the age of 14 but not yet 20 years; "law breaking child," a juvenile under 14 years of age who has contravened the criminal law; or a "pre-offense juvenile," a juvenile who is regarded as likely to commit an offense, having regard to his character or environment.

A "juvenile offender" would generally be subjected to protective measures by the Family Court and it would be only in exceptional cases that punitive steps are taken. For the latter purpose his case would be transmitted to the public prosecutor for institution of proceedings in the Criminal Court, but this step cannot be taken if the "juvenile offender" is still under 16 years of age. Mr. Shiraishi pointed out that the rate of submission of such cases to the public prosecutor was only about 8% in 1973.

In the case of the "law breaking child," the principal treatment consists of measures prescribed by the Child Welfare Law and administered by a Child Welfare Agency. A Family Court may interpose its authority and stipulate protective measures only where a case is forwarded to it from a Child Welfare Agency. Protective measures can be imposed on a "pre-offense juvenile" if he has not yet attained 20 years of age. Measures under the Child Welfare Law too can be taken in respect of a "pre-offense juvenile under 18 years of age." It has to be borne in mind that all cases relating to juvenile offenders are to be referred to the Family Court which would order an investigation to be made by the pre-sentence investigator of the Court or a classification expert of a Juvenile Detention and Classification Home. In 1973 a total of 455,376 juveniles were referred to the Family Court and of that number about 57% were road traffic violators. When the Court holds a hearing, it is conducted in an informal, non-adversary manner and no public prosecutor is allowed to be present. However, the offending juvenile can have a lawyer present to advise him.

Mr. Shiraishi stressed that judges of the Family Court have pointed out the lack of adequate choices in the nomination of protective measures which it could order for a juvenile offender. At present there exists only a limited choice of three protective measures which a judge can choose from — placing the juvenile under the supervision of a probation officer (which has to be for more than two years), committing him to a Child Education and Training Home or a Home for Dependent Children or lastly committing him to a Juvenile Training School. Accordingly, realizing the inadequacies of the present law, the Ministry of Justice proposed in 1970 that more choices should be provided for by amendment to the Juvenile Law. However, still the proposals have not received legislative sanction.

Mr. Shiraishi endorsed the new proposals under which there would be a choice of seven protective measures — periodical appearance at a Probation Office, short-term probationary super-

vision of a Probation Office, probationary supervision of a Probation Office, committal to a Child Education and Training Home or a Home for Dependent Children, committal to a short-term Training and Detention Centre, committal to a short-term Reform and Training School for Juveniles and Young Persons, and lastly, committal to a Reform and Training School for Juveniles and Young Persons.

A strong plea was made for the diversification of protective measures which could be ordered by a Family Court. This has been a long felt need and it was specifically pointed out that the availability of the facility of short-term treatment is a very salutary measure which is considered extremely necessary.

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# The Bail in India

*by Jagdish Chandra**

## Introduction

The term "bail" has nowhere been defined in the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), but in common parlance it means to set free or liberate a person arrested or imprisoned on taking security to ensure his appearance before the court for his trial. The concept of bail is the outcome of the conflicting ideologies resting in the well-accepted principle of criminal jurisprudence in favour of the innocence of an accused person on the one hand and the society expecting protection as against the rapacious criminality of the offender. The importance of this branch of law need hardly be over-emphasized as it exists in all civilised societies, and its absence would simply betray the society as barbaric.

## Classification of Offences and Right to Bail

The Code places the offences into two categories—(i) bailable and (ii) non-bailable. According to S. 2(a) of the Code, "bailable offence" means an offence which is shown as bailable in the First Schedule annexed to the Code, or which is made bailable by any other law for the time being in force, while non-bailable offence means any other offence. The aforesaid First Schedule specifically mentions as bailable or non-bailable the various offences set out in the Indian Penal Code. The bailable offences are not serious offences while the non-bailable offences are more serious and grave in nature, and in this connection we may recall what is known as misdemeanour and felony in the Anglo-American system of jurisprudence. Bail in a misdemeanour is said to be of right at common law whereas in a felony it is discretionary with the court. This distinction is reflected in Ss. 436 and 437 of the Code which treat respectively the grant of bail in cases which are described in the phraseology of the Indian Legislature as bailable and non-bailable offences.

Under S. 436 of the Code it is obligatory upon the police officer and the court to release on bail the offender arrested or obtained in bailable offences, provided of course the offender is prepared to give bail. It is in the discretion of such officer or the court to order such release even on personal recognizance of the offender without sureties. But this provision of law, even though mandatory in nature, cannot be read as conferring on a person accused of a bailable offence, an unqualified, absolute and indefeasible right to remain released on bail, as under S. 439 (2) of the Code, a High Court or Court of Session can direct the arrest of the person released on bail even in a bailable offence. This order of cancellation of bail allowed in bailable offences may be necessitated if his conduct subsequent to the grant of bail is found subversive of a fair trial in court, and in that eventuality he cannot again invoke the mandatory provision of S. 436 of the Code in regard to his right of bail.

Regarding non-bailable offences, S. 437 of the Code deals with the powers of the Courts of Magistrates (courts of lowest grade in judicial hierarchy) and specifies that the granting of bail in such offences rests in the discretion of the magistrate. But the magistrate's discretion is taken away altogether in non-bailable offences which are punishable with death or imprisonment for life. However, this mandatory provision may be released in the discretion of the magistrate in cases where the offender is under the age of 16 years, or is a woman or is a sick or infirm person. If, however, there appears no reasonable ground for believing that the accused has committed a non-bailable offence but

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further enquiry into his guilt is necessary, the law makes it obligatory upon the magistrate to release him on bail, with or without sureties, pending such enquiry. If the trial before the magistrate gets protracted and is not concluded within a period of 60 days from the first date fixed for evidence, the accused becomes entitled to be bailed out as of right.

**Balancing Process in the Bail System**

It may look queer to some as to why, in bailable offences, it is obligatory upon a magistrate or a police officer to release an offender on bail whereas power has been conferred on the High Court and Court of Session to cancel the bail already granted by the magistrate/police officer, and why the magistrate should not have been vested with the discretion, as in non-bailable offences, to consider the advisability of grant/refusal of bail in bailable offences at the earliest. This criticism looks seemingly sound but, when thought out properly, turns out without substance. The system of bail set out above displays a balancing process between the human rights to individual liberty on the one hand and the protection of society on the other. In bailable offences the Legislature, in its wisdom, leaned in favour of the individual almost absolutely by snatching away the discretion of the magistrates and police officers in the matter of grant of bail but by way of abundant caution left it to the mature judicial wisdom of higher courts i.e. High Court and Court of Session to cancel such bail if necessary; while in non-bailable offences the tilting in favour of the individual got balanced with the interests of the society and the magistrate was allowed discretion to choose between the two in the matter of grant/refusal of bail, but in very serious non-bailable offences punishable with death or life imprisonment it tilted in favour of the society almost completely where the magistrate was not allowed to grant bail. This balancing process looks simply superb.

Even though mandatory limitations have been placed on the power of the magistrate to order the release of person on bail in non-bailable offences, the powers of the High Court or Court of Session in those offences, as contemplated under S. 439 of the Code, are unfettered. Nevertheless this unfettered power, as established in judicial pronouncements, is to be exercised by the High Court or Court of Session not as a general rule but sparingly only in exceptional cases, and the discretion must be exercised judicially. Thus, in 195 Indian cases 178 Emperor vs. Abubakar, where an accused in a case of criminal conspiracy for murder was granted bail by the additional sessions judge on the ground that there was a discrepancy in the evidence of the approvers, the order was set aside by the High Court as being incomplete and premature appreciation of some of the evidence only, when it did not appear that this was a discrepancy incapable of explanation or that when the case was to come up for trial before a proper court and this and other evidence was brought on the record, this discrepancy would be fatal to the prosecution case. Similarly in a very recent case popularly known as "Bank Van Robbery Case" of Delhi, the order granting bail to one of the accused by the sessions judge when the accusation was of robbery and murder, was set aside by the High Court holding that it was not a fit case where the sessions judge ought to have granted bail, even though there was a discrepancy in prosecution evidence and the first information report was silent about that accused. This case is still awaiting trial. So subject to these limitations in regard to the granting of bail in non-bailable offences punishable with death or imprisonment for life, it can be said on general principles and on the scheme of Ss. 436 and 437, that the grant of bail is the rule and the refusal the exception. The statistics for the year 1974-75 (1. 4. 74 to 31. 3. 75) even in relation to bail applications in *the Court of Session alone* at *Delhi* is a clean pointer to this inference.

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|---|---|
| Total Institution ..... | 3,738 |
| Accepted ..... | 2,690 |
| Rejected ..... | 1,048 |

**Fair Trial, The Test**

The detention of an offender before

and during trial has as its object not the punishment of the offender but only securing his attendance at the trial. The conception of bail must necessarily conform to what is known as 'fair' trial. Fair trial has two objects in view; it must be fair to the accused as also to the prosecution. The test of fairness must be judged from this dual point of view (vide Talab Haji Hussain V. Madhukar Purshottam Mondkar, A.I.R. 1958 Supreme Court 376). The fairness of trial must aim at the acquittal of the innocent and the conviction of the guilty, and this can be ensured if the witnesses are able to depose truthfully in court without fear or favour and regardless of the prosecution or the defence—their inducements or threats. So these are the basic guidelines in the matter of the grant/refusal of bail. The following are the tests which have been applied by the courts in granting/refusing bail applications:

( 1 ) Severity of accusation.
( 2 ) Nature of evidence in support of prosecution.
( 3 ) Severity of punishment which conviction shall entail.
( 4 ) Character, behaviour, means and standing of the accused.
( 5 ) Whether facts disclose a bailable offence.
( 6 ) Likelihood of the accused or anyone of them absconding if released on bail.
( 7 ) Danger of the accused tampering with prosecution evidence or overawing or threatening prosecution witnesses.
( 8 ) Possibility that an accused on release on bail may convey information to his co-accused who are not arrested or charge-sheeted.
( 9 ) Opportunity to the accused to meet his counsel for purposes of his defence.
(10) Failing health of the accused.
(11) Age and sex of the accused.
(12) Protracted nature of trial.
(13) Police not submitting the challan despite long time having elapsed.
(14) Accused having no member of his family to look after his case.
(15) The principal offender having already been released on bail.

This is by no means an exhaustive list, and the courts take into consideration all the relevant factors in the given circumstances of each particular case. Moreover, it is not only one circumstance which influences the ultimate discretion of the courts but the sum totality of all the circumstances of the case.

### Notice of Bail Applications to Public Prosecutor

Even though the Code does not specifically provide for the giving of notice to the public prosecutor before the granting/refusing of bail application, and the specific provision contained in S. 439 (1) of the Code regarding giving of notice to public prosecutor before the High Court or a Court of Session grants bail in offences exclusively triable by a Court of Session or punishable with life imprisonment, necessarily implying that no notice is generally required to be given to public prosecutor before hearing a bail application, such notice is usually given by the courts, as otherwise evidence in possession of the public prosecutors, which is necessary to enable the court to come to a prima facie opinion whether the offence is bailable or whether the offence is one entailing severe punishment or is one punishable with death or life imprisonment or that there are no reasonable grounds for believing that the accused has committed a non-bailable offence but that there are sufficient grounds for further enquiry into his guilt, would not be available to the court. There is in fact a set hour for hearing the bail applications and the public prosecutor remains present throughout that time in the court. If the accused takes into his head not to supply a copy of his bail application to the public prosecutor under the literal cover of the law, all adverse inferences can be drawn by the court against the accused and thus such contingency hardly arises.

### Bias of Courts in Trials After Refusing Bail

Normally the court granting/refusing the bail is not the court which subsequent-

ly tries the case and thus there is hardly any justification to fear that the court refusing the bail application would have a bias against the accused while trying the case and at the time of final judgement. Moreover the courts are sufficiently trained in their judicial outlook to differentiate between the two stages—one before the trial when the evidence is not complete and is only prima facie, and the other after the trial when the evidence is complete.

### Cancellation of Bail

If an accused person, by his misconduct, puts the fair trial into jeopardy, it would be the primary and paramount duty of criminal courts to ensure that the risk to the fair trial is removed; and this is equally true in cases of both bailable as well as non-bailable offences, as under S. 439 (2) of the Code a High Court or Court of Session is empowered to direct that any person released on bail in both types of offences may be arrested and committed to custody. Under S. 437 (5) of the Code even the magistrate who had enlarged an accused in a non-bailable offence is empowered to direct the re-arrest of such person, if considered necessary, but this power of re-arrest is not allowed to the magistrate in bailable offences.

Granting of bail in non-bailable offences is a concession allowed to the accused and it presupposes that this privilege is not abused by the accused in any manner and that he has not come into contact with the prosecution witnesses to exert any undue influence on them so as to destroy the evidence or to minimize its effect against him. In the following instances the courts have cancelled the bail granted to an accused person:

(1) Where the accused continues or repeats same offence.
(2) Where he misuses his liberty.
(3) Where he tampers with prosecution evidence.
(4) Where he escapes to a foreign country or places himself beyond the control of his sureties.
(5) Where the charge is amended as from the one U/S. 324 I.P.C. to one U/S. 326 I.P.C. and from the one U/S. 304 I.P.C. to one U/S. 302 I.P.C.
(6) Wrong exercise of discretion by the lower court.
(7) Change of circumstances.
(8) When insufficient sureties have been accepted.
(9) When surety for attendance or good behaviour applies for discharge.
(10) When bond is forfeited.
(11) When accused fails to make appearance.

The instances of cancellation of bail are very very few.

### Bail not to be Excessive

As required U/S. 440 (1) of the Code the amount of bond must be fixed by the court with due regard to the circumstances of the case and must not be excessive, and U/S. 440 (2) the High Court or Court of Session is empowered to direct the reduction of the bail ordered by a police officer or a magistrate. Reduction necessarily means reduction in regard to the bond amount or the number of sureties or both.

### Anticipatory Bail

A highly significant step forward has been taken in the Code when provision was made in S. 438 for the grant of anticipatory bail when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence in which contingency he may apply to the High Court or the Court of Session for granting him anticipatory bail and discretionary powers have been conferred on the High Court and the Court of Session to issue direction that in the event of his being arrested, he shall be released on bail by the police. While making such direction the High Court or the Court of Session may impose conditions that "such person shall make himself available for interrogation by a police officer as and when required; that

he shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the same to the police or to the court; that he shall not leave India without the prior permission of the court," etc., etc. This provision of law is an innovation created by the Code, as no such provision existed under the Old Criminal Procedure Code of 1898, and the preponderance of judicial opinion was in favour of the view that anticipatory bail could not be granted to such a person.

### Finality as to Bail Orders

It is also a matter of interest to note that finality does not attach to an order of rejection passed in regard to a bail application and successive application for bail can be made by an accused person, the reason being that circumstances justifying the grant of bail may vary and arise under different conditions subsequent to the rejection of the previous application. The supervening serious illness may necessitate the order of release on bail, even if the previous bail application has already been rejected. Thus an order on a bail application is nothing more than an interlocutory and tentative expression of the conclusion as to whether a person should be set at large pending trial, or disposal of his appeal.

### Mandatory Right of Bail After Lapse of a Certain Period

Another very significant achievement of the Code in the matter of bails is provided in S. 167 proviso (a) according to which an accused person in respect of whom investigation cannot be completed by the police within 24 hours of his arrest, and who must be produced before a magistrate forthwith, and the magistrate can order his detention in custody for a total period not exceeding 60 days, and on the expiry of the said period of 60 days, such person becomes entitled to be released on bail and this provision as to grant of bail is mandatory.

### Change in Bail Conception Under Defence of India Rules, 1971

An inroad has been made in the aforesaid provisions relating to the granting of bail by Rule 184 of the Defence of India Rules, 1971, inasmuch as it provides that "notwithstanding everything contained in the Code of Criminal Procedure, 1898, no person accused or convicted of a contravention of these Rules or orders made thereunder shall, if in custody, be released on bail, unless—(a) the prosecution has been given an opportunity to oppose the bail application, and (b) where the prosecution opposes the application and the contravention is of any such provision of these Rules or orders made thereunder as the Central Government or the State Government may by notified order specify in this behalf, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such contravention."

The Government has, however, by notified order specified the contravention of Rule 33 alone of these Rules, and consequently it is the contravention of Rule 33 alone which falls within the purview of Rule 184 set out above relating to the granting of bails and the breach of the other Rules is not yet covered by Rule 184. It would be thus seen that a person arrested on the alleged contravention of Rule 33 of the Defence of India Rules is not governed by the statutory presumption of innocence till his guilt is proved in the matter of bail, and in order to secure bail the burden lies on him to show the existence of reasonable grounds for believing that he is not guilty.

### Right of Bail not Justiciable in Cases of Preventive Detention

The matter of bail thus far remained within the powers of the courts which were, however, to exercise the same judicially and within the framework of the law. Still more serious inroad was made by the Maintenance of Internal Security Act, 1971, S. 15 of which empowered only the Government "to direct the temporary release of any person de-

tained in pursuance of a detention order passed under the said enactment, for any specified period with or without conditions acceptable to that person, and it may at any time cancel such release, and while directing such release the Government may require him to enter into a bond with or without sureties for the observance of the conditions specified in the direction of such release." This provision has so far remained intact and has not been altered by MISA (Second Amendment) Ordinance, 1975. It would, however, be noted that cases under MISA and Defence of India Rules, 1971, are not many and shall be confined only to the days of emergency.

**Conclusion**

I may venture to observe that the bail system as at present is working quite normally and satisfactorily, and there is hardly any problem in regard to the same as the discretion in the matter of bails as referred to above is exercised in a judicial manner by the various courts.

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# The Role of Houses of Equity in Prevention of Crime in Iran

*by G. R. Shahri**

According to the ninth principle of the revolution of the Shah and the people in Iran, a special kind of village court came into existence. It is called the House of Equity or People's Court, and now there exists in most of the larger villages of Iran one House of Equity.

The principle of the House of Equity or People's Court was not borrowed from any foreign ideology or country. It was derived from the ancient and Islamic tradition of Iran.

The concept of justice is deeply rooted in the Iranian civilization. There were two sets of problems that had to be sorted out. First, the means of justice had to be brought into the village. It was not a common feature of Iran Justice in earlier times. In Iran, the villager, poor and oppressed as he was, could spare neither the money nor the time to travel all over the country to approach different courts to secure justice.

The pre-revolutionary system of the administration of law was very complicated. There was no such thing as a village court. The villager had to travel to the provincial capital, where the courts were in session. The Court of Appeal was normally stationed in the capital. Thus the villager faced a great problem, whenever his rights were infringed and he thought of going to court. Apart from his inability to go through the entire process of the administration of law, this business of running from court to court over long periods of time and at considerable expense did not suit his simple way of thinking. The second aspect which needed consideration related to the actual character of the disputes that normally arose in the villages. These disputes certainly did not concern the complicated issues of commercial tariffs, registration of trade marks, patenting of inventions, liquidations or bankruptcies. Such complicated issues were outside the scope of commercial life in the villages. The peasant normally faced problems relating to his own land, water or sheep. Even when money was involved, it was hardly more than the value of a few sheep or cows. In any event this was the situation at time that the revolution of Shah and people was set in motion. It could be thought that with the rising of the standard of living the financial stake of the disputes would go up. However, at the time when the Ninth Principle was evolved, this was the nature of the problems in rural Iranian society.

There were other problems too, which could be termed problems of rural psychology. The simple villager, having been frightened by the complicated process of law, did not like to undergo that experience when he had a dispute with another villager. The consequence was that he preferred to use violence rather than the process of law for the assertion of his rights. This naturally led to crimes, and a society in which crime thrived would in turn retard all other forms of cultural development. From the administrative point of view, too, the old system had proved an utter failure. The paper work involved in these disputes was an exhausting and time consuming affair. The courts were loaded with cases, the wheel of justice, slow by nature, moved even more slowly. As a result, when the cases finally after months or sometimes years came up for hearing, the judges had little patience to go into the details of their merits. These sets of problems, after analysis, led to the conclusion that there was no alternative but a complete change in the system of administering justice in rural Iran. This could be done only if new innovations were introduced. The Shah has written that this problem was not as difficult as it seemed. It was simple to realize that no one could understand the problems of a villager better than another

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villager. Things which a distinguished lawyer might have difficulty in grasping, would appear crystal clear to a village elder, who acting as an arbitrator, could solve the differences in a way that would be familiar with the precedents involved and with the whole substance of the dispute and could speak to the two parties in a language they could both easily understand.

Thus it was that the principle of arbitration was found to be the most suitable means of administering justice in the villages. The traditional rural community of Iran had always rendered respect to elders. Even the domination of the landlord feudal class had failed to displace the village elders from their position of social influence and regard.

The arbitration by a number of trustworthy local men could resolve the villagers' problems with speed and impartiality. This understanding led to the creation of the People's Courts or Houses of Equity. The People's Courts consist of five judges elected from among men of the district by the people themselves. The election itself takes place under the supervision of the local court of justice. These five judges of the Houses of Equity are granted a term of duty three years, and do not work for any compensation. Their function is a part of their contribution to the new social order. The jurisdiction of the Houses of Equity in civil cases is as follows:

1. Investigating the financial claims whether movable or immovable, where the amount in controversy will not exceed 10,000 Rials (¥43,000).
2. Claims made on movable properties, where the amount in controversy is up to 50,000 Rials (¥215,000), provided, however, that the parties would declare their consent in that respect.
3. The claims in connection with family disturbances, maintenance of the wife and children and other persons entitled to the maintenance.
4. Investigating the claims made in connection with the adverse possession and abatement of nuisances.

The jurisdiction of the House of Equity in respect to criminal cases is as follows:

1. Handling of minor offences which are punishable by a fine to 200 Rials (¥86).
2. To take care in preserving the evidence of the crime.
3. To prevent the escape of the accused in case of crimes and to notify officials forthwith of it, and to hand the accused over to them.

*Procedure*

The procedure for hearing a case by the House of Equity is quite simple. The plaintiff pleads his cause, by word or in writing before the clerk. The clerk informs the defendant of the substance of the case. The defendant in turn makes his rejoinder also to the clerk once both sides have stated what they have to say on the merits of the dispute. The clerk records it and sends a complete dossier to the House of Equity for action. The suit is then heard. The clerk reads the documents, records the proceedings and statements of both parties in evidence, and after deliberation, a decision is reached by the House of Equity through collective agreement.

The first House of Equity was set up in 1963, and gradually the number of Houses of Equity increased, so that their number at present exceeds 8,900. The statistics below show the number of Houses of Equity, and the number of cases heard and decided by them in the last decade.

| *Year* | *No. of Houses of Equity* | *No. of Cases Heard and Decided by H. E.* |
|---|---|---|
| 1963 | 234 | 2,034 |
| 1964 | 624 | 22,644 |
| 1965 | 848 | 35,655 |
| 1966 | 1,070 | 46,306 |
| 1967 | 1,565 | 54,149 |
| 1968 | 2,445 | 75,013 |
| 1969 | 3,261 | 95,044 |
| 1970 | 6,044 | 233,274 |
| 1971 | 7,214 | 278,431 |
| 1972 | 8,194 | 309,130 |
| 1973 | 8,705 | 500,603 |
| 1974 | 8,784 | 559,670 |

The number of villages which are under the jurisdiction of Houses of Equity at present is 16,158. The difference between the number of Houses of Equity (8,784) and the number of villages under their jurisdiction (16,158) is because some Houses of Equity have jurisdiction over two or three small villages.

The quality of justice in these courts was examined by legal experts. In their opinion the decisions of the courts were found to be just and logical and at the same time in accordance with judicial principles.

The statistically verified conclusions show that since the date of establishing the Houses of Equity, in each village the number of crimes decreased more than 30 percent. Therefore, I think setting up Houses of Equity is one way of preventing crimes, which is the main purpose of the administration of criminal justice. It also is an effective and inexpensive way for relieving the over-loaded courts and it enables them to deal with the important cases with speed. Because of the fruitful results, realized by Houses of Equity, we established, under the law enacted by the Parliament (Majless), similar judicial bodies in the cities, which are called Arbitration Councils. The number of Arbitration Councils at present is more than 250 and in the year 1974, they heard and decided 1,339,892 cases.

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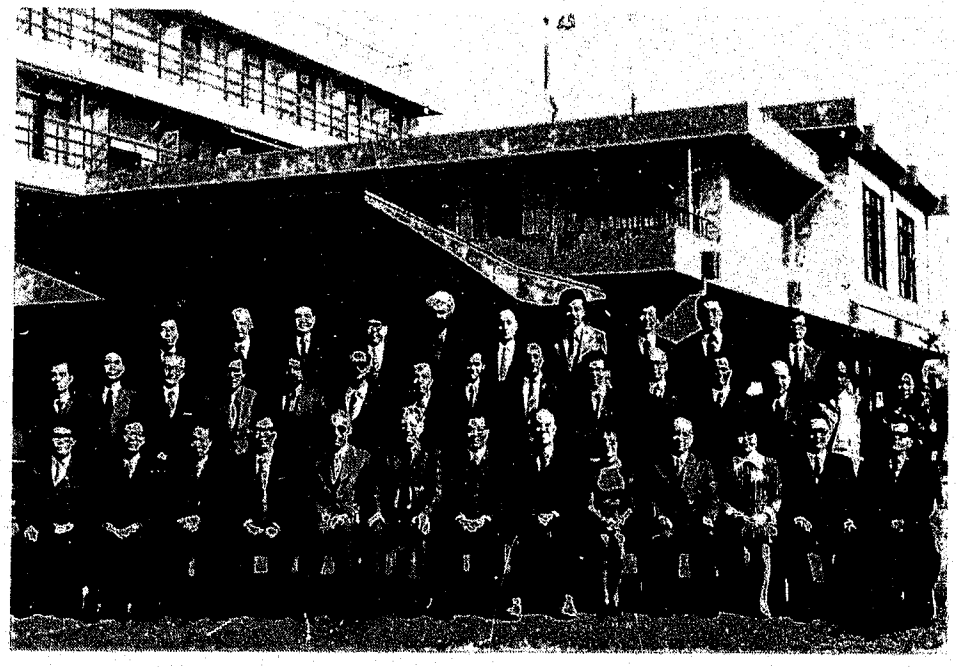

*Back Row:* Nakagawa (Staff); Ansari (Iran); Nakazawa (Japan); Okimoto (Japan); Singh (Singapore); Inoue (Japan); Hindarto (Indonesia); Ishii (Staff); Okahara (Staff); Takayasu (Staff)

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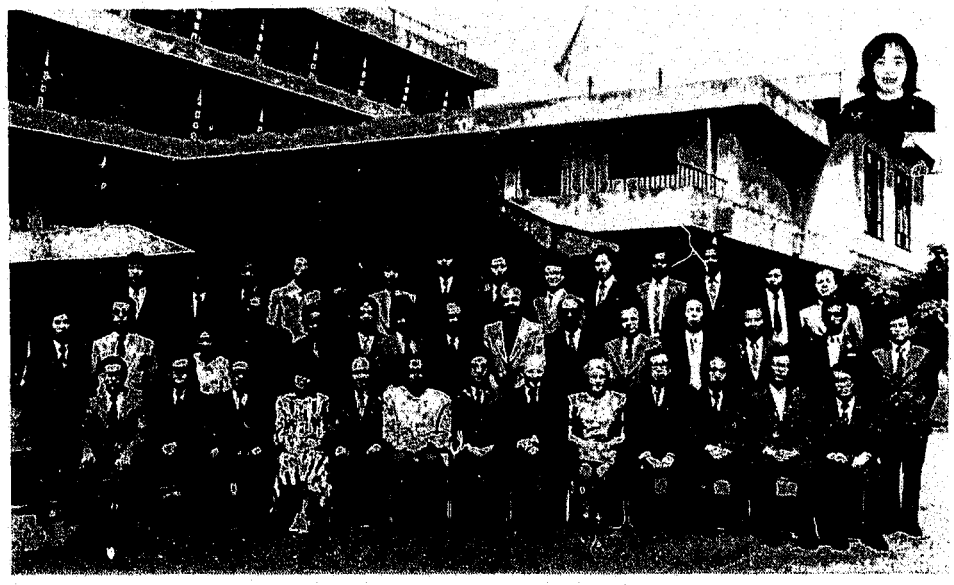

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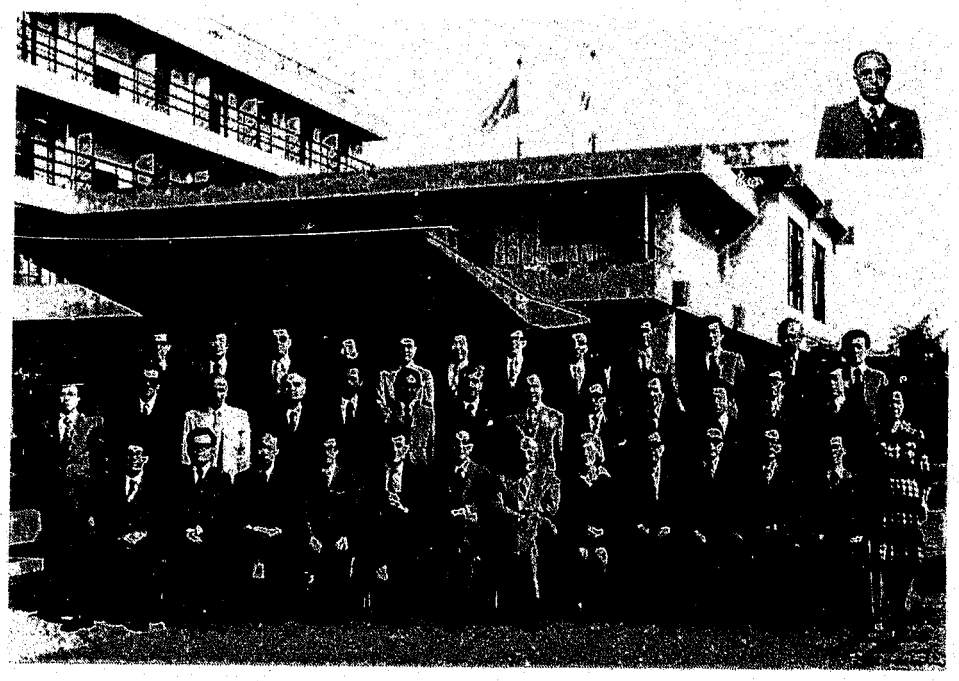

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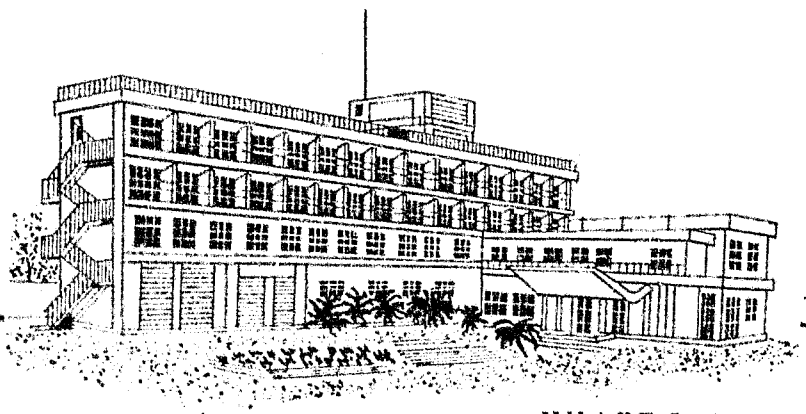

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Printed in Japan by The Asahi Evening News

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