CRIMINAL JUSTICE IN JAPAN

MINISTRY OF JUSTICE
JAPAN

CRIMINAL JUSTICE IN JAPAN

MINISTRY OF JUSTICE
JAPAN

The Chinese character printed on the cover is an ancient style of the Chinese character for "law". Originally, however, it was an ideograph signifying "criminal justice". Etymologically this rather complicated symbol consists of two parts. The left hand component means water. In ancient times the people of the Far East seemed to respect the equal treatment of persons, which could be symbolized by water, as one of the essentials of criminal justice. The right hand component, which again can be broken down into an upper part and a lower part, signifies the role of an imaginative animal resembling a unicorn which was supposed to have the supernatural power of tossing the guilty party to one side, out of the forum. Our ancestors, who invented this ingenious device for symbolizing abstract concepts, envisaged the two important functions of criminal justice, that is, the discovery of criminal personality and the fair treatment of it.

CRIMINAL JUSTICE IN JAPAN

CONTENTS

CRIMINAL JUSTICE IN JAPAN

Introduction

It was in 1890 that Japan had a constitution incorporating its principles of the rule of law and representative government. This Constitution provided for the separation of powers and the protection of civil liberties. Under it criminal justice was administered according to law as enacted by the national legislature. However, the Emperor was a sovereign and held mighty powers over the country.

Since the end of World War II, the Emperor has been prescribed in the Constitution as a symbol of national unity. The Constitution of 1946 established a democratic government and confirmed the principle of the rule of law. Constitutional safeguards for the fundamental human rights were strengthened. In writing this booklet an effort has been made to present a concise picture of the administration of criminal justice in postwar Japan in as simple terms as possible. The administration of justice is a living thing and is not a mere mechanical implementation of statutes and regulations. We have attempted to portray it as such and in our general explanations necessarily omitted detailed qualifications and exceptions which are to be found in the statutes and regulations.

CHAPTER I. THE POLICE

I. Introduction

The police, as an agency charged with the functions of protecting society and maintaining public peace and order, must carry out its duties efficiently and in conformity with the democratic principles upon which the present Japanese Constitution is based. As in other democratic countries, the organization and activities of the police in Japan are guided by the two principles of supremacy of law and democratic administration.

The Police Law was enacted in 1954, conforming with these principles. This Law also intended to provide a more efficient police organization, paying considerable respect to the principle of local autonomy. From this point of view, the municipal police units established by the Police Law of 1948 were integrated into each Prefectural Police.

II. Outline of the Present Police Organization

The principal divisions of the present police system are as follows:

1. National Public Safety Commission:

The National Public Safety Commission is under the jurisdiction of the Prime Minister. It is composed of a chairman and five members, having five year terms, who are appointed by the Prime Minister with the consent of both Houses of the Diet. The Chairman, however, is a State Minister, who convenes the Commission and presides over its affairs, but is not a member. The chairman may not exercise undue influence over the Commission, because the decisions must be made by a majority of the attending members, and the Chairman may not make a decision except in the case of a tie.

The National Public Safety Commission controls the National Police Agency with respect to such matters as presiding over police training,

police communications, criminal statistics, police equipment, and other coordination of police administration, as well as matters of police operations affecting the national public safety, which the Law prescribes as follows:

i) Matters relating to serious natural disasters creating public unrest.

ii) Matters relating to civil disturbances disrupting peace in local areas.

The National Public Safety Commission has the duty of appointing or dismissing the Director General of the National Police Agency with the approval of the Prime Minister. Appointments and dismissals of Chiefs of Prefectural Police Headquarters are also made by the Commission with the consent of the Prefectural Public Safety Commission; and as for the Chief (Superintendent-General) of the Tokyo Metropolitan Police Department, the further approval of the Prime Minister is required. Prefectural Public Safety Commissions may, when necessary, submit recommendations to the National Public Safety Commission with respect to the dismissal of or disciplinary action against the Chief of a Prefectural Police Department.

2. *National Police Agency:*

The National Police Agency has been established under the control of the National Public Safety Commission as a national agency headed by a Director-General.

The Agency performs prescribed duties which cover the same scope as those of the National Public Safety Commission. The Director-General directs and supervises the Prefectural Police in matters within the scope of the duties of the National Police Agency.

The National Police Agency is made up of the Director-General's Secretariat and five Bureaus, namely the Police Administration Bureau, the Criminal Investigation Bureau, the Traffic Bureau, the Security Bureau and the Communications Bureau. In addition, as separate institutions attached to the Agency, there are the Police College, the National Research Institute of Police Science and the Imperial Guard Headquarters.

There are seven Regional Police Bureaus established as local offices of the National Police Agency, whose jurisdiction extends to all districts except the areas of Tokyo Prefecture and Hokkaido.

3. *Prefectural Police:*

The term "Prefectural Police" includes both the Prefectural Police

organizations and the Prefectural Public Safety Commissions which control the police organizations.

The Prefectural Public Safety Commissions are established under the jurisdiction of the respective Prefectural Governors. They are usually composed of three members (five members in the case of Tokyo Prefecture and the prefectures in which three are situated Yokohama, Nagoya, Kyoto, Osaka, Kobe and Kitakyushu), whose appointments are made by the Governor with the consent of the Prefectural Assembly. Two members out of five in such designated prefecture shall be recommended by the mayor with the consent of the City Assembly of the designated city. All Prefectural Police Departments come under the control of the aforementioned Commissions.

The jurisdiction of the Prefectural Polices is generally confined to their respective prefectures. (However, as regards the matters falling under the jurisdiction of the National Police Agency, they are subject to the direction and supervision of the Director-General of the National Police Agency)

The authorized personnel strength of the Prefectural Police is determined by Prefectural Ordinance, but the number of police officers must conform to the standards fixed by Cabinet Order. According to this Cabinet Order, the total strength was set at 181,350 men as of the 15th of May, 1972. The Prefectural Police Officers who hold a rank higher than Senior Superintendent are designated as "Local Senior Police Officials" and they hold the same status as National Public Officials. They are appointed and may be dismissed by the National Public Safety Commission with the consent of the respective Prefectural Public Safety Commission.

There are 47 Prefectural Police Departments in Japan, and the number of Police Officers in these Departments is as follows:

Number of Personnel Authorized	Number of Prefectural Police Departments for which this number is authorized
Over 37,000	1
10,001 to 20,000	1
8,001 to 10,000	3
7,001 to 8,000	2
5,001 to 7,000	2
3,001 to 5,000	4

2,001 to 3,000	11
1,501 to 2,000	9
1,001 to 1,500	13
Under 1,000	1
	46

The largest Department, of course, is the Tokyo Metropolitan Police Department with 37,490 men, and the next is the Osaka Police Department.

The most recent population estimate for Japan, made as of October 1972, is 107,340,000. Since the total police officers authorized are 183,710, which includes the officers of the National Police Agency and the Imperial Guard as well as the Officers of the Prefectural Police, there is one police officer for about 584 persons in this country.

III. Criminal Investigations and Other Police Functions

The Police Law (Article 2) describes the duties of the police as "Protection of life, person and property of individuals; prevention, suppression and detection of crime and apprehension of suspects; control of traffic; and other functions necessary to maintain public peace and order."

Of these functions, those which most directly relate to criminal justice are crime detection and the apprehension of suspects.

1. Criminal Investigation:

Crime detection is one of the primary duties of the police prescribed by the Police Law. This is the duty of all police officers. including partolmen, in all prefectural police jurisdictions. Every Police Department, however, whether it is a Prefectural Police Headquarters or a local Police Station, has officers and units specializing in crime detection. These specialized units are engaged mainly in the investigation of cases which require extended or large scale investigation or special investigative techniques. These specialized units in the Police Headquarters direct and assist in the investigation of important cases, and sometimes conduct the investigation independently. They also assist Prefectural Police Department Chiefs in general crime detection problems.

Criminal investigation, as well as police activities in other field, must conform to the provisions of laws and ordinances. The Law for Execution of Police Duties was created to provide a general standard of performance

for police officers. The Code of Criminal Procedure was created to control the procedures of criminal investigation including arrest of suspects, as well as criminal proceedings in general as will be described in the next chapter.

In this connection it should be noted that the present Constitution prescribes, "No person shall be convicted or punished in cases where the only proof against him is his own confession." (Article 38). Investigation to obtain legal evidence, therefore, is particularly important in criminal cases, and consequently it has been, and is, highly important to establish carefully systematized and scientific crime-detection methods. Scientific identification techniques, including utilization of the fingerprinting and voice-printing system, investigative photograph, telephone call tracing system and chemical examinations have been carefully developed, as these devices play an important role in the investigative activities of the police. Also the EDP (electronic data processing) has come to be used. The progress in this aspect of police organization can be seen in the establishment of the Identification Section as well as the Investigation Section in the Criminal Investigation Bureau, and the establishment of the National Research Institute of Police Science attached to the National Police Agency.

2. *Trends of Crimes Known to the Police:*

In Japan the major crimes are punished under the provisions of the Penal Code, but the provisions for punishment of other miscellaneous offenses are contained in other laws and ordinances.

A total of 687,890 offenses against the Japanese Penal Code, excluding "deaths or injuries through negligence in the conduct of one's occupation, in traffic accident", came to the attention of the police in 1971, The trend in total number of criminal offenses from 1961 to 1971 is shown as follows, based on an index of 100 for 1961.

1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
100	99	98	99	96	92	87	88	89	91	89

During the same period, the percentages of heinous offenses (murder, robbery, rape and arson), crimes of violence (violence, bodily injury, intimidation, and extortion), theft, crimes of intellect (fraud, official corruption, and embezzlement), and offenses against public morals (gambling, abortion, and obscenity), and others which are all prescribed in the Penal Code, have been as follows:—

	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
Heinous crimes	1.00	0.93	0.90	1.06	1.06	1.06	1.66	1.63	1.6	1.4	1.4
Crimes of violence	10.85	10.38	9.81	11.27	10.74	10.31	16.41	15.41	14.7	13.4	12.5
Theft	68.74	69.32	68.43	76.34	76.47	77.40	64.96	66.41	67.2	69.4	71.7
Crimes of intellect	7.45	6.95	6.09	7.53	7.76	7.17	10.24	10.09	10.2	9.8	8.8
Offenses against public morals	0.42	0.45	0.50	0.70	0.94	1.02	1.76	1.72	1.8	1.7	1.7
Others	11.54	11.97	14.27	3.10	3.03	3.04	4.97	4.74	4.5	4.3	3.9
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

When a police officer finds any sign that a crime has been committed, he must try to identify suspects and locate evidence (The Code of Criminal Procedure, Article 189). After completing this investigation, he refers the case to the Public Prosecutor in accordance with the prescribed procedure.

3. Police Work for Juveniles:

In this connection, mention should be made of special procedures followed in juvenile cases. In Japan a "juvenile" is defined as a person under 20 years of age. Children under 14 years of age, however, even though they violate the Penal Code, may not be held criminally responsible.

The police are concerned not only with those juveniles who have committed crimes, but also with other juveniles who come under any of the categories prescribed by the Juvenile Law and who are regarded as prone to commit offenses in view of their character or environment (Juvenile Law, Article 3). The police also have a responsibility in connection with any juveniles who have behavior problems, or who may be in need of protection. In handling these boys and girls, the police must first think of the prevention of delinquency, and of the protection and rehabilitation of juveniles. This is one of the reasons why the police have worked so hard to improve the training of police officers in this specialized field, and to prepare necessary materials for their work.

CHAPTER II. CRIMINAL PROCEDURE

I. Introduction

The procedure followed in a criminal case is the same throughout Japan. There is only one territorial jurisdiction and it is on a national level. The Code of Criminal Procedure of 1948 and the Rules of Criminal Procedure of 1949 are the principal sources of law governing criminal procedure. Since Japan is a civil law country, case law is only of secondary importance.

As of 1972, criminal cases are handled by 574 summary courts, 50 district courts, 8 high courts (courts of appeal), and the Supreme Court. There are also 50 family courts whose special jurisdiction and procedure are prescribed in the Juvenile Law of 1948.

Historically the Japanese law of criminal procedure is the result of a mixture of European and Anglo-American traditions of law. The so-called Old Code of Criminal Procedure of 1922 was based in its entirety on German law. The New Code of Criminal Procedure of 1948 which was adopted under the New Constitution of 1946, is still based on the old law in its general scheme, but it also has largely adopted Anglo-American concept to protect human rights.

In writing this account an effort has been made to describe briefly and simply Japanese criminal procedure with specific reference to those aspects of its functioning which should be of most interest to those foreigners who are not familiar with the criminal procedure of Japan.

II. Procedure from Arrest to Trial

1. Investigating Agencies:

The principal investigating agencies are the police and public prosecutors. They cooperate and divide the work of investigation between them; the former collect evidence in a crude form, whereas the latter refine and reinforce it from a legal standpoint. The public prosecutors also

may give necessary general advice to the police or ask them to assist in their investigations. The police and the public prosecutors usually start their investigation on their own initiative, although it is sometimes started on the demand for prosecution filed with them by the victim, other persons concerned, government authorities or a private person in general. Investigation is to be made with or without compulsion, depending upon the cooperation of the subject. Exercise of power upon persons or things of evidentiary value is, generally, subject to judicial control by applying for warrants for arrest or for search and seizure.

2. *Arrest:*

Generally a warrant issued by a judge is necessary for an arrest. However, any person may arrest without warrant an offender who is committing or has just committed a crime before him. An investigating official also may arrest the suspect without warrant if he has sufficient grounds to believe that the latter has committed certain types of serious crimes and if, in addition, there is no time to procure a warrant. In this case, warrant must be procured soon afterwards.

3. *Procedure Subsequent to Arrest; Taking Suspect Before Detention Judge:*

If the police need to detain an arrested suspect, they must take him to a public prosecutor within 48 hours together with evidence showing reasonable grounds to support their suspicion of guilt. The public prosecutor who receives the suspect must immediately inform him of the charges against him and of his right to the aid of counsel and must give him an opportunity for explanation. The public prosecutor will also make investigation to obtain further evidence supporting the suspicion of guilt. If the public prosecutor finds that the detention of the suspect is both necessary and supported by reasonable grounds, he must within 24 hours request a judge to issue a warrant for detention. If he fails to make the request within this period or the judge does not issue a warrant upon request, he shall release the suspect, unless within the same period he institutes a prosecution by filing an information.

When the judge in charge of the issuance of warrants is asked to issue a warrant for detention, he gives the suspect an opportunity for explanation and then examines the evidence submitted by the public prosecutor and interrogates the suspect, if necessary, to decide whether or not there are

reasonable grounds to support a suspicion of guilt. This procedure is closed to the public, and the suspect has no right to a public hearing, although he is entitled to the aid of counsel if he can afford to obtain one. If the judge finds his detention both necessary and supported by reasonable grounds, he will issue a warrant for detention. Then the detained suspect may request the judge to disclose the grounds for detention in open court. If the judge finds that there are no grounds for detention or that a warrant cannot be issued in accordance with the provision of the law, he must immediately order the suspect to be released.

4. Public Prosecutors' Investigation and Its Conclusion:

The period of detention at this stage is, as a rule, 10 days. However, the judge may extend it upon request of the public prosecutor. The total period of such extension must not be longer than 10 days. With regard to certain serious crimes an additional extension of period not exceeding 5 days is possible. Public prosecutors are required to carry out their investigations within this period and to decide whether or not there is sufficient evidence to support the prosecution of the detained suspects. If they are convinced of the guilt of their suspects, they may file an information with the court to open their prosecution. In 1971, 74,102 and 1,883,842 persons were prosecuted in district courts and summary courts, respectively. The latter number includes those who were prosecuted by informal proceedings for minor cases. However, even though they are convinced of the guilt of their suspects, they may drop the prosecution without filing an information, if they find that the prosecution is not essential in view of such criminological factors as the personality, age, and environmental background of the suspect; the nature and circumstances of the crime; and the circumstances after the offence and the possibility of rehabilitation of the suspect. A statistical survey made by the Ministry of Justice revealed that in 1971 in about 30% of all Penal Code offences in which the public prosecutors could properly open their formal prosecution, they exercised this discretionary power and did not institute prosecution for one or more of the foregoing reasons.

Japan does not have any such system as grand jury. Since 1948, however, she has the "Kensatsu Shinsakai", the Prosecution Investigation Committee or Inquest of Prosecution, consisting of lay people chosen by lot from among ordinary citizens. The function of this body is to

investigate and control in a democratic and advisory way the discretionary power of non-prosecution which is vested in the public prosecutors.

5. Informal Proceedings for Minor Cases:

Public prosecutors may institute relatively informal criminal actions in the summary courts for minor crimes, provided that the defendants make no objection to this informal proceeding. The courts will consider and decide these cases summarily on documentary and real evidence submitted by the public prosecutors without opening public hearings and without receiving any evidence from the accused. In these proceedings, however, sentences heavier than a fine of 200,000 yen shall not be imposed. If the parties who are not content with the sentences summarily imposed demand formal trials within two weeks of receipt of notice of the sentences, the summary sentence is set aside and the case is prosecuted in ordinary proceedings. In 1971, 1,794,441 persons were sentenced through these informal channels.

Similarly, minor criminal cases involving traffic offences which are to be punished with a fine of not more than 200,000 yen may be tried quickly in summary courts if the defendants are not against this informal procedure. The courts open public trials and render summary sentences pursuant to a simple and speedy procedure. The parties who are not content with the sentences imposed may demand formal trials within two weeks of the date of imposition of sentence. In 1971, 5,797 traffic cases were tried summarily in summary courts.

"Hansoku-kin" (Traffic infraction fine) Procedure

The "Hansoku-kin" (traffic infraction fine) system is a procedure under which a person who commits certain offences in violation of the Road Traffic Law is exempted from criminal punishments by paying a sum of money fixed by law or ordinance at a post office or certain other banking organs when he receives a *notice* (Kokuchi) or *notification* (Tsūkoku) from a police official about his offence. A person who is caught for a violation of the Road Traffic Law is first given a violation ticket (*notice*) by a police official (usually on the spot), which describes the nature of the violation, the police station to which he should report at a later date and the sum of money equivalent to "Hansoku-kin", etc. There are two ways of paying "Hansoku-kin":

(1) Payment at a post office or certain other banking organs within one week after the date of receipt of a violation ticket. (One extra day is added if the last day of the week falls on Sunday or a national holiday.) (This system is called *provisional payment*).

If the violator follows this procedure, he is not required to report to the police station.

(2) Payment at a post office or certain other banking organs within the period of time mentioned in a written *notification* (within 10 days after the date of receipt of the *notification*) which the violator receives from a senior police official.

The above *notification* is given to the violator when he does not make the provisional payment under (1) above but reports to the police station as designated by the violation ticket. In case he does not report to the police station, the *notification* is mailed to the violator by "certified delivery". In the case of the latter, the violator must pay 190 yen for postal charges in addition to "Hansoku-kin".

According to this procedure, the violator is required, as a matter of principle, to report to a police station to receive a written notification and, in case he fails to report to it, he must pay extra 190 yen.

In case a violator fails to pay "Hansoku-kin", he is to be dealt with under regular criminal procedure and is subjects to criminal punishment by the court.

III. Some Constitutional Guarantees: Counsel, Bail, Confrontation and Examination of Hostile Witnesses, and Privilege against Self-Incrimination

Article 37 of the Japanese Constitution and Article 1 of the Code of Criminal Procedure guarantee a fair and speedy trial. Among the instruments for the implementation of this ideal, the right to counsel, bail, confrontation and examination of hostile witnesses, and the privilege against self-incrimination are most important.

Any suspect or defendant is entitled to the assistance of competent counsel. If the defendant is unable to obtain counsel by reason of poverty or for some other reason, the court shall assign counsel to him upon his request. An arrested suspect must be notified of his right to counsel.

A court shall not open the trial of a defendant prosecuted for certain serious offences which are punishable by a maximum penalty of death, life imprisonment, or imprisonment for not less than three years, without affording him competent counsel. In such a case, if no defence counsel has yet been selected, the court must assign counsel at the expense of the State.

A defendant is also entitled to be released on bail at his own request or at the request of certain other persons specified by law except in certain special cases prescribed by law. A court may, if it deems proper, release a defendant on bail on its own initiative. There are no bail bonds or bondsmen in Japan and the defendant must deposit the required security with the court before obtaining his release. The defendant may also be released upon the personal guaranty of his friends or relatives and their promise to pay the amount which would otherwise be required to be deposited, should the defendant violate his bail.

In a criminal trial no person shall be compelled to testify against himself. A defendant is incompetent as a witness, which means that he cannot be sworn as a witness even though he may be willing. He also has an absolute privilege of refusing any statement and the court may not consider his mere failure to answer some or all questions against him by invoking this privilege. The defendant may testify without taking an oath and this testimony is to be given consideration by the court. Since he is not sworn, his false statement in court does not constitute the crime of perjury. (In this connection, it may surprise Anglo-American lawyers to learn that, if, in civil actions where the parties can be sworn, they should give false testimony, it would not constitute perjury since that crime applies only to witnesses.)

IV. Trial

1. Trial Courts and Their Organization:

Japan has a jury trial law since 1923, although it has been suspended since 1943 for some practical reasons. Even prior to its suspension the right to jury trial was waived by defendants in 99% of the cases. They apparently valued the right to a review of the facts by the court of second

instance which would be lost if jury trial were had. Moreover, in Japan there has been a tendency among the people to trust the professional judge and also in most cases the judge has been thought lss strict than the jury. Thus, there is no jury system in operation today.

In minor cases the summary courts are trial courts of first instance. In relatively serious cases the district courts are trial courts of first instance. The high courts (the courts of appeal) also may sometimes be trial courts of second instance; in cases of specific serious crimes such as crimes relating to insurrection, however, they function as trial courts of first instance. A summary court consists of one trial judge, whereas a district court consists of one or three trial judges according to the gravity of the case it handles. A high court consists of three judges except in certain specific serious cases where five judges constitute the court.

2. *Procedure at the Beginning of a Trial:*

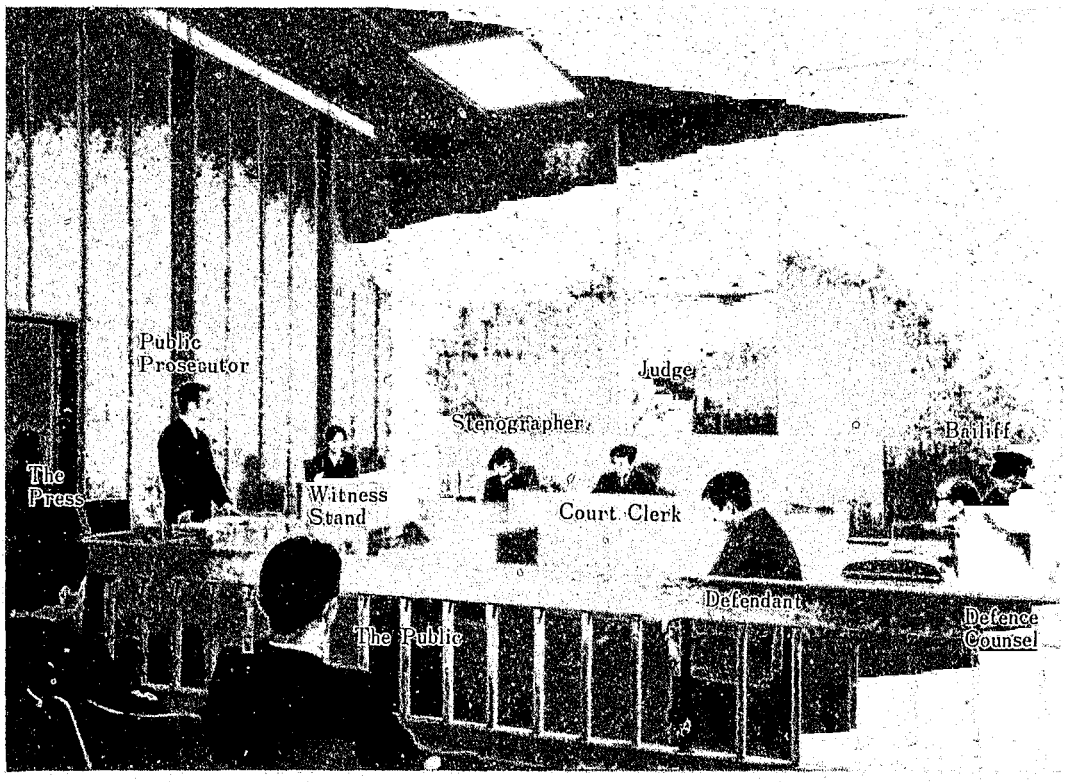
After the identification of the defendant by the court, the public prosecutor reads a written information which contains counts constituting the criminal charges made against the defendant. After being advised of the privilege against self-incrimination, the defendant is given an opportunity to state his opinion about the charge made against him. He usually admits or denies the charge. His admission of guilt, however, does not enable the court to skip the fact-finding process, although it will somewhat simplify its procedure.

3. *Opening Statement:*

After the defendant and his counsel have stated their opinion with regard to the charge made against the defendant, the public prosecutor makes a kind of opening statement in which he outlines what he intends to prove. The purpose of this is to acquaint the court, the defence lawyer, and the defendant with the prosecution's allegation and its plan of proof so that they may follow the evidence as it is presented. However, in minor or simple cases the prosecution often skips this stage of procedure as a matter of fact.

4. *Introduction of Evidence:*

After the opening statement the prosecuting attorney produces the prosecution's evidence in the form of testimonial, documentary, or real evidence. Testimonial evidence is produced by examining the witness by direct and cross-examination pursuant to the rules prescribed by the



A Trial in Japan

Supreme Court. The defendant is entitled to confront and cross-examine witnesses against him. For this reason hearsay evidence including documentary evidence is excluded with some exceptions prescribed by law. At the early part of this stage the prosecution is prohibited from introducing as evidence the written confession of the defendant in order that the court may not be biased against him by an early introduction of his self-incriminating statement.

At the close of the prosecution's evidence the defendant may, if he wishes, present evidence to refute the prosecution's case. The court also may from time to time take proper evidence on its own initiative. At the end of this process the prosecution usually presents official records showing prior convictions of the defendant, if he has any criminal history, and the defence counsel usually presents testimonial or documentary evidence tending to prove that the defendant is a person of good character and background, or that a settlement has been made between the defendant and his victim by making restitution or reparation. The court also interrogates the defendant about pertinent fact and circumstances. Then, if neither the prosecution nor the defendant presents any further evidence, the court gives each side an opportunity to make a closing argument.

5. Closing Argument:

In the closing arguments the prosecutor and the defence counsel review and analyze the evidence and attempt to persuade the court to render a favourable judgment. The prosecution must make its closing argument first. The prosecutor is specifically required to state his opinion about the facts to be found and the law to be applied to them. He also makes his recommendation of a proper punishment to be fixed by the court. After the closing arguments are completed, the defendant is given a final opportunity to state his opinion about his case. Then the court declares the fact-finding process closed and fixes the date when judgment shall be pronounced. If, however, the case is simple enough, the court may pronounce judgment immediately.

6. The Judgment and Sentence of the Court:

Since Japan has no jury system in operation, the court, consisting of a judge or judges, is the sole trier of facts and it is also responsible for the application of the law to the facts as found by it. Rendering a judgment of conviction or acquittal and fixing the type and amount of punish-

ment in a sentence are also the functions of the judge or judges constituting the court. And the extremely wide range of penalties provided for by the penal laws of Japan makes it a painstaking work for judges to fix the type and amount of sentence properly. Except in juvenile cases, sentences ordinarily are pronounced in terms of a specified length of time or of a specified amount of money. Take the example of a homicide case. The Penal Code of Japan provides that "a person who kills another shall be punished with death or imprisonment with labor for life or not less than three years". Therefore, in a homicide case the court has the discretion to fix the sentence at death or imprisonment for life or for any specific term of not less than three years. Within these limits the judge may impose a sentence of imprisonment with labor, for instance, for five years. And when there are extenuating circumstances in certain prescribed cases wherein the court imposes a comparatively lesser penalty, the court may suspend the execution of the sentence and put the criminal under probationary supervision for a certain period. When a fine is imposed, the period of workhouse detention, as substitute penalty in default of paying out the fine, is to be fixed and pronounced in the same sentence. The length of period of the detention in such a case cannot exceed two years. In this kind of case the wording of the sentence will be as follows: "The defendant shall pay a fine of 10,000 yen. If the defendant is unable to pay the fine in full he shall be detained in a workhouse at the rate of one day for each 200 yen of the unpaid part of the fine."

Facts are to be found on the basis of the evidence and its probative value is left to the discretion of the court. The admissibility of confessions in evidence is strictly limited and no person can be convicted in cases where the only proof against him is his own confession. When the court is convinced that there is sufficient proof against the defendant, the court renders a judgment of "guilty" by pronouncing a sentence. In pronouncing the sentence the court is also required to indicate the facts constituting the offence, to enumerate the pieces of evidence supporting the guilty facts, and to explain the application of law justifying the judgment of "guilty". If the case is not punishable for some reason or if there is no sufficient proof of guilt, the defendant is pronounced "not guilty". Since the prosecution carries the burden of proof, if the prosecution fails to persuade the court to believe that the defendant has committed the

offence, the principle "in dubio pro reo" requires the court to find the defendant "not guilty". In 1970, 589 (0.82%) of 71,748 defendants tried and adjudicated by the courts of first instance were found "not guilty". This extremely low rate of "not guilty" cases is one of the characteristics of the criminal justice in Japan.

Even if it is probable that the prosecution would be able to prove its case, the defendant may still be acquitted by final judgment in the following instances: for example, when a final judgment has already been rendered on the same case, or when the provision of criminal law on which the defendant's alleged crime is based has been abolished by a law which becomes effective subsequent to the commission of the offence, etc.. Criminal action is also to be dismissed by a final judgment in the following instances: for example, when a court has no jurisdiction over the defendant, or when another criminal action has been brought on the same case, etc.. Furthermore, criminal action is to be dismissed by a ruling of the court in some instance where a criminal charge, even if true, does not contain any facts constituting an offence, or where the defendant has died, or, being a corporation, it has ceased to exist, etc..

7. *Compensation for the Innocent:*

The detained defendant who has been finally found not guilty must be compensated by the State for his detention under certain conditions according to the decision of the court. Also to the arrested or detained suspect whom the public prosecutor has decided not to prosecute for his innocence, compensation may be given according to the decision of the public prosecutor.

V. The Appeal

After a judgment has been pronounced by a trial court of first instance, the party who is not content with it may, within the period prescribed by law, appeal to a high court as the reviewing court. It must be noted that the prosecution may take an appeal from a judgment of the trial court which the prosecution finds too lenient or too severe or from a judgment pronouncing the defendant not guilty. In 1970, 9,518 appeals were taken from the final judgments imposed on about 75,850 defendants in trial courts. This means that the appeal rate to high courts is about

12.5%. The reviewing court examines the written record of what happened at the trial court, and considers the written and oral arguments of both the defence attorney and the public prosecutor. The court may, or sometimes must, hear additional evidence in order to make a better decision. After reviewing the judgment of the lower court with respect to both its factual and legal conclusions, the court renders a written decision and opinion, which either reverses or affirms the original judgment and states the reasons for whichever it does. The court affirms the judgment of the lower court by dismissing the appeal which has been taken from it.

A decision reversing the judgment of the lower court ordinarily means that some procedural or substantial irregularities constituting reversible error were found in the procedure, or that there was not sufficient evidentiary basis to support the original judgment. Sometimes the reviewing court reverses the original judgment and remands the case to the original or another trial court of first instance; sometimes it reverses the judgment and makes a decision of its own. In the latter case no penalty heavier than that imposed by the original sentence is to be pronounced, if the appeal was taken by, or for the benefit of, the defendant only. If a case has been remanded to a new court of first instance, that court conducts a new trial and renders a new decision. However, since the decision of the reviewing court binds the trial court to which the case has been remanded, the trial court cannot render a decision inconsistent with the decision of the reviewing court.

A decision of the reviewing court reversing or affirming an original judgment is not, however, a final disposition of the case. Under certain conditions as prescribed by law, an appeal may be taken to the Supreme Court. For instance, if the judgment of a high court is alleged to violate the principles of the Constitution or to be inconsistent with precedents established by the Supreme Court, it may be appealed to the Supreme Court. In 1970, 3,019 appeals were taken to the Supreme Court from the decisions imposed on 8,797 defendants in high courts. This means that the appeal rate to the Supreme Court is about 34.3%.

In principle, no appeal may be made against a ruling which the court renders on an issue raised in the course of the proceedings. However, any error in such a ruling may be pointed out in an appeal against the judgment rendered at the end of the proceedings of the court. Under

certain conditions, however, a minor appeal or "Kokoku" can be taken to a reviewing court from a ruling made by a trial court of first instance. In such cases no further appeal is permitted from the ruling made by the reviewing court. A special minor appeal may be taken even from those rulings or orders from which no appeal is ordinarily permitted, but only if it is made on the grounds that the rulings or orders violate the principles of the Constitution or are inconsistent with precedents of the Supreme Court.

A decision of the Supreme Court or that of a high court from which no appeal is made or permitted is a final disposition of the case and puts an end to the controversy between the parties. If a judgment has not been finally reversed after a certain time, it becomes "binding" and the parties must submit to it, unless recourse can be had to one of the extraordinary remedies outlined in the following section.

VI. Extraordinary Remedies

Even after the judgment of a court has become finally binding, it is possible to have it revised or set aside by means of some extraordinary de novo proceedings or "Sai Shin". A public prosecutor, or the defendant who has been pronounced "guilty", or his relatives within a certain degree, may request an extraordinary de novo proceeding for the benefit of the defendant against whom a judgment of "guilty" or a judgment dismissing an appeal has become finally binding in certain cases prescribed by law as, for instance, when documentary or real evidence or oral testimony on which the original judgment was based has been proved by another finally binding judgment to have been forged or altered, or when clear evidence on which the defendant should have been found "not guilty" or acquitted is newly found. Request for an extraordinary de novo proceeding is to be made to the court which rendered the original judgment. If the court finds good cause in the request, it renders a ruling for commencing an extraordinary de novo proceeding. When the ruling for a de novo proceeding has become finally binding, the court opens a trial anew or reopens a reviewing procedure according to the nature of the original procedure. In the extraordinary de novo proceeding no penalty heavier than that pronounced in the original sentence is to be imposed.

Another extraordinary remedy is called the extraordinary appeal or "Hijō Jōkoku". When, after a judgment has become finally binding, it is discovered that the procedure or judgment of the case was in violation of law, the Prosecutor-General may file an application for an extraordinary appeal with the Supreme Court. When an extraordinary appeal is considered to be well-founded, a judgment must be rendered in accordance with the following: (1) when the original judgment was in violation of law the part in violation of law shall be quashed; however, if the original judgment was disadvantageous to the defendant, it shall be quashed and new judgment shall be rendered; (2) when any procedure was in violation of law, the procedure in violation shall be quashed. The effect of the judgment in an extraordinary appeal except for the judgment quashing the original judgment disadvantageous to the defendant, is, as it were, academic and does not change the status of the defendant in any way but merely sets the court's record straight.

VII. Probation

Probation under the Japanese system takes the form of "suspension of execution of sentence". The Penal Code of Japan provides, in the main, the following prerequisites for suspending the execution of a sentence: (A) (1) the sentence which the court is going to impose upon the defendant is imprisonment (or imprisonment with labor) for not more than three years or a fine of not more than 200,000 yen; (2) there exist circumstances favourable to the defendant; and (3) the defendant has not previously been sentenced to imprisonment or a graver penalty, or (4) the defendant, though beoing previously sentenced to imprisonment or a graver penalty, has not again been sentenced to imprisonment or a graver penalty within five years from the day when execution of the former penalty was completed or remitted; or (B) the defendant being previously sentenced to imprisonment or a graver penalty and granted the suspension of its execution, is sentenced to imprisonment (or imprisonment with labor) for not more than one year and there exist circumstances especially favourable to him.

The defendant, when granted suspension of execution of sentence in accordance with (A) may be placed under probationary supervision

during the period of the suspension. In the case of (B) the defendant must be placed under probationary supervision during the period of suspension.

As a matter of fact the court often advises the defendant to make restitution of money stolen or to make other reparation to the victim, before it makes up its mind to place him on probation. It should be noted here that in adult probation no pre-sentence inquiry by the pre-sentence investigator is required, although the court may order probationary supervision if it deems it advisable. This differs from the Anglo-American system of probation in which the concept of probation generally implies the pre-sentence inquiry and supervision by probation officers. However, juvenile probation, which is a protective measure under the Juvenile Law, requires the inquiry and probationary supervision by pre-sentence investigators.

In granting probation the court must fix the period during which the defendant is required to remain on good behaviour. This period must be not less than one year nor more than five years. If he is convicted of another crime during this period, the suspension of execution of the sentence may or must be revoked and the sentence be executed. When the period of suspension has elapsed without being revoked, the pronouncement of sentence loses its effect.

Among other defects of the Japanese probation system the shortage of probation officers and the lack of the pre-sentence investigation system in adult probation should primarily be noted.

VIII. Release on Parole

A sentence of imprisonment for a specified term or for a number of years does not necessarily mean that the convicted person will remain in prison for the whole of that particular period of time. Under certain conditions and circumstances he may be released on parole, which means a provisional release under supervision until the expiration of the period fixed by the sentence. If the person sentenced to imprisonment appears to have learned his lesson, a parole board may release him on parole under certain conditions and circumstances. A convicted person is eligible

to be released on parole after he has served one-third of the specified number of years of imprisonment or after ten years if he was sentenced to life imprisonment. A juvenile who has beeen given an indeterminate minimum-maxmum sentence under the Juvenile Law is eligible for parole after he has served one-third of the minimum term. A violation of the conditions of the parole subjects the parolee to possible return to prison for the remainder of his unexpired sentence.

IX. Special Procedure for Juvenile Cases

The Juvenile Law of 1948 established the procedure for the family court apart from the procedure of regular criminal courts. Juvenile delinquents under twenty years of age, including any juvenile "prone to commit offences or violate criminal law or ordinance in view of his character or environment" and who shows such symptoms as disobedience to his parents, frequently staying away from home without good reason, mixing with delinquent or immoral persons, frequenting immoral places, or showing a disposition to engage in morally harmful behaviour, must be sent by the public prosecutor, police office, etc., to the family court for an inquiry and a hearing there. Inquiry and hearing by the court are carried out entirely on a diagnostic and therapeutic basis. The court is staffed with family court pre-sentence investigators who are trained as social workers. The Juvenile Law provides: "In making investigations ....every effort shall be made to make efficient use of medical, psychological, pedagogical, sociological and other technical knowledge, especially the result of classification conducted by the Juvenile Classification Home in regard to their conduct, life history, disposition and environment...". The trial shall be conducted in a mild atmosphere with warm consideration for the welfare of the juvenile delinquent. It is closed to the public. Newspapers or other publications for mass communication are prohibited from reporting the case of juvenile delinquents in such a manner as to allow the public to identify them.

According to the philosophy underlying the Juvenile Law, juvenile delinquents should not be punished but educated and rehabilitated as sound citizens through educative measures. Therefore, the major consequ-

ence of the inquiry and hearing by the family court are (1) placement of the juvenile delinquents on probation under the probationary supervision by probation officers of the Probation Office, (2) commitment of them to the Child Education and Training Home or the Home for Dependent Children, and (3) commitment of them to the Juvenile Training School. Theoretically, it is expected that criminal action is to be taken exceptionally. The court may refer the case of a juvenile offender to the public prosecutor only if it finds it reasonable to place the juvenile under certain punitive measures. When the case is sent back, the public prosecutor prosecutes the juvenile in an ordinary criminal court in the same manner as he prosecutes an adult offender. However, even in such cases juveniles are generally punishable only by indeterminate sentences, and no juvenile offender who is under 18 years of age when committing a capital crime is to be punished with death penalty. It must also be noted that a juvenile offender under 16 years cannot be sent back to the public prosecutor for punitive measures.

CHAPTER III. CORRECTIONAL SERVICE

I. Introduction

The administration of penal institutions and the treatment of prisoners are regulated by such basic laws and regulations as the Prison Law of 1908, the Prison Law Enforcement Regulations (Ministry of Justice Ordinance, 1908), the Ordinance for Prisoners' Progressive Treatment (Ministry of Justice Ordinance, 1933), the Prisoners' Classification Regulations (Minister of Justice Directive, 1972) and by other directives issued by the Minister of Justice. Studies concerning the amendment of the Prison Law of 1908 were started in 1922. In 1947, after the end of World War II, the necessity of revising the Law was again considered. The revising work was again started in 1967 and is now under way.

The Juvenile Law of 1948 and the Juvenile Training School Law of 1948 govern the administration of juvenile training schools and juvenile classification homes.

The Women's Guidance Home Law governs the administration of the women's guidance homes which are the institutions for giving protection and living guidance to prostitutes to get them rehabilitated.

Throughout Japan, there are 56 prisons, 9 juvenile prisons, 3 medical prisons, 7 houses of detention, 9 branch prisons, 1 medical branch prison and 107 branch houses of detention. The juvenile correctional institutions include 62 juvenile training schools, 2 branch juvenile training schools, 51 juvenile classification homes and one branch juvenile classification home. The women's guidance homes are 3. The penal and juvenile correctional institutions and women's guidance institutions mentioned above are controlled by eight regional correction headquarters, intermediary supervisory organizations.

The Correction Bureau of the Ministry of Justice is responsible for the administration of the prisons as well as its correctional system for juvenile delinquents under 20 years of age and guidance institutions for prostitutes.

For the training of correctional personnel, the Minister of Justice operates the Training Institute in Tokyo and eight branch training institutes. The Correction and Rehabilitation Council consisting of the Correction Sub-Council, Rehabilitation Sub-Council and Science Sub-Council for Correction and Rehabilitation serves as an advisory body to the Minister of Justice.

As of December 31, 1971, the prison population in Japan numbered 47,744, including 1,020 females. A detailed breakdown of this number reveals that 37,722 are convicted prisoners sentenced to imprisonment with labour which includes 759 females and 707 juveniles; 1,556 sentenced to imprisonment including 4 females and 33 juveniles; 48 condemned to death, including no female; 8,013 untried prisoners, including 246 females; and 393 others.

Prisoners convicted for theft number 14,531 and exceed all other offenders in number. They are followed by those convicted for homicide, robbery, indecency, fraud, and bodily injury. Offences against special laws other than the Penal Code account for 2,048 prisoners. Among prison-

ers sentenced to imprisonment with labour there are 19,250 first offenders and 17,492 repeaters, excluding life termers. The large number of recidivists is a phenomenon which has its inception in 1952. This is apparently a result of the high criminal wave which followed the termination of World War II, however, recently the recidivist rate is gradually decreasing again, and it requires further criminological survey and analysis.

The small number of juvenile prisoners is the result of the establishment of a system for the prevention of juvenile delinquency and the rehabilitation of youthful offenders under the Juvenile Law. Today, most juvenile delinquents are treated by non-punitive, protective measures rather than punitive measures.

The 60 juvenile training schools which are the juvenile correctional institutions accommodate 4,048 juvenile delinquents, including 340 girls. Here also theft (1,626 juveniles) leads all other offences in number and is followed by indecency, intimidation, bodily injury and robbery.

Juvenile classification homes are the institutions which receive juvenile delinquents from the family courts under the Juvenile Law, and they conduct necessary classification surveys. On an average, in 1971, there were daily 902 juvenile delinquents including 87 girls in 50 juvenile classification homes and one branch home throughout the country. Juveniles committed here are kept in custody from 2 to 4 weeks during which time their background and disposition are observed and studied and reports are prepared which will assist the family court in deciding what disposition to make and aid the enforcement of protective measures taken by the family court.

As of December 31, 1971, there were 22 women detained in women's guidance homes.

II. Treatment of Convicted Prisoners at Correctional Institutions

1. Introduction:

The treatment of convicted prisoners is based on the classification and progressive system. In principle it is group treatment in units, but its purpose is to correct the criminal inclination of the convicted prisoners by individual treatment.

2. *Classification system:*

The classification system which was in operation since 1949 has been substantially revised by the new Prisoners' Classification Regulations which became effective on the 1st of July 1972.

The new Regulations are designed to conduct the scientific classification of prisoners and ensure their proper cusdody and treatment based on it, so that the functions of prisons, juvenile prisons and detention houses may be fully and effectively fulfilled. The characteristics of the Regulations are that: (1) the Director of Correction Bureau must nominate as a classification center one institution equipped with special facilities in each of the eight Correction Regions throughout the country; (2) when a person is committed to an institution, his sentence being final, the examination for classification at the institution must be completed within about two months as a general rule; and (3) the grouping (classes) of prisoners for custody has been almost totally changed by the new Regulations, which newly set up the grouping categories for treatment, besides the above grouping (classes) for custody, as mentioned later.

(a) Classification process

Under this new system, the periods of time for classification at the time of committal are, in the case of those committed to a classification center (male prisoners under 26 years of age whose prison terms are one year or over and who have never served prison terms before, except foreigners in F class mentioned below), are about 55 days at the center plus about 5 days at the institution to which they are committed and, in the case of those not committed to a center, about 10 days at the institution where they are confined at the time of their sentence becoming final and then about 20 days at the institution to which they are committed from there.

During the above periods of classification, the following treatment programs are carried out, emphatically:

(1) Those sent to a classification center are given, (i) at the center, orientation for their adaptation to life in prison as well as for classification inquiry during the first 15 days or so, and then prison work to find out their vocational aptitude and training in prison discipline for about 30 days, and then counseling for emotional stability and orientation for inspiring them to new efforts for rehabilitation as well

as oreintation for transfer from the center to the institution selected for them, for about 10 days and, (ii) at the institution to which they are transferred, orientation for adaptation to the life there and training in discipline.

(2) Those not sent to a center are first given (i) at the institution where they are detained when their sentence becomes final, orientation for classification inquiry and for tansfer from there to the institution selected for them, and (ii) at the institution to which they are transferred, they receive counseling for emotional stability, training in discipline and orientation for adaptation to prison life as well as for inspiring them to new efforts for rehabilitation.

(b) Treatment based on the above classification

Under the Regulations, there are two kinds of grouping of prisoners, one from custodial considerations and the other from treatment considerations, as already mentioned:

(1) Grouping from custodial consideration

(i) by sex, nationality, kind of sentence, age and prison term

Class W: (females)

Class F: (foreigners who require treatment different from that for Japanese)

Class I: (those sentenced to imprisonment without labor)

Class J: (juveniles)

Class L: (those who have to serve a term of 8 years or over)

Class Y: (adults under 26 years of age)

(ii) by the degree of advancement of criminal inclination

Class A: (not advanced in criminal inclination)

Class B: (advanced in criminal inclination)

(iii) by mental defect or physical sickness or defect

Class M: (mentally defective)

Sub-class Mx: (the feeble-minded who are seriously handicapped in social life, due to the deficiency of intellectual faculties and those who should be treated like the feeble-minded)

Sub-class My: (psychopaths (those who are seriously handicapped in social life because their character is noticeably distorted, though

they do not suffer from psychosis in its strict sense) and those of whom psychopathic traits are discerned to a considerable degree.)

Sub-class Mz: (psychotics (those who suffer from mental disease in its narrow sense such as schizophrenia, manicdepressive psychosis, etc.), those who are suspected, to a considerable degree, to suffer from mental disease and those who suffer from serious neurosis, and also those who suffer from prison psychosis, drug intoxication (including strong drug dependance), alcoholism or after-effects thereof to a remarkable degree)

Class P: (physically sick or defective)

Sub-class Px: (those requiring medical treatment or care for a considerable period of time because of physical sickness, pregnancy or delivery)

Sub-class Py: (those requiring special treatment because of some physical defect and those who are blind, deaf or mute)

Sub-class Pz: (those over about 60 years of age who are becoming senile considerably and those requiring special treatment because they have a weak constitution)

(2) Grouping from treatment consideration

(i) by types of treatment required

Class V: (those requiring vocational training)

Class E: (those requiring schooling)

Class G: (those requiring living guidance)

Class T: (those requiring therapeutic treatment)

Class S: (those requiring special protection and care)

(ii) by other factors

Class O: (those who are deemed suitable for open treatment)

Class N: (those who are deemed suitable for accounting work)

Under this classification system, all the prisons are to receive only those prisoners belonging to specific categories to give them proper treatment.

3. Progressive System:

The progressive system is conducted for convicted prisoners sentenced to imprisonment with labour under the Ordinance for Prisoners' Progressive Treatment of 1933. There are four grades in this system which starts with the lowest or fourth grade for new comers and continues up to the highest or first grade. In principle those who are placed in the fourth and third grades are confined in community cells and those in the second grade and higher are confined in individual cells at night. Those who are classified in the highest grade enjoy extensive self-government and privileges.

Those sentenced to imprisonment without labor are accorded treatment similar to this progressive treatment, as they have increased in number in recent years and a majority of them engage in prison work voluntarily.

4. Open Institution:

As of the end of December 1972, there were 55 prison labour camps attached to prisons or juvenile prisons throughout Japan. Fifteen of these are of open-type "living-in" camps. Prisoners working at these camps are selected by classification process which takes into account their prison record, the length of sentence remaining to be served, and other factors. They serve as a sort of intermediate prison for those whose release date is close. A new mode of open institutional treatment has been tried in every correction region since 1961. This has become a test system applied throughout the country since 1965. At present, the Ohi Shipyard Camp on Shikoku Island (established in 1961), the Kitsuregawa Agricultural and Civil Engineering School in Tochigi Prefecture north of Tokyo (Branch of Kurobane Prison; opened in 1971), the Ichihara Prison in Chiba Prefecture (for traffic offenders; established in 1969) and the Arii Shipyard Camp of Onomichi Branch Prison near Hiroshima (established in 1968) are among the most progressive open institutions equipped with modern correctional facilities.

5. Prison Labour:

In Japan labour is compulsory for convicted prisoners sentenced to imprisonment with labour. As of December 31, 1971, 91% of the whole convicted prisoners were employed in prison labor. Those sentenced to imprisonment without labour, those in penal detention or unconvicted prisoners awaiting trial may be employed upon their own application. There are various kinds of prison labour projects and monetary gratuity is given to those so engaged for stimulating the prisoners' will to work. However, the amount of the gratuity is so small that an effort is being made to increase it. The actual working hours are eight per day and a weekly holiday system is in force. Compensation is paid for accidents incurred while working, but again, the sum is so small that an effort is being made to increase it.

6. Vocational Training:

Vocational training is offered to those prisoners who " can be corrected easily " as well as to youth and juvenile offenders. Such training is offered in addition to regular prison labor, and includes the repair and operation of automobiles, barbering, beauticians' work, dressmaking, laundry, the repair of radios, etc. This training is designed to enable the prisoners to pass national examination for these occupations and secure licences while they are in the institution for facilitating their employment after release.

7. School education:

School education is given four hours a day to juveniles and other inmates who need such education, but, if necessary, additional time may be devoted to school education. Usually leisure hours may be used for this purpose.

At the Matsumoto Juvenile Prison in Nagano Prefecture, a branch of the municipal junior high school was set up in 1955, to which the juvenile prisoners who have not completed their ordinary school education are transferred from the prisons throughout the country.

8. Correspondence Courses:

For juvenile and adult inmates, correspondence courses are encouraged aiming at their intellectual improvement. The courses are those approved by the Minister of Education and include junior and senior high school curricula and some courses of a university level and vocational courses in radio, automobile and electricity, mechanics, book-keeping, mimeorgraphy,

etc. The correspondence courses may be taken at their free time and on holidays. The number of those taking correspondence courses is steadily increasing, being 4,700 in 1972.

9. Visual and Auditory Education:

By the use of movies, slides, radio and music records, visual and auditory education is given to inmates, mainly for the purpose of the better use of leisure hours. These methods are chosen for the purpose of improving the cultural background of the inmates and preparing them for their future life in society. Those juvenile prisoners who behave well may be allowed to enjoy the privilege of participating in such activities not only inside the institution but also outside it.

The Short Wave Broadcasting for Correctional Institutions is a programme specially planned and sponsored by the authorities concerned for the purpose of strengthening guidance in daily life for inmates.

10. Religious Activity:

The Constitution of Japan prohibits the appointment of prison chaplains as government officials. However, through the activities of the League of Religions, inmates receive religious guidance under the leadership of priests of their own religious sects. Thus, their religious freedom is protected and an opportunity for the cultivation of their religious sentiments and the promotion of their faith is encouraged.

11. Prison Visitors' System:

About one thousand voluntary visitors, including 121 women, were serving the correctional system as of the end of 1971. This prison visitors' programme had its inception in 1953 and has achieved remarkable results by providing constructive guidance to solve various individual problems of prisoners such as troubles at home, planning for their future livelihood, etc.

12. Recreational Activity:

Recreational activities are rather encouraged than limited. They include sports, movies, dramas, music, reading, etc. The hours after labour are allotted to these activities. Necessary materials are provided by the authorities. Books and magazines are censored if they are sent from outside.

13. Prison Supplies:

Basically, convicted prisoners receive food and clothing from the prison while unconvicted prisoners may purchase their own food if they so desire. Nutritional needs of the inmates are carefully taken into account in preparing the prison diet which is designed to maintain and promote their working power as well as their health. The standard of quality and quantity of the diet is established by a Minister of Justice directive.

14. Medical Care:

Prisoners receive the medical care of the same standard as that ordinary people can normally receive. Prison infirmaries are equipped with all necessary medical apparatus and, depending upon the size of the institution, a sufficient number of doctors are assigned on a full-time basis. If necessary, prisoners may be transferred to outside hospitals for surgery or special treatment. Three special prisons and one branch prison have been established for treating inmates afflicted with tuberculosis, leprosy, mental illness, and chronic ailments. Prisoners may also receive psychiatric care by group therapy, orthopedic corrections, and such other treatment as removal of tattoo markings and optional surgery.

15. Interview and Correspondence:

In general, an interview between a prisoner and a visitor is conducted in the presence of a prison official except in the case of an interview between an unconvicted and his attorney. All mails to and from prisoners are subject to censorship.

16. Rehabilitation:

Rehabilitation activities for convicted prisoners are commenced at the time of their admission to institutions. A government rehabilitation agency (probation office) maintains contact with the prisoner's family and serves as a liaison organ between them and the prisoner. For those prisoners whose time of release is approaching a systematic educational programme for the future and assistance for finding employment are given.

17. Security:

Restraining instruments, such as straight jacks, instruments to control vocal outbursts, handcuffs and arresting ropes, are used for the purpose of the prevention and suppression of escape, violence and suicide, when an inmate is outside the prison, but no chains. Revolvers, gasguns and police sticks are used, but no swords. However, the abuse of these weap-

ons is strictly prohibited. Recently, considerable improvement has been made of a solitary cell for tranquilization.

18. Reward and Discipline:

For any oustanding good conduct performed by a prisoner, reward is granted. Disciplinary measures include the suspension of physical exercise, reduction of diet and " Minor Solitary Confinement ". The reduction of food, however, does not apply to a juvenile or an unconvicted prisoner. The system of " First Degree Solitary Confinement " remains as a method of discipline but it is actually no longer in use.

19. Petition:

Inmates in penal institutions are entitled to submit petitions or complaints, orally or in writing, about their treatment to either the Minister of Justice or to inspecting officers.

III. Treatment of Inmates in Juvenile Training Schools

The Juvenile Training schools are used for the correction of juvenile delinquents committed thereto by the family courts as a protective measure prescribed in the Juvenile Law of 1948. They are graded as Primary, Middle, Advanced and Medical. These schools conduct correctional education for juvenile delinquents until they become 20 years of age. However, incarceration in an advanced juvenile training schools may, if necessary, continue until they become 23 years of age and, if medical care is needed, they may be kept up to 26 years of age in a medical juvenile training school. Progressive treatment is applied to these inmates and their privileges are increased step by step. Institutions are separately established according to sex. It is not appropriate that one institution should seek to attain many objectives of correctional education. In order to make it effective, therefore, a plan to establish specialized juvenile training schools has been pushed forward since 1963. According to this plan, there are to be established such specialized training schools with the sole objective of giving junior high school education, or vocational training, or medical treatment. Two institutions in Tokyo have already been designated as experimental schools for physical training.

1. Correctional Education:

The core of the treatment for juvenile inmates is the correctional

education which consists of school education, vocational guidance, guidances in daily life and other appropriate training, and medical treatment. If necessary, the superintendent of a juvenile training school may entrust part of this programme, with the approval of the director of the regional correction headquarters, to a school, hospital or a private enterprise or individual.

2. *School Education:*

The school education programme covers primary and junior high school courses and sometimes senior high school or college work. With respect to school education, it is necessary to follow the recommendation of the Minister of Education. Even though there are a number of difficulties in the composition of classes and planning of proper educational guidance due to the lack of inmates' will to learn, difference in their attainments, and also due to the fact that they commence a course at different time, a marked improvement in the educational level of inmates has been attained due to the modern techniques of education, such as visual and auditory aids and the use of group guidance and seminars.

3. *Vocational Guidance:*

Vocational guidance is offered for the purpose of cultivating inmates' willingness to work as well as developing knowledge and skill necessary to qualify them for future employment. At the same time, emphasis is placed on promoting their ability to select an occupation fit for their personality. Various kinds of training are offered, such as wood work, metal work, repairing of radios, driving automobiles, printing, farming, etc. for boys, and beautician's work, dressmaking, handicraft, typewriting, etc. for girls. Those taking the vocational training are given remuneration. If an inmate suffers injury or death during his vocational training, compensation is paid. The vocational training is conducted not only inside the school, but also at outside establishments in order to make the training complete. In the latter case earnings gained outside are given to the inmate at the time of release.

4. *Guidance in Daily Life:*

For some time after commitment to the institution, juveniles are given living guidance in daily life, usually by directive means. Then with the

promotion of the grade of treatment, the methods of guidance is changed to non-directive means, and the juveniles are trained by means of group discussion and autonomous living programme, and they are guided through their daily life in a manner to take care of their own health and hygiene, cultivate the habit of handling things carefully and lead an orderly life and to be harmonious with one another and cultivate the spirit of responsibility and thus to develop the mental attitude necessary for group as well as individual life. For this purpose, club and group recreational activities are encouraged under the special guidance programme. In addition, counselling by prison visitors is bringing about desirable results. These voluntary visitors for inmates at juvenile training schools numbered over 600, as of the end of 1971.

The Short Wave Broadcasting for Correctional Institutions is a programme specially planned and sponsored by the authorities concerned for the purpose of strengthening guidance in daily life for the inmates.

5. Medical Care:

Five principal training schools and one branch are devoted exclusively to juvenile inmates requiring physical or mental medical care. In these institutions every effort is made to correct defects and facilitate the rehabilitation of the inmates. Twenty other training schools, while not devoted strictly to medical care, have complete medical sections which are able to perform substantially the same function as the medical training schools.

6. Privilege and Discipline:

Treatment at the juvenile training schools is lenient to a great extent as compared with that of penal institutions. The atmosphere at the schools is relatively free with various privileges granted. Inmates classified as 1st grade are allowed home leave privilege and visit their homes without supervision. Other inmates, regardless of their grade, are allowed to visit their homes in the event of serious illness or death of a close relative. Special leave is awarded for inmates with good records. The use of handcuffs is permitted only for the restraint of unruly inmates, and disciplinary action is limited to reprimand or confinement in a repentance room for a short time.

CHAPTER IV. REHABILITATION OF OFFENDERS

I. Probation, Parole and Aftercare

In terms of social defence, the responsibility of the Government should not end when it has committed an offender to prison. Obviously, its further responsibility for his rehabilitation arises at the time of his release. Criminal statistics indicate that a year or so immediately following his release is of crucial importance for his rehabilitation. Reflecting this fact, the Japanese law clearly states that the responsibility for the aftercare of discharged offenders as well as the administration of probation and parole is vested in the State. Extramural services for offenders play quite an important role in the administration of criminal justice, because such services help and encourage those released on probation or parole to readjust themselves to useful lives in society. In other words, they give a finishing touch to the treatment of offenders by guiding them under probation and parole supervision outside the walls of institutions (prisons or training schools) or by giving them proper aftercare.

One of the earliest signs of aftercare services in Japan was seen in a social welfare service undertaken by a feudal lord in the 17th century. It gradually developed with the modernization of Japan. However, it is only after the World War II that the offenders' rehabilitation system has made a remarkable progress.

The non-institutional treatment of offenders may be classified into the following two categories:

(a) Probation and Parole Supervision

This is a substitute for treatment within institutions and, unlike aftercare, it contains an element of State authority. Persons placed under such supervision consist of the following five categories: (1) a person (usually a juvenile) who has been placed on probation by the family court, (2) a person (usually a juvenile) who has been paroled from the juvenile training school, (3) an adult or juvenile who has been paroled from prison, (4) an adult or juvenile who has been placed on probation by the criminal

court and (5) an adult female who has been paroled from the women's guidance home. The total of the persons who were under the probation or parole supervision of these five kinds was 78,714 as of November 1972.

(b) Aftercare

Unlike probation or parole, aftercare is not a substitute for institutional treatment but is provided only on voluntary basis. It is applied to those persons who are in difficulties after their release from prison or detention house.

II. Agencies for Non-Institutional Treatment of Offenders

1. Probation Office:

The probation offices are the agencies which are responsible for the community-based treatment of offenders. They are located at the 50 cities where the district courts are located. They are under the jurisdiction of the Ministry of Justice, being responsible not only for probation and parole of both adults and juveniles but also for the aftercare of discharged offenders.

As rehabilitation agents working for these offices, there are (a) government probation officers, (b) volunteer probation officers, and (c) Rehabilitation Aid Hostels (or Societies).

The probation officers are regularly paid full-time government official assigned to the probation offices. They are 742 in total. In general, the probation officer may be defined as a case worker. He is required to have sufficient knowledge of psychology, pedagogy, sociology or psychiatry and expertise relating to the rehabilitation of offenders. He is primarily responsible for a case to which he has been assigned by the chief of the probation office. However, it is not common that he personally handles all the process of case work. Usually he refers the probationer or parolee to volunteer probation officers with his instructions who act as his assistants and directly carry out probation or parole supervision.

Volunteer probation officers are selected from among ordinary citizens and work at the front line of rehabilitation services with humanitarian spirit. They are appointed by the Minister of Justice and engage in rehabilitation case work as unpaid part-time workers. There are about 47,000 volunteer probation officers throughout the country.

Rehabilitation aid hostels (and societies) are private organizations. They perform rehabilitation services under the authorization and supervision of the Minister of Justice. They carry out their work by giving aid and accommodations mainly to those probationers and parolees as well as discharged offenders who have been referred to them from the probation office. The State reimburses the expenses for such care. There are 115 rehabilitation aid hostels (and societies) in the country, and the number of the persons cared for at the hostels in February 1972 accounted for 1,539.

2. *Regional Parole Board:*

The regional Parole Boards are placed at eight cities where the high courts are located. The Board is responsible for deciding on parole and its revocation as well as for supervising the probation offices. Its decision is rendered by a panel of three members.

3. *The National Offenders Rehabilitation Commission:*

This commission, consisting of five members, has the power (a) to make an inquiry into a complaint about any decision made by the Parole Board and (b) to make recommendation to the Minister of Justice about special pardon.

III. Legal Basis for Probation, Parole and Aftercare Services

The basic laws prescribing the community-based treatment system are as follows: (1) The Offenders Rehabilitation Law of 1949, providing for matters concerning probation and parole supervision; (2) The Law for Probationary Supervision of Persons under Suspension of Execution of Sentence of 1954, prescribing probationary supervision to be pronounced by the criminal court; (3) The Law for the Aftercare of Discharged Offenders of 1950, containing the provisions concerning aftercare and rehabilitation aid hostels and societies: and (4) The Volunteer Probation Officer Law of 1950 concerning the volunteer probation officer system.

(For details of rehabilitation services based on these laws, please see "Non-institutional Treatment of Offenders in Japan", The Ministry of Justice, 1970.)

CHAPTER V. JAPANESE LAWYERS

I. The Structure of the Legal Profession

The basic laws relating to the legal profession are the Court Organization Law of 1947, The Public Prosecutors Office Law of 1947, and The Lawyer Law (The Practicing Attorney Law) of 1949. The Japanese legal profession consists of three categories of lawyers — judges, public prosecutors and practicing attorneys. As of 1972, the number of lawyers belonging to each branch of the profession is as follows:

There are 2,681 judges, including 15 Supreme Court Justices, 8 High Court Chief Justices, 589 assistant judges, and 781 summary court judges. The total number of prosecutors assigned to the Supreme Public Prosecutors Office, 8 High Public Prosecutors Offices, 50 District Public Prosecutors Offices and 575 Local Public Prosecutors Offices is 2,071 including 898 assistant public prosecutors. There are 9,552 practicing attorneys belonging to 52 Local Bar Associations which are organized into one national coordinating organization called the "Japan Federation of Bar Associations".

II. Outline of Legal Training

1. Qualifying Examinations:

In order to become lawyer of whatever category, a candidate has to take the National Bar Examination which is held annually by the National Bar Examination Committee of the Ministry of Justice. Today almost all candidates are law graduates from university law departments, but a very small portion of the total graduates actually takes this examination. The standard of the examination is fairly high and in 1972, out of 23,425 candidates, 523 (2.29%) passed it. Almost all of those who successfully pass this examination are appointed by the Supreme Court as law apprentices.

Law apprenticeship is not the only gateway to the legal profession. There are also some other ways of entering the profession. For example,

experienced court clerks or experienced prosecutor's assistants may become summary court judges or assistant public prosecutors under certain conditions prescribed by law. Theoretically law professors also may become judges or public prosecutors under certain conditions, but such professors have been few in the past.

Judges and assistant judges are assigned by the Supreme Court and retire at the age of 65 (70 for summary court judges). Public prosecutors are appointed by Minister of Justice and retire at the age of 63 (65 for the Prosecutor General). Their status is well guaranteed by law against the infringement of possible political influences.

2. *Law Apprenticeship under the Legal Training and Research Institute:*

Before entering the profession, the law candidate must study two more years as a law apprentice under the supervision of the Legal Training and Research Institute of the Supreme Court. The initial four months and the final four months of apprenticeship are spent in the Institute's class-rooms, while the remainder of the two year term must be spent in training conducted in courts, law firms, and in public prosecutors' offices under the supervision of the Institute. The Institute has a well developed curriculum conducted by a strong faculty composed of able judges, prosecutors and practicing attorneys. At the completion of his term with the Institute the apprentice takes final examination and, if he succeeds, he is equally qualified to become an assistant judge, prosecutor, or attorney. As a matter of fact, almost all of the apprentices pass the final examinations. The efficiency of legal training under the Institute contributes to the satisfactory standard of the Japanese legal profession and to the movement toward a "unified legal profession".

III. Legal Careers

The graduates of the Legal Training and Research Institute may become assistant judges, public prosecutors, or practicing attorneys at their own free choice. The following table shows what kinds of professional careers were selected by the graduates of the Institute in recent years.

	Total	Ass. Judge	Pub.Pros.	Prac.Att.	Miscellaneous
1965	441(23)	72(6)	52(1)	316(16)	1
1966	478(25)	66(2)	47(1)	359(21)	6(1)

1967	484(26)	73(4)	49	356(21)	6(1)
1968	501(28)	85(6)	49(1)	369(20)	8(1)
1969	516(18)	84(2)	53	373(16)	6
1970	512(21)	64(1)	38	405(20)	5
1971	506(37)	65(2)	47(3)	388(30)	6(2)
1972	495(34)	58(2)	59(5)	370(27)	8

The figures in brackets show numbers of women lawyers.

END